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Mark Stechishin
Associate General Counsel
Investment Industry Regulatory Organization of Canada
(IIROC)
Suite 2000, 121 King Street West
Toronto, Ontario
M5H 3T9

Delivered via Email: mstechishin@iiroc

Re: IIROC Expert Investor Issues Panel (EIIP)

FAIR Canada is pleased to provide comments to IIROC on the proposed Expert Investor Issues Panel (EIIP or Panel).

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

FAIR Canada is supportive of IIROC's efforts to ensure that investor concerns are carefully considered in its policy-making and regulatory processes. We believe that, if properly implemented and supported, the Panel could augment this effort and provide additional expertise to IIROC in this area.

As a front-line regulator, it is imperative that the investor perspective be fully integrated within IIROC's corporate governance structures to support its public interest mandate. When establishing the EIIP, however, it should be approached as a way to supplement these structures; and not as a substitute for them.

RESPONSIBILITIES

We have two principal concerns with how the Responsibilities are set out in the proposed Terms of Reference.

¹ Visit www.faircanada.ca for more information.

Lack of Clear Responsibilities - First, we note that the proposal only addresses obligations in respect of ethical expectations and confidentiality. It does not specify any concrete responsibilities for the EIIP.

This is inconsistent with the other investor advisory panels we reviewed in Canada and other jurisdictions, all of which were established with a comprehensive and clear set of responsibilities. To ensure the EIIP is set up for success, the Terms of Reference should include a clearer set of responsibilities. This would also assist in recruiting individuals with relevant experience and expertise.

FAIR Canada believes the following responsibilities should be included:

1. Advise IIROC in respect of and provide comment on:
 - a) IIROC concept papers, proposed rules or policies,
 - b) IIROC's annual statement of priorities and strategic plans,
 - c) the effectiveness of any investor protection initiative implemented by IIROC, including any mandated disclosure intended to inform and protect investors,
 - d) possible adverse impacts on investors from any product or fee structure, or
 - e) significant policy issues affecting investors that the Panel may identify through its own deliberations.
2. Conduct research (including being able to commission third party research or polling surveys) to understand investor concerns and disclose any findings and recommendations to IIROC management and the Board of Directors, as appropriate.
3. Meet with and discuss issues of concern with IIROC's Executive Management Team and Board of Directors at least twice a year.
4. Be allowed to appoint one member of the EIIP to sit as an observer at IIROC's Board meetings, or request that IIROC's Board consider specific concerns or issues raised by the EIIP.

Confidentiality – Second, we believe that the starting point should be to assume the Panel's work and deliberations would be made public to promote accountability and confidence. This would include posting meeting agendas and minutes, as well as any commentary prepared by the Panel.

Instead, the proposal appears to contemplate that the Panel's work would be subject to a veil of confidentiality, except where IIROC provides specific consent to the Panel to disclose information (including the existence of any discussions that may have occurred between the EIIP and IIROC.)

A lack of transparency into the Panel's work will undermine public confidence in the EIIP and IIROC's efforts to seek additional input from the perspective of the investor. While we appreciate the need to protect confidential information and discussions that may occur from time to time, in our view the confidentiality provisions are overly broad and unnecessary.

Accordingly, we would recommend that the Panel only be required to maintain confidentiality in respect of documents or discussions that are identified as such by IIROC staff and that are otherwise not in the public domain. In all other cases, the Panel should be free to be as transparent as possible with respect to its deliberations and commentary.

ACCOUNTABILITY

We believe that, ultimately, the EIIP is accountable to the public, and not only to IIROC's staff or Board of Directors. As such, we believe the Terms of Reference should provide additional details to ensure an appropriate level of accountability to the public.

These would include requiring the EIIP to:

- Publish a public annual report on its work.
- Publish written comments to any IIROC rule or proposal that impacts investors.
- Nominate a spokesperson who can speak publicly on behalf of EIIP on investor rights issues.
- Make all agendas and meeting minutes public, subject to the proviso of redacting confidential non-public information.

MANDATE

Overall, FAIR Canada supports the proposed mandate set out in the Terms of Reference. As noted above, we believe it should be enhanced to make it clear that the EIIP will also advise IIROC in respect of its annual priorities and strategic plans.

TYPE

FAIR Canada agrees that the EIIP should be an independent advisory panel to IIROC staff. To optimize its overall effectiveness, however, the Panel should also advise IIROC's Board of Directors.

We would recommend that the EIIP as a whole meet with IIROC's Board at least twice a year to discuss the Panel's work and respond to any questions from Board Directors about how senior management is responding to investor concerns. In addition to providing a sounding board for

how responsive the organization is, the meeting would also permit Directors to deepen their own understanding of investor issues by speaking directly with Panel experts.

Membership

Selection – We support the public selection process, including creating a nominating committee as contemplated in the proposal.

Composition – FAIR Canada is generally supportive of the composition and proposed areas of expertise. We recommend that expertise in behavioural research related to investing and decision making also be included.

In addition, the areas of “government public policy” and “professional regulation” are too general and may not include someone with relevant expertise. As such, we believe they should be focused on securities regulation, consumer protection or investor rights (similar to the qualifiers applied to “academics”).

Terms - We believe there should be greater flexibility on the length of terms, as some individuals may wish to contribute to the Panel’s work for more than a two-year term, or for more than the two-term maximum.

We also note that, as compared to other advisory bodies in similar jurisdictions, limiting the term of members to a maximum of only four years is on the low end of the range. We would recommend increasing each term from 2 years to 3 years, and/or permitting members to serve up to a maximum of 6 years.

Given the infrequency of EIIP meetings each year, together with the breadth of regulatory and operational matters undertaken by IIROC, it could take some members their first year to become conversant with regulatory issues and processes. Longer terms would help overcome this practical challenge and enable EIIP members to gain a deeper understanding of IIROC’s activities and initiatives.

We also believe longer terms could enhance the caliber of the advice provided by the EIIP. This is because most regulatory proposals raise complex, often competing challenges, that require time to consider and understand. Many important investor focused proposals also take years to implement. Longer terms could help promote a “steady hand” on policy matters of concern to the EIIP, as well as further institutional knowledge within the EIIP.

Panel Chair – We agree with the responsibilities proposed for the Panel Chair. In our view, though, it would be advisable to create a Vice-Chair position as well.

In addition to the benefit of having someone that can stand in when the Chair is unavailable, it

would facilitate smoother and quicker transitions when there is a change in the Panel's Chair. In short, it would be helpful for succession planning within the EIIP. Given the relatively short terms contemplated in the proposal, ensuring a smooth transition between Chairs will be vital to the Panel's overall success and impact.

In addition, we note that the Panel Chair is tasked with monitoring the effectiveness of the EIIP in achieving its mandate. To support this responsibility, we think it would be helpful for IIROC to articulate what success would look like. This could be done by articulating the types of criteria the Chair should take into account when assessing the Panel's effectiveness.

Honorarium – We support providing members with an honorarium. We recommend that it be set at a sufficiently high level to attract individuals with relevant expertise and compensate them for an appropriate level of engagement.

MEETINGS

The proposal states that "Meeting agendas shall be retained by IIROC Staff."

As discussed above, we believe the meeting agendas should be made public to promote transparency and confidence in the EIIP's work. Where appropriate, portions could be redacted to protect any non-public information that is expressly shared in confidence with the EIIP.

IIROC SUPPORT

To be effective, the EIIP will require administrative and other support. IIROC should establish and allocate an annual budget to the EIIP to provide for reasonable expenses associated with meetings and for undertaking research projects. The EIIP should also have access to IIROC staff to arrange for presentations and briefings on topics of interest to the Panel.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please be advised that we intend to make our submission public by posting it to the FAIR Canada website. We would be pleased to discuss our submission with IIROC should you have questions or require further explanation of our views on these matters. Please contact me at jp.bureaud@faircanada.ca.

Sincerely,



Jean-Paul Bureaud
Executive Director