

Comments Received in Response to Rules Notice 19-0076 – Rules Notice – Request for Comments – Dealer Member Rules and UMIR – Minor Contravention Program and Early Resolution Offers

On April 25, 2019, we issued [Notice 19-0076](#) requesting comments on two proposed alternative forms of disciplinary action:

- (1) the Minor Contravention Program (the **MCP**), and
- (2) Early Resolution Offers.

IIROC received [28 comment letters](#) from the following commenters:

Arthur Ross
Ruth Elliot
Peter Whitehouse
Kenmar Associates
David Fieldstone
Tom Dusmet
Mildred Jagdeo
Harold Geller of MBC Law Professional Corporation
Investor Advisory Panel of the Ontario Securities Commission
Isaac Glick
Larry Elford
Debra McFadden
S. Gourley
Peter Johnson
David Palk
GB
Stan Buell
Canadian Foundation for Advancement of Investor Rights (**FAIR**)
The Canadian Advocacy Council for Canadian CFA Institute Societies

Martyn Cook
 Yves Robillard of Miller Thomson LLP
 Yegal Rosen
 Andrew Teasdale
 Chris Robinson
 Raymond James Ltd.
 Investment Industry Association of Canada (IIAC)
 Borden Ladner Gervais LLP
 Mandeville Private Client Inc.

Copies of these comment letters are publicly available on IIROC’s website (www.iroc.ca). We have withdrawn our proposal for the MCP (see Notice [21-0059](#)). Therefore, the following response addresses only comments applicable to the Early Resolution Offers proposal.

Summary of Comment	IIROC Response and Additional IIROC Commentary
Early Resolution Offers	
General Comments	
The majority of commenters recognized that Early Resolution Offers were available to Staff under the current enforcement process and were consistent with the IIROC Sanction Guidelines.	The use of Early Resolution Offers requires no amendments to our Consolidated Enforcement, Examination and Approval Rules (the Consolidated Rules). However, we welcomed the comments on the proposal. We encourage early settlement of cases and want to be transparent about how we intend to further that goal.
Some commenters were concerned that the use of Early Resolution Offers would limit any subsequent negotiation or replace the existing settlement negotiation practices. Some commenters expressed concern as to how IIROC Enforcement Staff (Staff) would formulate the “best offer.”	<p>If an Early Resolution Offer is rejected, Staff would retain the discretion to negotiate a subsequent settlement.</p> <p>An Early Resolution Offer will constitute Staff’s best settlement offer based on its evaluation of the case at the time the offer is made. In other words, Staff’s best offer would apply a 30% discount to the sanction Staff would offer through normal course settlement negotiations. The discount would reflect the credit provided for the early and exceptional cooperation of the</p>

Summary of Comment	IIROC Response and Additional IIROC Commentary
	respondent. If an Early Resolution Offer is rejected, Staff will not agree to a 30% discount in any subsequent settlement.
<p>A few commenters asked what was meant by “a reduction of 30% on the sanctions Staff would otherwise seek in a settlement agreement.” Some asked whether the discount applied to suspensions and costs.</p>	<p>In an Early Resolution Offer, Staff will make its best offer based on an evaluation of the specific facts and circumstances of the case, the relevant Sanction Guideline principles and relevant prior cases. Staff will reduce that best offer by 30%. The reduction could apply to both a fine and a suspension, but will most often be applicable in cases in which only a fine is sought.</p> <p>Any costs sought by Staff will not be subject to a 30% reduction. However, we acknowledge that costs associated with an Early Resolution Offer will likely be lower than any subsequent resolution of the case.</p>
<p>A few commenters interpreted the criteria for an Early Resolution Offer as not requiring compensation be paid or financial benefit to be disgorged. Some commenters made an assumption that the name of the disciplined Approved Person or Dealer Member would not be published, similar to the proposed Minor Contravention Program.</p>	<p>As noted in our response to comments on Notice 18-0045:</p> <p>In cases of client losses or financial benefit to Approved Persons or Dealers, the respondent would be required to compensate clients and disgorge any financial benefit in order to meet the criteria for an Early Resolution Offer.</p> <p>Where the case involves conduct requiring remedial measures, Staff will consider whether the remedial measures taken are satisfactory in order to be eligible for an Early Resolution Offer.</p> <p>Early Resolution Offers will follow the same process as our current settlement process including full publication of the names of the Approved Person and Dealer Member.</p>