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July 23, 2019

VIA eMail and XpressPost

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Re: Comments on the proposed Minor Contravention Program [MCP] and Early Resolution Offers Program. [EROP]

Dear Sir:

The two proposals are complicated as they try to change the present market regulations status quo. And so, we have to see if the investor's best interests are the focus of these proposed changes.

Minor Contravention Program [MCP]

As I understand this MCP applies mostly to IAs being the "approved person". The MCP implies that the IIROC has the power to fine the IA even for a minor error.

In my court case of ROSEN v. BMO-NB, Superior Court Judge Edward Belobaba confirmed that IAs are allowed overtime [OT] as they are employees and work under the Ont. Employment Act. 2000. Also, a CCRA document was submitted to the court, as evidence. The letter states that an as per CCRA, an IA, is an employee with all the right and protections of an employee. [https://www.ontario.ca/document/your-guide-employment-standards-act]

Therefore, I must state that it is up to the Financial Industry Firm [Employer] to discipline the "approved person". The Employer has many internal checks to make sure that its staff follows all the Employer rules, as well as IIROC rules, as well as industry accepted suitability standards.

Financial Industry Member [FIMS] may change the way that they operate. IAs being employees, must respect the RULES and PROCEDURES established by his employer in his contract of employment.. IAs work without the personal protection of an E&O Insurance. IAs work without their conversations being recorded by their employer. The conversation would confirm and/or dispute trading instructions

Transaction and suitability checks, are conducted in the branch, by the Branch Manager, by the regional VP, and in the head office, by compliance.

If the IA makes an honest work-day mistake, his Employer must cover the loss. Employees are not responsible for their financial errors as per the Ont. ESA 2000 Act.

If an IA commits **willful** fraud using false signatures, or borrowing assets from clients, or recommending unsuitable equities, or illegal activities, there are three [3] venues of action:

1/. Police could be called in.
2/. The Employer could discipline the IA internally.
3/. The IIROC could be advised to remove the IAs trading permit or restrict his activities or fine him or all the above.

The IIROC is allowed to go after the IA to recover financial losses suffered by the investor. IIROC is also able to set punitive damages on the IA. Since a large percentage of the IAs income is paid to his employer [+/- 65%], the employer could also be made to disgorge its income from the IAs illegal activities.

The EMPLOYER does has the means and the obligation to put-the-client-whole. This obligation must be included in any settlement agreement

It is the Employer's duty to supervise all of it's staff in all departments. And so, minor non-willful errors, by staff, will remain confidential. But aggressive willful illegal activities will be handled by IIROC or the Police.

In conclusion, I recommend that the MCP proposals be amended as suggested by my comments. In the best-interest of the investor, transparency and full disclosure are always recommended.

Early Resolution Offers Program. [ERO]

The IIROC is the national self-regulating and self-financing organization which oversees all investment dealers and all trading activities.

The IIROC has large expenses derived from staff salaries, staff pension plans, legal staff, location costs, investigative costs, court costs, etc. I don't believe that lowering case fines by 30% will help IIROC maintain its budget. I don't believe that by offering a 30% discount on fines, Financial Industry Member will be encouraged to come forward on their own.

Is the purpose of the 30% reduction in penalty fees designed to allow IIROC to handle more cases?? Does IIROC believe that there are still many irregularities in the financial industry? Is IIROC willing to conduct random checks??

Financial Industry Member [FIM] firms have all kinds of internal checks and balances. The FIM firms also create large information packages of rules and regulations for IAs.

These internal info packages were created over many years and were produced by many department heads, compliance heads, income committees, board members, etc.

So, it would be logical that the FIM would internally discover and report the errors in procedures. Why should a FIM firm be rewarded for doing their due diligence job. ?

The IIROC could consider investigating if the embedded errors and procedure were there a longtime or are just a short term glitch. Like an external PC virus.

If the IIROC is ready to reduce the ultimate fine by - 30% for the FIM firms cooperation, that IIROC could consider a + 30% surcharge where negligent and / or willful activity took place.

When a FIM firm pays a fine, it is really the innocent shareholders who lose income. It is not management with their fixed salaries that pay the fine. It is not the board of directors whose job it is to see that the FIM complies with all IIROC and OSC rules.

Why is it that head office staff responsible for creating the FIM internal rules, regulation, manuals and procedures, are never charged with any offence. ?? Why is it that the compliance staff in the branch, the sector and head office are never charged with any offence.? ??

In all cases of fraud or willful errors, it is mandatory that the investor be made whole, 1st. It does not matter if the fraud was caused at the branch level or because of head office embedded rules and regulations.

Perhaps IIROC could consider opening a claims office where small investors and/or seniors would come to have their financial cases reviewed. Small investors really do not have where to go to get help and advice when their interests are compromised.

I recommend that the ERO initiative strike a balance between a 30% reduction in fines, and a 30% increase in fines.

When the member firm is uncooperative, fails to fully compensate victims, fails to prove that internal controls have been changed, fails to have staff take the proper IIROC courses, fails to properly supervise to prevent future errors, only than can IIROC decide on the ERO initiative.

In the ERO program, it is imperative that the investor be fully compensated for his financial losses including his opportunity losses. Again in the best-interest of the investor, transparency and full disclosure are always recommended.

Again, I thank the IIROC for the opportunity to make a comment on the new proposals. These ideas are mine alone and are based on my 9 years experience in the Financial Industry.

I give permission for this letter to be posted on line.

Yegal Rosen, ...
Toronto