

IIROC NOTICE

Rules Notice Request for Comment

Dealer Member Rules

Please distribute internally to:

Legal and Compliance

Institutional

Operations

Research

Retail

Senior Management

Contact:

Angie F. Foggia

Policy Counsel, Member Regulation Policy

416 646-7203

afoggia@iiroc.ca

Notice 11-0350

December 7, 2011

Summary of comments received on the updated draft Guidance Notice MR0281: “Guidelines for the review, supervision and retention of advertisements, sales literature and correspondence”

On February 7, 2011, the Investment Industry Regulatory of Canada (“IIROC”) issued a draft update of Member Regulation Notice MR0281 which sets out regulatory expectations relating to the review, supervision and retention of advertisements, sales literature and correspondence (“updated Guidance Note”). The existing Member Regulation Notice MR0281, *Guidelines for the Review of Advertisements, Sales Literature and Correspondence*, was originally published on April 12, 2004.

IIROC received 5 comment letters in response to the updated Guidance Note. We thank all of the commenters for their helpful submissions.

Appendix “A” includes a summary of the comments received followed by IIROC’s responses to those comments. A revised version of the updated Guidance Note is being published simultaneously to this Notice as [Guidance Note 11-0349](#). Guidance Note 11-0349 replaces Member Regulation Notice MR0281 and is effective immediately.



APPENDIX “A”

Comments Received in Response to IIROC Rules Notice 11-0051 – Request for Comments

Updated draft guidance on guidelines for the review, supervision and retention of advertisements, sales literature and correspondence

Prescriptive nature of requirements

1. We received 4 comments suggesting the rules should be more principles-based to allow for more flexibility and reduce cost and compliance burdens on both IIROC and Dealer Members.

IIROC staff response

IIROC recognizes the benefits of principles-based rules generally. The fundamental objective of Dealer Member Rule 29.7 (“Rule 29.7”) is to ensure that all advertisements, sales literature and correspondence are accurate and not in any way, false or misleading. In order to achieve this objective with some consistency on an industry wide basis, IIROC believes that it is necessary and appropriate to set clear, base-line standards regarding the review, retention and supervision of these materials.

IIROC believes that Rule 29.7 and the Notice strike an appropriate balance, setting out clear base-line standards while still allowing a sufficient degree of flexibility to accommodate different methods of communication and the differences in Dealer Members’ business models.

Content requirements

2. The Notice should stress that however social media websites evolve they require the same professional communications standards and behavior that IIROC now demands.

IIROC staff response

IIROC staff believes that the Notice places sufficient emphasis on the fact that, irrespective of the method by which communication takes place and however social media websites evolve, Dealer Members must continue to ensure compliance with applicable regulatory requirements and securities legislation.

3. The Notice should provide guidance on the use of video websites, such as YouTube.

IIROC staff response

The Notice and rules apply to all methods used to communicate, including video websites such as YouTube. Although the Notice has been revised to include YouTube, the social media websites listed are not exhaustive.



4. Unlike Rule 29.7, the Notice does not address what specific policies and procedures are mandatory for Dealer Members.

IIROC staff response

A Notice is not intended to reiterate each of the requirements set out in the rules; rather, the purpose of a Notice is to set out IIROC’s interpretation, expectations, considerations and suggested best practices relating to the requirements set out in the rules. Dealer Members are advised to read the Notice in light of their regulatory requirements.

5. The Notice provides that Dealer Members have the discretion to use pre-approval, post-use approval or post-use sampling to supervise communications. This is inconsistent with Rule 29.7(3) which mandate pre-use approval for many types of communications.

IIROC staff response

The Notice has been revised to capture the types of advertisements, sales literature and correspondence listed in Rule 29.7(3) that must be approved prior to publication or use.

6. Reference should be made to Member Regulation Notice 098, *What Constitutes a “Recommendation”?* (“MR098”), to help Dealer Members determine what constitutes a recommendation.

IIROC staff response

The Notice has been revised to make reference to MR098.

7. The Notice should advise Dealer Members to consider prohibiting or restricting registrants who have presented compliance risks in the past, and allow only those registrants who have received appropriate training on the firm’s policies and procedures regarding social media websites to engage in such communications.

IIROC staff response

The Notice has been revised to include considerations for Dealer Members when designing and implementing compliant supervisory practice, including prohibiting or restricting the use of these websites by Approved Persons who have presented compliance risks in the past, and allowing only those registrants who have received appropriate training on the firm’s policies and procedures regarding social media websites to engage in such communications.



Third-Party Research and Communications

8. Communications by a Dealer Member, using the resources of that Dealer Member, are always “first-party” communications.

IIROC staff response

Whether or not third-party communication will be considered as the Dealer Member’s communication will depend on the facts and circumstances of each case. Dealer Members should consider the use of disclaimers, the nature of their involvement in the preparation of the communication prior to posting and any evidence of explicit or implicit endorsement or approval of the post in order to help determine whether or not the third-party post reflects the views of the firm. It is important to note that the use of disclaimer language will not necessarily relieve Dealer Members’ of their responsibility for third-party posts.

9. One commenter recommends that IIROC create a reasonable time restriction whereby pages must be reviewed at least once a month to remove third-party promotional materials that do not align with the regulations.

IIROC staff response

It is IIROC’s expectation that Dealer Members will establish policies and procedures for third-party communication that are compliant with their regulatory obligations at all times.

10. Clarify whether or not research reports issued by registered representatives who are not employed as research analysts require prior approval.

IIROC staff response

The Notice has been revised to specify that reports and recommendations that resemble research reports but that are issued by registered representatives, who are not employed as research analysts, require prior approval pursuant to Dealer Member Rule 29.7(3).

11. Provide best practices related to the monitoring and reviewing of third party communications or posts.

IIROC staff response

The Notice has been revised to provide best practices related to the monitoring and reviewing of third party communications or posts.



Responsibilities of Dealer Members and Registrants

12. The Notice should address a Dealer Member’s responsibility to determine what internet modes they will allow their registrants to appear on or be involved with based on the firm’s capacity to supervise.

IIROC staff response

The Notice clearly states that it is the Dealer Member’s responsibility to evaluate the adequacy of their systems, to review all forms of communication and to determine whether or not there is a need to prohibit access to social media websites that do not allow for compliant supervision practices.

13. The Notice should place the prime responsibility on the registered or approved person themselves to understand IIROC sales and marketing regulations, and to self-police themselves as to what they communicate through social media websites.

IIROC staff response

IIROC believes that it is appropriate for the Dealer Member to supervise such communication, as set out in the Rule. It is IIROC’s expectation that a Dealer Member’s policies and procedures will include provisions for the education and training of registered and approved persons on the firm’s practices relating to the review, supervision and retention of advertisements, sales literature and correspondence of the firm.

Communication not intended for business purposes

14. The Notice fails to address situations where the individual has the credentials and title of an advisor but acts and communicates in a social manner that is not intended for business-building purposes.

IIROC staff response

The Notice is intended to address the use of social media websites for business purposes only. However, Dealer Members should be mindful of their regulatory requirements that may be triggered as a result of the content of the communication regardless of whether or not it was intended for business purposes.



Suggested Enhancements

15. We received two comments requesting additional guidance on social media and enhancements to IIROC's regulatory model and guidance.

IIROC staff response

IIROC staff believes that the current regulatory model illustrates IIROC's commitment to protect investors and set high quality regulatory and investment industry standards. The use of social media will vary from firm to firm, based on their business models. Each firm should therefore establish clearly defined and enforceable compliance safeguards that reflect their unique social networking and internet activity needs.