

Sent via email

June 27, 2019

Charles Corlett
Director, Enforcement Litigation
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, ON M5H 3T9
ccorlett@iiroc.ca

Market Regulation Ontario Securities Commission
Suite 1903, Box 55 20 Queen Street West
Toronto, Ontario M5H 3S8
e-mail: marketregulation@osc.gov.on.ca

Request for Comment Minor Contravention Program (MCP) and Early Resolution Offers (ERO) Initiative

https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20190425_notice-rfc-minor-contravention-program.pdf

I appreciate the opportunity to provide an input to these proposed disciplinary tools. They are certainly controversial from a retail investor perspective.

MCP

It is not clear from the consultation paper what happens to “minor contraventions” now. Are they dealt with via Cautionary letters or are they sidelined altogether? If sidelined, how many such cases are there in a typical 12 month period? If the number is very small, perhaps IIROC should just put them through a full Hearing. If the number is large, is IIROC Enforcement Staff so under-resourced that it must sideline them? Nevertheless, I can see the benefits of a fast track lane but that lane must be fully transparent and the operational definition of “minor contravention” must be better articulated. The questions posed in the IIROC survey sure don’t sound like minor contraventions to me as a retail client expecting to receive trustworthy financial advice for my retirement.

Because individual Reps may find the MCP an attractive alternative to facing public disciplinary proceedings, individuals may be more open to making admissions in response to an MCP Notice. Such admissions may adversely affect their dealer firms, so this is a potential positive for investor protection.

If the MCP involves a dually- licensed individual, the associated insurance regulator could in principle commence an investigation that would necessitate the need for public disclosure of the individual’s identity.

Advisor organizations like FP Canada would not have access to MCP information that could impact an individual’s credentials. If MCP is approved by the IIROC Board, despite investor concerns, I recommend that access to MCP files be made available to recognized professional associations.

The following questions appear in the IIROC investor survey https://www.iroc.ca/industry/enforcement/Documents/IIROC-Alternative-Discipline-Investor-Survey-2018_EN.pdf:

TYPE OF ENFORCEMENT THAT SHOULD TAKE PLACE FOR SPECIFIC SITUATIONS (CONT’D)

	TOTAL				
	Take no action	Impose a fine as a minor violation	Try to negotiate an early settlement	Proceed to a full formal hearing before a disciplinary panel	Don't know/not sure
	1011				
	%	%	%	%	%
An investment advisor buys or sells an investment without the approval of the client, but the advisor admits the mistake.	2	23	35	38	12
For several years, an advisor engages in a practice where as a matter of convenience, he signs account documents on behalf of his clients. Notwithstanding that this is a breach of IIROC rules, his clients are aware of this practice and have given him verbal approval. There was no harm to his clients.	12	34	19	26	15
An advisor at an investment firm makes an investment for a client that has a higher risk than the client’s risk tolerance and the client loses money. The advisor and the firm fully cooperate with IIROC’s investigation, apologize and compensate the client for his or her losses.	9	26	38	23	12
When the risk profile of a client changes, an advisor is required to update the Know Your Client form and have the client review and sign. An advisor had for many years discussed fully with clients any changes to their risk profile and had invested accordingly. The advisor neglected to have the client review and sign the appropriate updated documents. Clients did not complain about this oversight, but the advisor breached IIROC rules by not completing the documentation.	9	44	23	18	14
An investment firm discovers that it has been over-charging clients for each trade. It identifies all the cases where this has occurred and pays back investors. . It also notifies IIROC of its actions to correct the situation.	26	29	24	16	11

Are these the types of rule contraventions IIROC consider “minor contraventions”? For instance, the scenario: *For several years, an advisor engages in a practice where as a matter of convenience, he signs account documents on behalf of his clients. Notwithstanding that this is a breach of IIROC rules, his clients are aware of this practice and have given him verbal approval. There was no harm to his clients* resulted in just 26% supporting a full hearing (15% could not offer an opinion). This is a lot more than a breach of IIROC rules, it is forgery.

Signature falsification (forgery) can:

- adversely affect the integrity and reliability of documents including the critical KYC;
- destroy the audit trail and impact the ability of Reps to produce valid documentation to support advice recommendations that come into question;

- prejudice a client by making it appear that they executed a particular document when they did not;
- mislead Member supervisory and compliance personnel;
- negatively affect the Member complaint handling process; and
- facilitate other misconduct such as unauthorized trading, Off book, fraud and misappropriation of client funds.

Forged signatures contaminate the very basis for non-discretionary accounts .Such behaviour is not characteristic of professional advice giving. This is a problem for the retail investor and its secrecy adds to the problem.

Finding just one such adulterated form is also a big problem for Members, who must then interview supervisory personnel and branch staff, contact and interview affected clients, conduct a branch-level review and recomplete affected forms going back years. The Member would also have to inform IIROC.

If indeed these survey scenarios are “minor contraventions”, I have very serious concerns with MCP; so should Member firms. For inadvertent, one- time promptly remedied mistakes, I recommend the Member handle this in accordance with contemporary personnel practices.

ERO

The ERO initiative doesn't pass a basic smell test. The IIROC argument for giving its members a 30% discounted fine is that the credit for cooperation program credits weren't sufficient, thereby resulting in prolonged “extensive negotiations”. This, IIROC argues, makes the disciplinary process more efficient. Arguably, a 40% discount would make the process even more efficient! The Board should be required to demonstrate how this process is in the Public interest. Will ERO lead to a reduction in rule breaches? Will it lead to an improved culture of compliance among Members? Will it lead to an increased respect for IIROC and the CSA? I do however appreciate the fact the one of the conditions for use of ERO is investor compensation where investors lost money. (I assume this to mean full, fair and timely compensation based on OBSI's validated loss calculation methodology).

SUMMATION

Overall, it seems to me that IIROC negotiates with rule breakers instead of imposing fines per CSA approved sanction guidelines and letting Hearing Panels decide on fairness. Because of this, protracted negotiations are required tying up

precious enforcement resources. This explains why such a very small percentage of complaints ever reach the prosecution stage. It seems to me that the basic IIROC approach to enforcement needs an overhaul and refresh if real investor protection is to be realized.

Respectfully,
GB