



ANDREW J. KRIEGLER

President and Chief Executive Officer

August 16, 2016

Ms. Ursula Menke  
Chair, OSC Investor Advisory Panel  
Ontario Securities Commission  
20 Queen Street West, 19<sup>th</sup> Floor  
Toronto, ON M5H 3S8

Via mail and email: [iap@osc.gov.on.ca](mailto:iap@osc.gov.on.ca)

Dear Ursula,

Thank you for your letter of August 8, 2016.

I appreciate the time that you and your colleagues took to draft your letter to me. However, I must say that I am also disappointed that you did not take the opportunity to speak with me in advance about your concerns and the assumptions on which they are based.

Indeed, had we had that opportunity to speak in advance, I feel that your response to our Strategic Plan could have more effectively continued the productive, open and evidence-based dialogue that IIROC and the Panel have developed in recent months. As a result, I thought it was important for me to formally respond to your letter in the hopes of both clarifying some assumptions and to support our continued positive dialogue.

Let me begin by responding to the statement in your letter that IIROC will “continue to fail in its mandate to protect investors” unless it reforms its culture and governance. I am proud of IIROC’s record in fulfilling its investor protection mandate and our internal culture which is strongly committed to serving the public interest. IIROC’s regulatory partners in the CSA have also confirmed that IIROC is fulfilling all aspects of its mandate over the course of successive oversight reviews.

Next, I’d like to address your comments on the “best interest” issue. Of course, the notion of a “best interest” requires, by construction, that there be both multiple interests and that those interests be in conflict. In other words, the most important part of the best interest issue is how advisors must act when their interests conflict or are perceived to conflict with those of their clients.

Our rules state unequivocally that any conflict between a registrant and their client must be resolved:

*“...in a fair, equitable and transparent manner, and consistent with the best interests of the client or clients...” (emphasis added)*

Further, as our recent notice<sup>1</sup> stated, if we need to make further changes to make it absolutely clear that IIROC's rules put the best interest of the client ahead of the interests of the registrant, we are prepared to do so.

Our first step in that determination is to examine, in detail, the conflict of interest policies of IIROC-regulated firms as they relate to compensation matters and to determine what needs to be improved. The reason for that is that we believe that the compensation-related conflicts are at the core of most "best interest" issues and, based on examinations conducted over the past several years, IIROC-regulated firms already have appropriate policies and procedures to manage the bulk of non-compensation-related conflicts, and are following those policies and procedures.

In the spirit of a productive and evidence-based dialogue, I would invite the IAP to support our work in building out the guidance, compliance and review structure surrounding the requirements of registrants to act in the best interest of their clients, and to make specific suggestions if you feel that changes to the existing rules and guidance are needed to make the obligations absolutely clear.

At the same time, IIROC is already an active participant, with our CSA colleagues, in the analysis and debate of the issues raised in CSA Consultation Paper 33-304 – *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Towards Their Clients*. As you are aware, we are a national public interest regulator and therefore work towards a consensus that may be implemented nationally.

I take strong exception to your assertion that IIROC has not consulted retail investors as part of our ongoing work.

Setting aside the fact that I have personally met with you and/or the Investor Advisory Panel multiple times since I assumed my post as President and CEO of IIROC less than two years ago – and that I have not only offered but asked for the opportunity to meet with you more frequently, we pursue and are continuing to expand direct retail investor engagement in a number of ways. Let me list just four as examples:

- Retail investor focus groups: IIROC has on multiple occasions engaged retail investor focus groups and surveys to support its policy making process. Most recently, we have used such groups to provide investor insight on the efficacy of the KYC process in both Ontario and Quebec. We also surveyed investors directly on their perceptions regarding the services provided by Order Execution Only brokers (and the degree to which such services were regarded as advice versus simply execution services and therefore worthy of additional regulatory oversight).

---

<sup>1</sup> IIROC Notice 16-0068 – *Managing Conflicts in the Best Interest of the Client* (April 6, 2016).



- Retail investor research panels: We referenced this initiative in the Strategic Plan. Specifically, we are planning to expand our retail investor research substantially over the next year through either a recurring retail investor survey cycle or a retail investor research panel (likely of 2000+ retail investors) which enables us to engage a large number of “average” investors directly on specific issues and across the country.
- Consultation with the Canadian Foundation for the Advancement of Investor Rights (FAIR Canada): My policy team and I meet with the FAIR Executive on a quarterly basis for a substantive discussion on issues of common concern in retail investor protection. I was also recently invited to address the FAIR Board of Directors and am looking forward to the next opportunity to do so.
- Ongoing collaboration, communication and coordination with the OSC Office of the Investor: Our policy and public affairs groups liaise regularly to share information and best practices, discuss and collaborate on investor outreach initiatives and to explore how can more effectively engage and protect investors through our policy efforts. For example, we have provided resources for distribution through the OSC in the Community Program and are discussing how we can provide more value-added support to such events.

It is clear that I should have highlighted more effectively our investor consultation initiatives with you and your colleagues in previous discussions, but I hope that this puts that misapprehension to rest. I would also like to reiterate my request to meet with you and the Investor Advisory Panel on a regular and recurring basis.

Finally, with respect to OBSI, I must remind you that it was designed, with input from the CSA among others, not to have the power to make binding recommendations. It would not be appropriate for any regulator – whether it be IIROC, the MFDA or a CSA jurisdiction – to circumvent this structure through regulatory action in the absence of a regulatory breach. IIROC is a member of the Joint Regulators Committee (JRC) and I look forward to working with our JRC partners and OBSI to determine the appropriate response to the recent independent review committee report.

I value the IAP’s perspective and see it and its members as important stakeholders for IIROC as we continue our work to protect investors and support healthy Canadian capital markets. I hope to continue our productive dialogue and look forward to the opportunity to meet with you again.

Sincerely,



Andrew J. Kriegler  
President and Chief Executive Officer