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

https://www.osc.gov.on.ca/documents/en/Marketplaces/iroc_20190425_notice-rfc-minor-contravention-program.pdf

I am a recently retired advisor from one of the big-five bank-owned brokerage firms and am particularly proud of the fact that over my 21-year career, I never had a complaint lodged against me. The reason for that was not because anyone "went easy" on me, rather because I knew, understood and respected the rules – both those of decency and the law - and I understood why they were there – to protect unwitting investors from advisors who were too lazy or unscrupulous to do what was obviously the right thing to do.

I welcome this opportunity to let my voice be heard on these proposed enforcement tools and I hope that the time I am taking to make this effort will prove to not just be "part of going through the process", rather might be seriously considered in the quest for "good solutions".

The IIROC Board of directors has declared these proposals as being in the Public interest.

I question that:

My case against MCP:

How is imposing a "flat fee" fine going to make the punishment better fit the crime: as in, when advisors commit infractions in their business dealings? It seems to me that the only thing this proposal is guaranteed to achieve, is a bump in revenue to IIROC. But, as well, it might create a new, unneeded opportunity to "go light" on some more serious infractions, such as forgery of client signatures and IPS infractions, and hea, vy on honest mistakes.

Surely the former need to be harshly sanctioned to deter bad behaviour, and the latter be left to firm management to oversee a simple resolution (perhaps with regulator oversight) by approaching mistakes for what they are, resolving them to

everyone's satisfaction, and using them as coaching opportunities to avoid them going forward, not necessarily with public "sanctions".

Why can an employee who makes an inadvertent error or honest minor mistake not be addressed by dealer supervision and the HR dept? Effective guidance and coaching can ensure the employee is motivated to improve. If the customer suffered any loss, a simple correction can usually resolve the issue. Fining someone for an honest mistake is like using a sledge hammer to kill mice – making the mouse is more afraid of the hammer than anything else.

The MFDA deals with such minor contraventions using a Caution Letter. More serious breaches are dealt with a Warning letter. Why could IIROC not do something similar?

The "flat fine" MCP solution sounds like a formula which could incent people to try to cover up minor infractions instead of fixing them, to avoid the fines; and possibly incent the really bad actors to shrug them off as a cost of doing business, mimicking what the big boys do on Wall Street when they get caught breaking the law.

PERFECT: A PENALTY SYSTEM WHERE NOBODY WINS.

Looking at offenses case-by-case is more expensive and time consuming – but it's fair. In this case a fair enforcement strategy is most likely to encourage good behaviour from advisors.

IIROC has a history of investor-unfriendly initiatives **but also to listening to detractors at times, in an effort to "get it right". Will IIROC continue that tradition in this case? Let's hope so.**

Here are some cases in point:

- Back in 2014/15, IIROC released a proposal that would have allowed Registered Representatives to act as executors and trustees for clients, a practice long prohibited by the MFDA due to it being a CLEAR conflict of interest. An Oct. 2015 comment letter from the Small Investor Protection Association condemned the proposal by pointing out all the risks to retail investors of such a practice
<http://www.sipa.ca/library/SIPASubmissions/500%20OSC%20Greenglass%20-%20SIPA%20Comments%20re%20Executors%20201510.pdf> The OSC Investor Advisory Panel did not support the proposal either:
http://www.osc.gov.on.ca/documents/en/Investors/20150831_members-dealers-rule.pdf But only after other consumer groups jumped in and industry reaction was muted, did IIROC withdraw the controversial proposal.
- More recently (in 2016-2017), IIROC proposed Guidance that would have adversely impacted DIY investors and online dealers. FAIR Canada, SIPA, Kenmar and other consumer groups vigorously opposed the attempt to unduly constrain the many positive features and offerings of discount

brokers. Even the industry trade Association IIAC took strong exception to nearly all of the proposals, saying - "We feel the existing disclosures are clear: The client controls the investment decisions, so firms are not providing recommendations. The guidance is not protecting, nor helping the investor." <https://iiac.ca/wp-content/uploads/IIAC-Response-to-IIROCs-Order-Execution-Only-Guidance.pdf> However, the guidance was issued regardless, albeit with minor changes. Fortunately, it has not been turned into a Rule yet...

How could these 2 examples be painted to be in the Public Interest? Of course, they could not, and, consequently, they did not proceed. **Let's hope MCP gets shelved too.**

My case against ERO

My main objections to ERO are similar to those against MCP: they can become a tool to mask bad behaviour, just to get cases resolved quickly. This could result in a bad actor just paying the fine and going back to doing what they had done before, but being more careful to avoid getting caught again. Dialing back the sanctions in the name of expediency negates the so-called principles-based sanction guidelines IIROC lobbied so hard for in the past.

So, let's not go there. Follow the principles and apply the appropriate fine. Why all the extensive negotiation if IIROC has evidence of wrongdoing? An unsolicited offer of 30% (a fixed number) fine reduction just to move a case along violates core principles of justice. It also sends the wrong message to Main Street. IIROC must regulate, make sanction decisions and spend less time haggling with its dues-paying Members. Does IIROC not have the power to deal harshly with dealers who low-ball or reject OBSI monetary compensation recommendations?

Translation: ERO proposes to water down IIROC ethics to save a bit of money. How does that improve IIROC credibility?

Next, to increase IIROC credibility, and get to better solutions faster, would it not make sense to add more retail investor protection expertise to the Board?

Finally, in closing, what is IIROC doing to resolve the "elephant in the room" sized problems, which *would make a difference to investor protection*, instead of developing new, easy cash grabs like the MCP and ERO initiatives?

1. Management responsibility for rep activity:

It concerns me that when a registered Representative is fined, very often the client abuse has been going on for some time and/or with multiple clients. Supervision is obviously deficient. Since it is the investment firm's management which runs supervision, and usually earns a bonus based solely

on sales production by those they supervise, isn't this akin to the fox running the henhouse?

This makes management at least partially complicit in the wrongdoing of the firm's front-line staff. So, when a Rep is ordered to disgorge his/her share of sales commissions, why (a) isn't the Dealer also required to give up their share of the improperly received commission and (b) why isn't the dealer sanctioned (as in NAMED and FINED) for negligent supervision and compliance? Also, where do the "disgorged funds go? Does the victim get any of that money?

If you want to stop bad behaviour punish the managers for the bad actions of their teams.

2. **Address dealer incentive programs and sales quotas** where they are the primary causes of Rep wrongdoing
3. **Develop regulation related to the protection of seniors and vulnerable investors.** So far, all that has been done is to offer general guidance and statements of encouragement.
http://www.iroc.ca/Documents/2016/87c0e6d5-8054-4e88-9b56-9a079b8c35aa_en.pdf
4. **Outlaw trailing commission paying funds for discount brokers**, since those trailing commissions are intended to "pay for advice", which discount brokers are prohibited from providing?

I agree to web posting of my Comment Letter.

Respectfully submitted,

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