

November 13, 2017

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BY EMAIL

Re: Proposed Provisions Respecting Client Identifiers

Scotia Capital appreciates the opportunity to comment on IIROC's Proposed Provisions Respecting Client Identifiers (the "Proposal") and the consultative approach being taken by IIROC on this very important matter.

While we appreciate IIROC's policy objectives of enhancing market integrity and investor protection, in particular as related to electronic trading, we are concerned with certain aspects of this proposal, which we believe introduce unintended risks to the overall trading ecosystem, and therefore should be reconsidered.

Specifically, we are concerned that the existence of a comprehensive data set of trades linked to specific legal entities introduces the possibility of data compromise and abuse. While we believe that due precautions on information security will be taken, we cannot assume that a future breach will necessarily be avoided. Recent experience with data breaches in various industries suggests that no matter how well prepared, the risk of a breach is a real one, and must be taken seriously.

In the event of a security breach, we believe this data set would represent a treasure trove of confidential information, which could lead to a significant erosion of confidence in Canadian capital markets. This is not a uniquely Canadian problem, as similar concerns over the U.S. efforts to introduce a consolidated audit trail are currently facing resistance along similar lines.

If misused, the data set contemplated by IIROC would introduce the possibility of reverse engineering client trading patterns and strategies, divulging client positions and generally exposing clients' proprietary and confidential information. As a regulated entity, and in the interest of our clients, we take numerous measures to protect client information by ensuring information barriers, access management processes and deploying confidentiality related controls to protect sensitive client information. By releasing client identity through industry-wide LEIs to a central database which we do not control, we lose the ability to take steps to safeguard client data. In turn, we believe this puts our commitment of confidentiality to our clients at risk.

Recent high profile sensitive data breaches at large organizations demonstrate the extreme difficulty of preventing breaches whether inadvertent or a result of outside malicious activity. As well, even with diligent and robust procedures there will be the perception that regulatory staff who have access to this data and later move to investment firms have an inappropriate advantage in the marketplace. With access to such high profile and valuable information, the possibility of information leakage, either directly or indirectly, becomes a bigger problem.

Note: other regulatory reporting requirements do require client level identification numbers, such as Large Open Position Reporting records for Listed Derivatives transactions. However, those reports are on a discrete end-of-day position basis for only specific reportable thresholds and not at the every order / trade level, as in the Proposal.

Additionally, the Proposal recognizes that it is not feasible to require foreign dealers to submit this information for their clients in most cases. This creates a clear regulatory arbitrage between Canadian and non-Canadian dealers. Any entity concerned about LEI disclosure (which we expect to be most institutional clients) is thereby encouraged to trade through a foreign dealer rather than directly with a Canadian firm. Given the lopsided data requirement, there is also a risk of disadvantaging Canadian asset managers, who provide the information, to the global counterparts who do not. In an extreme case, this disparity in treatment could discourage clients from participating in Canadian markets altogether for fear of their information being captured and used maliciously in the future.

Overall, we do not believe the benefit of more efficient investigations counterbalances the dangers of the Proposal. We understand the desire for a larger and more complete dataset to facilitate the detection of potential market integrity violations and manipulative trading. However, in our opinion the current regulatory mechanisms in place as part of dealer gatekeeper responsibilities and direct monitoring by IIROC are sufficient and reasonable. Direct Electronic Access orders already uniquely identify the client and details on orders are available to IIROC by request to the dealer.

We believe a more appropriate path to follow would be introducing data keeping requirements internal to dealers which would include LEIs. In turn, dealers could supply LEIs in response to ad-hoc requests based on specific concerns, rather than passing the information on to the central database and marketplaces for any potential future use. This would facilitate investigations while maintaining a distributed dataset that would be less susceptible to any single data breach.

Additionally, we would like to voice our support for the comment letter submitted by the IIAC, which appropriately outlines the challenges of this proposal.

We would be pleased to discuss this matter further.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sean Kersey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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