

INVESTOR ADVISORY PANEL

April 26, 2018

By Email

Charles Corlett
Director, Enforcement Litigation
Investment Industry Regulatory Organization of Canada
121 King St. West, Suite#2000
Toronto, ON M5H 3T9
e-mail: ccorlett@iiroc.ca

Re: Request for Comment – Enforcement Alternative Forms of Disciplinary Action

I am writing on behalf of the OSC's Investor Advisory Panel (IAP), an independent advisory body mandated to voice investor viewpoints and concerns as an integral part of the Commission's rule-making and policy-making process. The members of the IAP believe that enforcement and timely disciplinary action are key elements of an effective investor protection framework and therefore we applaud the Investment Industry Regulatory Organization of Canada (IIROC) for initiating this public consultation on two proposals designed to address disciplinary cases in a more appropriate and timely manner. We understand that:

- The **minor violation program** is intended to avoid the time and expense of a full disciplinary hearing; individuals would be fined \$2,500 and firms would be fined \$5,000 for minor violations; and the rule breach would not reside on the individual's or firm's formal disciplinary record and would remain anonymous to the public.
- The **early resolution program** is designed to settle cases as soon as sufficient facts are known and certain conditions are met, thereby allowing IIROC to address wrongdoing more quickly.

The consultation paper poses several specific questions, but before responding, we would like to make a few general comments. First, given the importance we attach to fair and effective disciplinary action, the members of the IAP consider this a very significant consultation. However, the absence of more background information and relevant evidence-based analysis makes it difficult for us to evaluate the merits of the proposed initiatives. The only evidence cited is Schedule A – Comparable Regulatory Programs. The table presents a very high-level comparison of minor violation programs of selected securities and other regulatory bodies (no comparable information is provided for the early resolution program) but provides no information on the relative effectiveness of these programs. In addition, no explanation is offered to explain why this specific group of comparators (many of which regulate exchanges rather than dealers and registered representatives) was chosen while other potential comparators were not.

Members of the IAP believe that the consultation paper would have benefitted from the inclusion of some historic IIROC enforcement data to allow commenters to better assess the potential impact of these proposals. In addition, including a few anonymized case studies to highlight the potential time savings and efficiencies of the proposals would also have been helpful. Finally, we note disapprovingly that the consultation paper does not include an explicit cost/benefit analysis. Considering these shortcomings members of the IAP are not able to endorse these IIROC proposals at this time.

In terms of the specific questions:

Minor Contravention Program

1. Do you believe that the proposed MCP would be useful?

Impossible to determine given the limited information provided in the consultation paper.

2. Should a Dealer Member be eligible for the MCP?

If this program does go forward, members of the IAP believe that it should only be available to Registered Representatives. We also reject the criteria of “limited or no harm to clients or other market participants” since it is too vague and subjective. There should be specific criteria to determine the measure of impact that would qualify as “limited”. A senior who loses 33% of her RSP due to advisor misconduct would not consider the harm to be “limited”, though such losses of say \$25,000 might be considered “limited” by a dealer or representative. The assessment of “limited” should be from the perspective of the client. Or that element should be removed altogether.

3. What aspects of the proposed MCP, if any, should be public?

IAP members generally believe that the investing public has a right to know about the nature and extent of disciplinary action in relation to representative/dealer misconduct and reject the anonymity proposed for the program

4. What legal or regulatory effect should acceptance of a MCP Notice have?

An admission by a dealer or representative to IIROC should be admissible in civil litigation.

5. Do you agree that the sanction should be a fixed amount?

Yes.

6. Do you agree with the quantum of the proposed sanctions?

The proposed fines, particularly since they constitute the only consequence of the violation, are low.

Early Resolution Offers

1. Do you believe that the Early Resolution Offers initiative is necessary? Will it meet its objective?

The members of the IAP do not understand why this program is necessary. We would be very disappointed to learn that IIROC staff do not currently propose a fair settlement offer “as soon as sufficient facts of a case are known”. If this is not currently the case, it is unlikely that the proposed program will be any more successful in promoting early settlements.

2. How can Staff best demonstrate the credit given for accepting an Early Resolution Offer?

The members of the IAP do not have a strong view on this matter.

3. To what extent should Staff factor internal discipline into the decision to make an Early Resolution Offer?

The members of the IAP do not have a strong view on this matter.

Other Considerations

1. Are there other initiatives or programs that Staff should consider in order to provide more flexibility and options in addressing breaches of regulatory requirements in a fair and proportionate manner?

We suggest that IIROC immediately suspend any Dealer that ignores an OBSI settlement recommendation

We thank you for considering our letter.

Sincerely,

“Letty Dewar”

Letty Dewar
Chair, Investor Advisory Panel