

June 3, 2019

Charles Corlett
Director, Enforcement Litigation
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, ON M5H 3T9
ccorlett@iiroc.ca

Market Regulation Ontario Securities Commission
Suite 1903, Box 55 20 Queen Street West
Toronto, Ontario M5H 3S8
e-mail: marketregulation@osc.gov.on.ca

Request for Comment Minor Contravention Program (MCP) and Early Resolution Offers (ERO) Initiative

https://www.osc.gov.on.ca/documents/en/Marketplaces/iiroc_20190425_notice-rfc-minor-contravention-program.pdf

I can understand why IIROC would want a fast track system for minor contraventions of its Rules, like a Small Claims Court. To support the MCP proposal there should be some sense of the number of cases per annum. If one uses the documented cases involving Cautionary letters it appears this is a very minor issue. Also, I do not understand why minor unintentional or "honest mistake" breaches of the rules merit any sanction. Often, the root cause of these are poor employee training, poorly written rules, limited access to rules, undue pressure or lax supervision. There are many well intentioned advisors that are corrupted by dealer incentive programs, sales quotas and biased commission grids. This is a core issue that IIROC needs to deal with – if it does, the integrity of advice will improve and rule breaches/ enforcement actions will decline.

Further, it is not obvious to me why the MCP tool does not require any identified investor harm from being redressed. For those individuals who knowingly broke the rules, why does IIROC want to keep this fact from public view? As an investor, I would want to know that. Transparency in enforcement is essential to get financial consumer trust in the regulatory system. As to the level of fines, it seems about right but without any supporting evidence from benchmarking, analysis or other research it is difficult to be sure.

If some form of MCP is ultimately adopted, the term "minor contravention" should be defined along with illustrative examples. I assume document adulteration, use of pre-signed blank forms, signature falsification, overcharging clients, misrepresentation etc. are not considered "minor". On the other side of the coin, what may appear to IIROC to be little client harm, may be seen to be more important to small retail investors. Again, some concrete examples would be helpful.

As to the Early Resolution initiative, my first question would be, why can't existing IIROC sanction guidelines be utilized? IIROC currently make extensive use of mitigating factors to justify lower fines for its Members. The argument that this program is needed to speed up prosecutions plays into the hands of industry participants. Perhaps a better solution would be to discuss less, negotiate less and let the evidence and the sanction guidelines play their just role. Some enforcement process re-engineering may also be in order.

I also have a real issue with a fixed 30% discount rate as a just fine. If there are factors that merit a reduced fine, the discount rate should be related to the type and magnitude of those factors. For example, if investor losses are relatively small and compensated, the discount should be lower than if investor losses are significant and compensated.

I do not see any evidence provided that this discounting will improve deterrence or improve industry processes. In fact, I can see arguments being made that it could lead to more calculated risks by industry participants. It is worth mentioning that the total amount of annual fines assessed against firms is so low that one can see why deterrence is low and reforms are not supported by the industry. The status quo is ideal for IIROC Members - the 30% discount on a low baselined fine is a bonus for them.

While IIROC is seeking tools to reduce Member fines and accelerate justice, it is not seeking rule changes to deal with truly nasty behaviour by firms and their Representatives. Should there not also be higher fines for these acts? If firms fail to fully and fairly compensate clients is that not worthy of an increased fine? If firms exploit vulnerable clients, people in retirement and seniors, shouldn't enhanced fines come into play? If a firm rejects an OBSI compensation recommendation, why wouldn't IIROC consider employing harsher tools for those situations sanction? IIROC needs to be more balanced in its approach to enforcement issues.

I hope my comments are of value to you.

Thank you for the opportunity for Main Street to provide comments.

Sincerely,
Isaac Glick