



PROFESSIONAL CORPORATION / SOCIÉTÉ PROFESSIONNELLE

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By Email

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Greetings,

Re: Request for Comment – Enforcement Alternative Forms of Disciplinary Action

Harold Geller and MBC Law Corporation are pleased to offer the following comments in response to IIROC's Request for Comment of its proposal for Enforcement Alternative Forms of Disciplinary Action Notice 18 – 0045.

We recognize and support IIROC's general objective to address wrongdoing in a fair and proportionate manner intended to inspire confidence and deter wrongdoing. Appropriate tools are necessary to meet this objective. The proposal of streamlining disciplinary action arising from so-called "minor contraventions" is appropriate if it reflects the needs of consumer protection. Once more, the proposal of the to use "early resolution" is commendable, if that too reflects the needs of consumer protection.

We refer to and agree with the comments of FAIR and Kenmar.

Given the limited resources available to those who represent investors and the asymmetric funding available to industry, IIROC is urged to take considerable care in seeking out further informed comments to counterweight the influence of the submissions of industry. Furthermore, the industry has direct input into the formation of policies such as this proposal, through representation on IIROC committees. Unfortunately, IIROC has not seen the benefit of involving the average investor or their advocates in the formation of policies prior to publication or in its committee structures. Again, as a regulator it is incumbent upon IIROC to take further steps to counterweight the influence of industry and its own governance to ensure fair and full consideration of IIROC policy including the proposed Enforcement Alternative Forms of Disciplinary Action.

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The proposal has important regulatory and industry considerations, but fails to address IIROC's mandate with respect to the protection of investors.

1. The proposals fail to address the need for public notice of these minor contraventions. Public notice would both generally and specifically deter this type of behaviour, and would also serve to advise investors, who may have been harmed by the so-called minor contraventions of the related potential harm that they may have suffered.
2. The proposals focus on providing mitigating factors for discipline, but fail to address the long-overdue consideration of the continuing power disparity and aggravating factors. At the very least, consideration of the empirical evidence and the evolving recognition of the asymmetric power balance between advisors/dealers on one side and investors on the other, as well as the aggravating factors related to vulnerable investors, should be recognized as a serious gap in the overall disciplinary process of IIROC and of these proposals in particular.

#### Recommendation

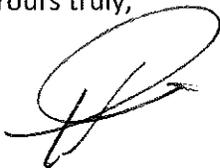
Early resolution should include not only admission of wrongdoing but both remedial steps and immediate compensation for harm caused. We recommend that IIROC adopt a compensation requirement for both proposed enforcement alternatives. That is, as a term of proposing these alternative enforcements, the licensee must fully compensate all harmed investors for their losses, opportunities and attendant costs. In adding this requirement, IIROC will support investor protection. This proposed requirement is akin to measures presently required for OSC "No Contest" Settlements.

Also, prior to the consideration of an Early Resolution Offer, the licensee's practices should be reviewed holistically with respect to other potential similar contraventions affecting other investors. Again, this is an opportunity for IIROC to robustly pursue its investor protection mandate in a proportionate and fair manner.

#### Conclusion

While the proposals in IIROC 18 – 0045 include elements of regulatory value, as presently proposed they are premature or untenable given the inadequate consideration of consumer protection.

Yours truly,

A handwritten signature in black ink, appearing to be 'H. Geller', written over a white background.

Harold Geller