IIROC OCRCVM
Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

# IIROC
# Sanction Guidelines

**February 2, 2015**

## Application

The IIROC *Sanction Guidelines* supersede and replace all previous versions of both the *Dealer Member Disciplinary Sanction Guidelines* and the *UMIR Disciplinary Sanction Guidelines.*

The IIROC *Sanction Guidelines* are effective as of February 2, 2015 and will be applied by Staff to all disciplinary and settlement proceedings. IIROC may amend these *Sanction Guidelines* by issuing a public notice that amendments have been made and posting the amended version on the IIROC website (www.iiroc.ca).

## Purpose of Sanction Guidelines

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada.

IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets. IIROC carries out its regulatory responsibilities through setting and enforcing rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees and through setting and enforcing market integrity rules regarding trading activity on Canadian equity marketplaces.

The primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity.

The *Sanction Guidelines* are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.

The *Sanction Guidelines* are intended to assist:

- IIROC Enforcement Staff and respondents in the negotiation of settlement agreements;
- hearing panels in determining whether to accept settlement agreements; and
- hearing panels in the fair and efficient determination of appropriate sanctions after disciplinary hearings.

The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. Hearing panels retain the discretion to impose the sanctions they consider appropriate.

The general principles and key factors set out in the *Sanction Guidelines* are not intended to fetter the discretion of a hearing panel in determining an appropriate sanction.

## Overview of *Sanction Guidelines*

The *Sanction Guidelines* are divided into two parts:

> **Part I – Sanction Principles for IIROC Disciplinary Proceedings** provides a framework that should be considered in connection with the imposition of sanctions in all cases.
>
> **Part II – Key Factors in Determining Sanctions** provides a list of factors commonly taken into consideration when making a determination as to an appropriate sanction.

## Part I – Sanction Principles for IIROC Disciplinary Proceedings

The following principles provide a framework that should be considered in connection with the imposition of sanctions in all cases.

### 1. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.

The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets.[1] In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).

When considering specific and general deterrence in the imposition of sanctions, consideration should be given to the size of the Dealer Member, including the firm's financial resources, nature of the firm's business, and the number of individuals associated with the firm, with a view toward ensuring that the sanctions imposed are sufficient to achieve deterrence. Similarly, with respect to an individual respondent, consideration should be given to a *bona fide* inability to pay when imposing a fine (see General Principle No. 7).

General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations.[2] Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

### 2. Disciplinary sanctions should be more severe for respondents with prior disciplinary records.

A respondent's prior disciplinary record is an aggravating factor and may warrant a harsher sanction than would be required had this been the respondent's first disciplinary contravention.

A prior disciplinary record for a similar or identical contravention strongly suggests that the prior sanction was not a sufficient deterrent, thereby necessitating an increased sanction in order to address specific deterrence. However, a prior record where the misconduct is different may nonetheless be a factor to consider and it may demonstrate a respondent's general disregard for compliance with regulatory requirements, the investing public or market integrity in general. A prior disciplinary record generally becomes less relevant as it becomes more dated.

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[1] See for example, *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43.

[2] In *Re Mills*, [2001] I.D.A.C.D. No. 7 at p. 3, the Hearing Panel observed: "Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the [hearing panel] in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment."

3. **For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct.**

   Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct at hand. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive.

   Depending on the facts and circumstances of a case, however, multiple contraventions may be treated individually such that a sanction is imposed for each contravention so long as the total sanction is proportionate to the overall misconduct.

   In addition, numerous, similar contraventions may warrant higher sanctions, since the existence of multiple contraventions may be treated as an aggravating factor.

4. **Sanctions should ensure that a respondent does not financially benefit as a result of the misconduct.**

   It is a fundamental tenet that wrong-doers should not benefit from their wrong-doing. Accordingly, in cases where the respondent benefited financially from the misconduct, the sanction, where possible, should include a disgorgement of the amount of any such financial benefit. Financial benefit would include any profits, commissions, fees, or any other compensation or other benefit received by the respondent, directly or indirectly, as a result of the misconduct. Financial benefit may include any loss avoided as a result of the misconduct.

5. **A suspension should be considered where**:

   - there has been one or more serious contraventions;
   - there has been a pattern of misconduct;
   - the respondent has a prior disciplinary history;
   - the contraventions involved fraudulent, willful and/or reckless misconduct; or
   - the misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole.

   Where the contravention relates to a respondent acting in a supervisory capacity, it may be appropriate to suspend the respondent from all registered capacities when the supervisory failings are so severe as to call into question the respondent's general fitness to act in any registered capacity.

6. **A permanent bar should be considered where:**

   - the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry;
   - the misconduct had an element of criminal or quasi-criminal activity; or

- there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole.

A fine and/or disgorgement should be considered even where a permanent bar is imposed in egregious cases involving significant harm to investors or to the integrity of the securities industry as a whole.

**7. Inability to pay is a factor when considering an appropriate monetary sanction or costs only when raised by the respondent.**

Inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. It should not be considered a predominant or determining factor, but it is a relevant factor depending on the circumstances of the misconduct.

The burden is on the respondent to raise the issue and provide evidence of financial hardship. Evidence of financial hardship should be in the form of sworn affidavits or declarations, along with standard or commonly accepted documents, such as tax returns, audited financial statements or other externally verified financial statements.

Evidence of inability to pay could result in the reduction/waive of a fine and/or in the imposition of an installment payment plan. In cases in which a hearing panel reduces or waives a fine based on a *bona fide* inability to pay, the written decision should so indicate.

**8. In determining the appropriate sanction, a respondent's proactive and exceptional assistance to IIROC in the investigation will be considered.**

IIROC Rules require a respondent to cooperate fully with investigations and respond to requests for information in a timely and straightforward manner.

In light of the general requirement to cooperate with IIROC investigations, only assistance by a respondent that is proactive and exceptional should be considered as a mitigating factor in imposing sanctions.

**9. Remedial sanctions tailored to the specific misconduct can be a useful tool in effectively addressing regulatory misconduct.**

Sanctions in disciplinary proceedings are intended to prevent the recurrence of misconduct and deter others from similar misconduct. Therefore, sanctions may be tailored to the misconduct at issue in each case. This necessitates a review of the nature of the misconduct and both the aggravating and mitigating factors and the degree of responsibility by the respondent.
To address the misconduct effectively in any given case, a hearing panel may design specific remedial sanctions in addition to, and other than, a fine, disgorgement or suspension. For example, a hearing panel may impose sanctions that:

(i) require a Dealer Member firm to submit for the Corporation approval and/or implement procedures for improved future compliance with regulatory requirements;

(ii) require a Dealer Member firm to retain a qualified independent consultant to develop and/or implement procedures for improved compliance with regulatory requirements;
(iii) require a Dealer Member firm to implement heightened supervision of certain individuals or branches / departments in the firm;
(iv) limit the activities of a Regulated Person, including suspending or barring a Regulated Person from acting in a supervisory capacity; or
(v) require professional re-qualification by the writing of an exam or the successful completion of a remedial course of study.

This list is illustrative, not exhaustive, and is included to provide examples of the types of sanctions that may be designed to address specific misconduct.

## Part II – Key Factors in Determining Sanctions

The following list of key factors should be considered, where applicable, when determining the appropriate sanctions. This list sets out commonly considered factors and is intended to be illustrative, not exhaustive.

1. The number, size and character of the transactions at issue.

2. Whether the respondent engaged in numerous acts and/or a pattern of misconduct.

3. Whether the respondent engaged in the misconduct over an extended period of time.

4. Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements.

5. Extent of harm to clients or other market participants.

6. Extent of harm to market integrity or the reputation of the marketplace, or both.

7. The level of vulnerability of the injured or affected client(s).

8. The respondent's relevant disciplinary history (see General Principle No. 2).

9. Extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct (see General Principle No. 4).

10. In the case of individuals, whether the respondent accepted responsibility for and acknowledged the misconduct to his or her employer or the regulator prior to detection and intervention by the Dealer Member or the regulator.

11. In the case of a Dealer Member, whether the respondent accepted responsibility for and acknowledged the misconduct to the regulator prior to detection and intervention by the regulator.

12. Whether an individual respondent was subject to internal discipline by the Dealer Member (see Staff Policy Statement on "Internal Discipline by a Dealer Member").

13. Whether an individual respondent or Dealer Member respondent voluntarily employed subsequent corrective measures to revise general and/or specific procedures to avoid recurrence of misconduct.

14. Whether the respondent made voluntary acts of compensation, including voluntary disgorgement of commissions, profits, other benefits and/or payment of restitution to clients.

15. Whether the respondent provided proactive and exceptional assistance to IIROC in the investigation of the misconduct (See General Principal No. 8 and see also Staff Policy Statement on "Credit for Cooperation").

16. Whether the respondent attempted to delay IIROC's investigation, to conceal information from IIROC, or intentionally provided inaccurate or misleading testimony or documentary information to IIROC.

17. Whether the respondent demonstrated reasonable reliance on competent supervisory, legal or accounting advice.

18. Whether at the time of the contravention, an individual respondent's Dealer Member firm had developed adequate training and educational initiatives with respect to the misconduct at issue.

19. Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a client, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.

20. Whether the respondent failed to heed regulatory guidance with respect to the misconduct at issue.

21. Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from IIROC, another regulator or a supervisor (in the case of an individual respondent) that the conduct contravened firm policies, IIROC rules or applicable securities laws or regulations or was not in the best interests of the client or public.