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Client Focused Reforms – Proposed Guidance on Know-your-client and Suitability Determination

<https://www.iiroc.ca/news-and-publications/notices-and-guidance/client-focused-reforms-proposed-guidance-know-your>

I welcome the opportunity to provide feedback on the proposals.

My comments are:

All terms used on the account application form should be in plain language so that clients understand what they are disclosing and agreeing to.

In addition to annual income, annual expenditures information should be acquired.

The names of the executor and beneficiaries should be obtained.

A copy (with date) of the completed KYC document should be provided to the client at account opening and whenever changes are made to the KYC document.

For greater clarity , IIROC should not only require that dealers have policies and procedures in place but that they should operationally implemented , periodically assessed for effectiveness and updated whenever required .

Dealers should be required to, at least once per year, ask clients if their personal situation has changed.

Unless there are very good reasons not to do so, there should be one KYC per account. Many account types such as a RESP have distinct time lines and objectives.

IIROC should provide expectations and guidance on how to calculate Risk capacity. As regards Risk capacity, at issue is the lack of consideration of the end purpose for the portfolio. How can one reasonably assess capacity for risk without at the bare minimum some form of goals-based financial planning assessment that determines the sensitivity of the client's goals to volatility and loss?

The use of any questionnaires or other tools to determine risk tolerance or risk capacity must be professionally validated and formally approved by the dealer before being used by Reps.

Given the vast number of conflicts of interest in place in the IIROC channel, IIROC should provide more guidance on how dealers are to resolve conflicts in the best interests of clients.

Unsuitable complaint resolution recommendations should be included in the document. There are just far too many complaints where the dealer's interests trump the best interests of the client. Even at the OBSI level, client compensation is low-balled. The goal of complaint resolution is to make client's whole.

Client complaint data should be reviewed for evidence of systemic issues, products or policies that are not designed to deliver results to result in outcomes in the best interests of clients. In those cases, prompt corrective action should be taken.

IIROC should update its complaint handling rules to be congruent with CFR best interests and other obligations.

Dealers must implement additional controls for changes in client name, address or banking information or other areas where there is an increased risk of fraud such as might occur with seniors and vulnerable investors.

Dealers should be required to make suitability determinations beyond investment actions if the business model provides services beyond investments .Examples include financial plans, tax advice and estate planning.

The rule should apply to all products sold by the dealer such as GIC's, Seg funds and PPN's, not just securities.

IIROC should make it very clear that suitability determination applies to the OVERALL CLIENT relationship not just construction of the portfolio and individual transactions.

IIROC should provide more guidance on suitability Re choice of a fee-based account.

Discount brokers should not be permitted to sell products that are unsuitable for the channel e.g. products paying disclosed or undisclosed embedded commissions.

Discount brokers should disclose pre-sale disclosure of ETF Facts for complex products such as leveraged and inverse exchange traded funds.

The identity and contact details of the Trusted Contact Person and POA should be integral to KYC data capture.

Appropriate due diligence shall be applied to any POA received.

Misleading Rep titles should be covered in this rule. Titles such as "Seniors Expert "can lead to undue trust in the Rep's ability to collect and interpret KYC information.

Dealers should have systems and controls to detect (a) inconsistencies and blank entries on KYC documentation and (b) KYC patterns from a Rep that appear to be client-independent .

The proposed rule requires that the advisor should inform and document cases where the client's objectives and suitable recommendations cannot be reconciled. What is not clear what happens next. Must the advisor avoid any investment actions?

Given the rapid rise in vulnerable investors and seniors I recommend that a separate section be written for this category of investor. For instance, seniors KYC should be updated at least annually rather than every 36 months and additional information be obtained. Re IIROC guidance on dealing with seniors <https://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=87C0E6D580544E889B569A079B8C35AA&Language=en>

Dealers should be required to investigate and act upon any and all complaints in the best interests of clients where the OBSI recommendations were not adhered to by the dealer.

Dealers should be held accountable for any and all recommendations made by Reps including those involving approved and unapproved outside activities.

Signature forgery and unauthorized KYC -related document adulteration should be viewed as criminal activity and reported to law enforcement.

IIROC should provide a plain language, bilingual Investor Guide on Suitability with respect to CFR obligations.

I hope you find this feedback useful. The expected benefits of CFR will only be achieved if IIROC monitors dealer compliance with the rules and applies enforcement with intensity and effectiveness. Investor compensation should be integrated into the IIROC mandate. I also urge IIROC to establish an investor advisory panel to provide real time investor feedback as CFR and other legislation s introduced. Also, a closer relationship with OBSI could be very helpful in identifying systemic issues involving dealer (mis)behaviour.

Sincerely,

Peter Whitehouse