



REMARKS BY ANDREW J. KRIEGLER, PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA TO THE STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS, FEBRUARY 1, 2016, PRE-BUDGET CONSULTATIONS

1. INTRODUCTION

Thank you, Madam Chair. Good afternoon. I am Andrew Kriegler, President and Chief Executive Officer of the Investment Industry Regulatory Organization of Canada or IIROC. I thank the Members of the Committee and their staff for the opportunity to be part of your 2016 pre-budget consultations.

I am not here today to ask for any fiscal or funding measure to be included in this year's Ontario Budget. Rather, I am seeking the Committee's support for two legislative measures which will permit IIROC to better protect Ontario's investors and support healthy capital markets in the province; measures which would do so at no material cost to government or taxpayers.

In your materials, you will find background information about IIROC. Briefly, we are the public interest self-regulatory organization that oversees all investment dealers and their trading activity on debt and equity marketplaces in Canada. We are national and are recognized by the Ontario Securities Commission and all other provincial securities regulators across the country.

We benefit from having the OSC as a strong regulatory partner and I would like to take this opportunity to particularly thank our OSC colleagues for their leadership, ongoing support and collaboration.

Ontario is the largest market we regulate. To put this into context, at the end of 2015, of the 174 investment firms we regulate, 109 of their head offices were located here in Ontario. There were close to 13,000 registered individuals and more than 3,000 business locations in the province – demonstrating just how much the investment community fuels economic growth in this province.

As a pan-Canadian regulator we employ over 400 people in Toronto, Montreal, Calgary and Vancouver. We set and enforce rules regarding the proficiency, business and financial conduct of IIROC-regulated firms and their staff, as well as market integrity rules, to ensure that Canada's capital markets operate in a fair and orderly manner.

Where there is a failure to address significant compliance findings, a clear failure to demonstrate a strong compliance culture and/or violations of our rules, we take enforcement action. In 2015, we completed 124 investigations nationally, of which 78 were in Ontario. The majority of our enforcement cases involved the suitability of investments for seniors, underlining the fact that the protection of seniors and vulnerable persons is one of our priorities.

As a regulator, it is vital that we have the tools necessary to vigorously and effectively protect the public – this includes the ability to enforce our rules and the sanctions imposed by our hearing panels on individuals who have broken those rules.

2. STRENGTHENING ENFORCEMENT – STRONGER POWERS TO COLLECT FINES

Investors must be confident that firms and individuals are complying with the rules and, if they are broken, that there will be appropriate consequences. The existence of real consequences acts as a deterrent to individuals who may consider engaging in misconduct. Failure to mete out such consequences undermines confidence in our capital markets.

IIROC collects 100 per cent of the fines levied against firms that have broken the rules, but many individuals evade payment – you can see their names on our web site. Our collection rate for fines owing by disciplined individuals is less than 20 per cent across Canada. This is unacceptable.

It is true, sometimes these individuals have no assets, but individual rule-breakers often evade payment by simply ceasing to be an IIROC registrant. In Ontario, we have no ability to collect beyond that point – regardless of what they have done, or how much money they owe.

This is wrong. If you break the rules and abuse the trust your clients have placed in you, you must pay the penalty and be seen to pay it.

In contrast, the Governments of Alberta and Quebec, through their respective Securities Acts, have given us the power to pursue these wrongdoers. Unsurprisingly, our collection rates in those two provinces are considerably higher than our national rate.

In Ontario, there is **over \$20 million** in outstanding fines against individuals (since 2008) – money that IIROC would use to better protect investors, fund the administration of disciplinary hearing panels and support investor education. Our Ontario collection rate for fines imposed so far during this fiscal year is only 2 per cent. Moreover, Ontario represents 61 per cent of the total amount of outstanding fines on a national basis in this fiscal year.

We are pursuing an amendment to the Securities Act to permit IIROC to more effectively collect fines in Ontario. Such an amendment would give us the ability to enforce hearing panel sanctions through the Ontario Superior Court of Justice.

Such an enforcement tool would send a strong and credible message of deterrence and would advance IIROC's public interest mandate. It would also foster investor confidence in the regulatory system and it would do so at no material cost to government or taxpayers.

3. STATUTORY IMMUNITY TO CARRY OUT IIROC'S PUBLIC INTEREST MANDATE

As I already noted, we are required to regulate with a view to promoting the protection of investors and the public interest.

We do so under the express authority of either the terms of the recognition orders issued by the OSC and the other securities regulators or the provisions of securities legislation.

If the OSC and its staff were to carry out our regulatory duties directly, they would have the benefit of the protections embedded in the Securities Act. It provides immunity for acts done in good faith in the performance of any duty or exercise of any power under Ontario securities law. Even though we carry out responsibilities given to us by the commissions, these protections do not apply to IIROC and its staff.

As a result, IIROC and its staff, including our disciplinary hearing adjudicators, are potentially exposed to legal action by individuals or entities that are not regulated by IIROC, based on regulatory actions taken or regulatory powers exercised in the course of IIROC's carrying out its public interest mandate -- even when those actions are taken in good faith.

So I am here to also pursue the addition of an immunity provision to the Securities Act for the good faith performance of our regulatory functions -- but only in respect of the responsibilities assigned to us under the Securities Act or by our OSC recognition order. Under this proposal, when we perform a regulatory function at the behest of the OSC, we would have the same immunity as that afforded to the OSC, were it to perform the function itself.

This would allow IIROC directors, officers, employees and disciplinary hearing adjudicators to act in the public interest without fear of lawsuits related to their regulatory role.

4. CLOSING

Before concluding these remarks, we wish to commend the government for its recent initiatives to modernize financial services regulation in Ontario.

The review of the Credit Unions and Caisse Populaires Act, conducted and completed by the Parliamentary Assistant to the Minister of Finance, Laura Albanese, is timely and we are confident that the recommendations resulting from this exercise will, upon implementation, enhance Ontario's credit union sector.

We have participated in the comment process on the preliminary paper of the expert advisory panel established to review the mandates of the Financial Services Commission of Ontario, Financial Services Tribunal and the Deposit Insurance Corporation of Ontario.

We welcome and support the panel's preliminary recommendations, which are to reduce regulatory fragmentation, promote harmonization among regulators and mandate that the financial services regulators work and cooperate with each other.

We believe strongly that cooperation and sharing of information between financial services regulators can facilitate better protection of investors and consumers. IIROC currently has agreements in place with over a dozen regulatory organizations across Canada and internationally and is in the process of negotiating several more.

We have also commented on the consultation document of the expert committee created to consider financial advisory and financial planning policy alternatives. We strongly believe there is need for regulation of financial planning.

We caution however that, as has already been noted by the FSCO mandate review panel, there is already significant regulatory fragmentation. It is not in the public interest to create yet another financial regulator. To do so would only lead to further consumer confusion, duplication, cost and regulatory gaps. Instead, Ontario should make use of its existing regulators to supervise financial planners operating in their respective jurisdictions but mandate that they work together and that they move to a common set of standards and discipline.

Thank you again for the opportunity to meet with you. We seek your support for the two legislative amendments we are recommending for inclusion by the Government in the bill accompanying the 2016 Ontario budget. These changes will enable IIROC to more effectively protect investors and work in the public interest.