

December 5, 2012

Robert Keller, Policy Counsel
IIROC
121 King St. W., Suite 2000
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M5H 3T9

Re: 12-0253 – Request for Comment on Compensation Structures

Robert,

Thank you for allowing me the opportunity to offer my thoughts on this important matter. What follows are my own person views- views which may or may not be shared by my employer, BBSL. Rather than providing a long narrative, I'd like to put forward my comments as bullet-point observations...

- You may wish to substitute the word 'biased' for 'conflicted'. While many people feel the words are (near) synonyms, I believe referencing 'biased' advice makes the problem more immediate and urgent. I also believe it is more factually accurate.
- Similarly, IIROC should act swiftly to eradicate the phrase 'trailer fees' from the popular vernacular. You use the phrase yourself a number of times in your paper and it is factually incorrect. To my experience, CRA, the CSA and all IIROC-compliant marketing material **requires** that the term used be 'trailing commissions'. Even if one were to disagree, regarding this usage, surely it should be obvious that trailers are either fees or commissions, but cannot be both simultaneously and cannot morph from one into another (and back again) depending on who is talking and/ or who the audience is. Look up the two words. The definitions are far from synonymous. The entry of the phrase "trailer fees" into the popular lexicon is just the industry's (successful, it seems) attempt to re-frame commissions (something paid to a sales representative for placing a product) as fees (something charged by a professional for offering valuable services). Calling an apple an orange doesn't make it an orange- no matter what percentage of the population does so. Similarly, calling a commission a fee does not make it a fee and, to the extent that there is confusion in the marketplace, regulators need to bear a good deal of the blame for allowing the industry's self-serving misrepresentation of the nature of their services to gain traction.
- Given that the industry has frequently referred to trailers as something like "fees paid for ongoing service and advice", discount brokerages (order-execution service accounts) should be banned from collecting them. By definition, they are not performing the services that warrant these payments. Charging a consumer for so-called "advice" that is neither requested nor received is reprehensible and totally contrary to the public interest.
- It should simply be illegal to put new issues into fee based accounts. No amount of disclosure should allow 'double charging' to exist. This practice is also reprehensible, as far as I am concerned. Your paper says that putting a commission-based product into a fee-based account after the fact may be a violation of Member Rule 29.1. More clarity is requested/ required as to when this may or may not be the case.

- While not something that ought to be mandatory, I was surprised to see no mention of fee scalability in your paper. It is simply not four times as much work to deal with a \$1,000,000 account as it is to deal with a \$250,000 account. Accordingly, I believe that regulators ought to give due consideration to the idea of encouraging advisors to offer a graduated/ marginal fee schedule to retail clients. As an example, I charge 1.4% on the first \$250,000 of household assets, but only 0.6% on all additional household assets. The fee for a \$1,000,000 account is therefore 80 bps.
- In my opinion, insufficient consideration has been given in your paper to the bias that is caused by embedded compensation. There are almost too many studies to count that chronicle this phenomenon. As such, while it remains every advisor's right to choose both the nature and the quantum (if possible) of his or her compensation, no mention is made to the interplay between compensation methodology and product recommendations/ appropriateness. By way of example, far more fee based advisors are likely to recommend ETFs than commission-based advisors. In a world of identical product merit, advisors should be indifferent between competing product options. The fact that an advisor's choice of compensation can (and often does) have an impact on product recommendations cannot be reasonably overlooked. This is especially true in consideration of the CSA's consultation paper 33-403 regarding considerations surrounding a possible fiduciary standard. How can a client's best interest possibly change simply due to an advisor's choice of compensation methodology? Surely to goodness, no personal choice regarding an advisor's preferred payment method ought to compromise a client's product choice as it pertains to a best interest decision. In spite of this, a causal linkage between advisor compensation methodology and advisor product recommendations clearly exists. To be absolutely clear on this point, I am in favour of choice and do not want to limit any advisor's ability to be paid the way he or she chooses. What I am resolutely opposed to, however, is the distinct lack of choice (and lack of disclosure surrounding that lack of choice) for many retail clients. Clients should be able to choose between (for instance) actively and passively managed products. So should advisors be able to choose. What I find inappropriate is that most advisors- perhaps in their own hubris and perhaps out of mere unthinking habit- recommend actively-managed products exclusively. This is at the heart of the question of client choice. People simply do not choose options if they are unaware of the mere existence of those options. Steps should be taken to ensure that, whatever product is chosen, that it is chosen after the careful consideration of competing options and made with due consideration to the principle of informed consent, bearing in mind that all material facts need to be disclosed in a full, true and plain manner. Choosing from a limited menu of potentially options when other potentially superior options might exist but are never brought to the client's attention is the antithesis of informed consent and full, true and plain disclosure.

Thank you again for allowing me to offer my thoughts.

Sincerely,



John J. De Goey