



Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

January 18, 2021

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Re: IIROC Notice 20-0238 Client Focused Reforms

FAIR Canada is pleased to provide comments on the proposed amendments to IIROC regulatory instruments designed to conform with the October 3, 2019, Client-Focused Reform (CFR) amendments adopted by the Canadian Securities Administrators (CSA). The CSA CFR amendments are set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and its related Companion Policy (NI 31-103).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for advancing investors' rights in Canada. As a voice of the Canadian investor and financial consumer, FAIR Canada promotes its mission through outreach and education on public policy issues, policy submissions to government and regulators, and proactive identification of emerging issues and other initiatives.¹

1. Set a High Bar

FAIR Canada has long advocated the need to introduce a best interest standard in Canada. It is unfortunate that statutory regulators, the SROs, and industry today appear content with a standard that permits a product to be recommended merely on the basis that it is "suitable"

¹ Visit www.faircanada.ca for more information.

for a client, as opposed to requiring that the recommendation be in the client's best interest. The difference is significant.

While we appreciate that the Client-Focused Reforms introduce welcomed changes intended to bridge this difference, we urge those tasked with protecting investors to continue to push and challenge the industry to deliver services that serve their clients' best interests. This outcome would promote the public interest and help foster fairer and more efficient capital markets. We also call upon the industry to take a leadership role in this regard. Our capital markets would be better and stronger for it, and public confidence in them would be higher.

As noted by the MFDA in its CFR related publication, the CSA's CFR amendments only establish minimum standards. As such, IIROC and its members are free to (and should) set rules and adopt practices that exceed the NI 31-103 standards. In amending regulatory instruments or transforming industry practices, we urge IIROC and its members to consider that investors place a great deal of reliance on and trust in them. As a result, the industry should strive for "best in class" solutions to the agency problem inherent in the client-registrant relationship. In short, we encourage IIROC to go beyond regulatory minimums established by the CSA and find ways to promote even better outcomes for investors, particularly retail investors.

Finally, we note that many of the CFR requirements are qualified by "reasonableness." For example, a representative is to "make reasonable efforts", "take reasonable steps" or "act within a reasonable time." We assume this qualifier is to provide flexibility to the industry in applying the CFR requirements to diverse business models and contexts.

Considering this, FAIR Canada believes it will be critically important that industry, IIROC and statutory regulators set a high bar for what is considered "reasonable." For regulators, this will also require robust and ongoing monitoring of how the industry is implementing the new requirements in practice. It will also need timely additional guidance of regulatory expectations around problematic practices and decisive enforcement action against those that fall short. Otherwise, the CFR amendments will not achieve two of their core objectives to:

1. change conduct requirements to align the interests of securities advisers, dealers, and representatives (registrant) better with the interests of their clients, and
2. improve outcomes for clients.

As noted, the CFR amendments contain many welcomed changes that, in our view, should enhance the client-registrant relationship when fully implemented. Set out below are additional recommendations that would further improve the relationship and better serve investors, particularly retail investors.

2. Expand the Trigger for a Suitability Determination

We believe that clients are better served by registrants who routinely monitor their clients' investments and carry out a review after a significant change occurs in market conditions, the sector, or security. This monitoring is what most retail clients expect is currently being done, so it is vital that the regulatory requirements and industry practice address any gaps in expectations.

In this regard, we note that IIROC Rule 3216(ii)(d)(IV) requires a statement in the Relationship Disclosure of whether suitability will be reviewed in certain situations, and "in particular, in the event of significant market fluctuations."

In our view, we should not be content with a general disclosure statement about whether suitability will be reviewed in these situations. We should go further and encourage that IIROC members be required to reassess suitability after significant market fluctuations to ensure any investments remain suitable. We struggle to see any reasonable justification for not doing so. This is particularly true given that significant market fluctuations, including those in a particular sector, can lead to substantial losses or, conversely, opportunities for the client.

Finally, we note that IIROC plans to issue further guidance to clarify the enhanced KYC and suitability determination requirements. Such guidance should include a specific discussion of significant market fluctuations on existing suitability determination practices.

3. Emphasize the Impact of Fees to Clients

Rule 3216(5)(ii)(j) requires a registrant to provide written disclosure to a client that, among other things, "generally explains" how fund management expense fees, account service fees, and other charges will impact a client's investment returns over time.

We agree this should be disclosed in writing to the client. However, we do not believe this requirement should be satisfied simply by providing the written disclosure; it is simply too important. In our view, the issue of fees should figure prominently in any discussion with the client at the time of the account opening or investment decision.

4. Monitor KYP Obligations for Negative Outcomes

Under IIROC Rule 3302, a registrant cannot purchase, sell, or recommend a security for a client unless the dealer has approved it after having conducted required product due diligence. We strongly urge IIROC to monitor the KYP processes implemented by dealers to ensure that their product shelves do not become overly restricted to proprietary or higher-

cost products as an unintended consequence of the new requirement.

We note the suitability determination requirement under Rule 3400(1)(i)(e) requires a dealer consider a reasonable range of alternative actions to assess that the purchase, sale, or recommendation is suitable and puts the client's interest first. In our view, this obligation should include performing a reasonable comparison with other similar securities in the market.

Finally, to the extent that a dealer is permitted to address the inherent conflict of interest in offering only proprietary products to clients by complying with the relationship disclosure requirements in IIROC Rule 3216, such disclosure must be meaningful and prominent in practice.

5. Disclose all Material Conflicts.

The conflicts of interest disclosure requirement under IIROC Rule 3113(1) includes a caveat that a registrant must only disclose material conflicts of interest to a client "if a reasonable client would expect to be informed of those conflicts of interest." It is unclear why this caveat is necessary. We believe it would be better to disclose the conflict irrespective of the registrant's view of what a reasonable client would expect. It would then be up to the client to decide what to do with the information provided.

FAIR Canada thanks you for the opportunity to provide our comments and views. Please be advised that we intend to make our comments public by posting them on the FAIR Canada website. I would be pleased to discuss our comments should you have questions or require further explanation of our views on these matters. Please contact me at JP.Bureaud@FAIRCanada.ca. Thank you.

Sincerely,



Jean-Paul Bureaud
Executive Director
FAIR Canada