

IIROC NOTICE

Rules Notice

Request for Comment

Dealer Member Rules and UMIR

Please distribute internally to:

Institutional
Legal and Compliance
Operations
Senior Management
Retail

Comments Due By: July 24, 2019

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19-0076
April 25, 2019

Minor Contravention Program and Early Resolution Offers

Executive Summary

On February 22, 2018, IIROC published a preliminary proposal ([Notice 18-0045](#)) requesting comments on two proposed alternative forms of disciplinary action:

- the Minor Contravention Program (**MCP**), and
- Early Resolution Offers.

We are proposing amendments to IIROC's [Consolidated Enforcement, Examination and Approval Rules](#) (the **Consolidated Rules**) to adopt the MCP with certain modifications.

Specifically, we are proposing amendments to Consolidated Rules 1200, 8200 and 8400¹ (the **Proposed Amendments**).

We are also proposing to adopt a Staff Policy Statement on Early Resolution Offers (the **Staff Policy Statement**).

The Proposed Amendments and the Staff Policy Statement would expand the options available to IIROC Enforcement Staff (**Staff**) to address wrongdoing in a fair and proportionate manner. The MCP would provide a more efficient means to resolve cases that cannot be adequately addressed by way of a Cautionary Letter but do not warrant formal disciplinary proceeding. The Staff Policy Statement would promote resolving cases efficiently by encouraging settlement agreements at an earlier point in the enforcement process.

Impacts

The Proposed Amendments and Staff Policy Statement will impact Dealers and Approved Persons involved in Enforcement investigations and proposed disciplinary proceedings as follows.

Minor Contravention Program: The MCP will provide a more efficient means to resolve cases that cannot be adequately addressed by way of a Cautionary Letter but do not warrant a formal disciplinary proceeding.

Early Resolution Offers: Those Dealers and Approved Persons who choose to resolve a case by Early Resolution Offer will be granted a reduction of 30% on the sanctions Staff would otherwise seek in a settlement agreement and a quicker resolution of the proposed enforcement proceeding.

How to Submit Comments

Comments on the Proposed Amendments and the Staff Policy Statement should be made in writing and delivered by **July 24, 2019** to:

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

¹ [Consolidated Rule 1200 - Definitions](#), [Consolidated Rule 8200 – Enforcement Proceedings](#) and [Consolidated Rule 8400 – Rules of Practice and Procedure](#).

Also, provide a copy to the Recognizing Regulators by forwarding a copy to:

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

Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website at www.iroc.ca.

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1. Minor Contravention Program

1.1 Purpose

The MCP would allow Staff to address contraventions that warrant a more meaningful regulatory response than a Cautionary Letter, but do not warrant the resources and costs associated with a formal disciplinary proceeding. The MCP highlights the importance of progressive discipline and ensures enforcement outcomes are proportionate to the contravention yet provide adequate deterrence.

As discussed below, Staff will determine on a case-by-case basis whether resolving a case by the MCP is appropriate.

1.2 Proposal

After considering the public comments we received on Notice 18-0045 (**Appendix D**) and consulting with [Canadian investors](#), industry members and other stakeholders, we are proposing three significant revisions to the MCP as set out in Notice 18-0045:

1. Dealers (firms) will not be eligible for the MCP
2. the fine will remain fixed, but would be increased from \$2,500 to \$5,000, and
3. each case resolved by the MCP will be approved in a streamlined process by a one-member hearing panel (as defined below).

In Notice 18-0045, we anticipated that implementing the MCP would require amendments to the Consolidated Rules. As described below, we are now publishing Proposed Amendments for public comment.

1.3 Proposed Amendments

To implement the MCP, we are proposing to amend the Consolidated Rules governing enforcement proceedings² and to make corresponding changes to our defined terms³. Blacklined and clean versions of the Proposed Amendments are attached as **Appendix A** and **Appendix B**, respectively.

To ensure a transparent and consistent process, we inserted the Proposed Amendments within the Consolidated Rules. The Proposed Amendments would not mark a departure from how IIROC enforcement proceedings and hearings are currently structured and conducted. The Proposed Amendments provide for the MCP to fit within the enforcement framework in

² Consolidated Rules 8200 - *Enforcement Proceedings* and 8400 - *Rules of Practice and Procedure*.

³ Consolidated Rule 1200 – *Definitions*.

Consolidated Rule 8200 and be subject to the Rules of Practice and Procedure in Consolidated Rule 8400.

Staff and a respondent would be able to settle a proposed proceeding under Consolidated Rule 8200 through a minor contravention agreement (**MCP Agreement**). Once agreed to, Staff would normally submit the MCP Agreement for acceptance to a one-member hearing panel consisting of a public member⁴ (a **one-member hearing panel**). The one-member hearing panel will make a determination of whether the proposed MCP Agreement should be accepted and is in the public interest.

1.4 Key Features

The process and key features set out in Notice 18-0045, subject to the revisions described above and the Proposed Amendments, continue to form part of the MCP proposal.

1.4.1 MCP Notice

Based on the criteria set out in section 1.5 below, Staff would provide a Minor Contravention Notice (the **MCP Notice**) to the Approved Person in lieu of commencing a disciplinary proceeding. The MCP Notice would contain:

- the IIROC requirement(s) contravened
- a summary of the relevant facts, and
- a statement that, if accepted, a \$5,000 fine will be imposed on the Approved Person.

Upon receipt of an MCP Notice, the Approved Person would have a prescribed amount of time determined by Staff to agree to the terms of the MCP Notice.

1.4.2 Agreement

By agreeing to the MCP Notice, the Approved Person would admit to contravening the specified IIROC requirement(s). Staff would not initiate a formal disciplinary proceeding, but would submit the MCP Agreement for acceptance by a one-member hearing panel.

Proceeding by an MCP would not be considered a disciplinary proceeding for the purposes of National Instrument 33-109 *Registration Information* and would not need to be disclosed on an Approved Person's Form 33-109F4. We will not make MCP proceedings public other than as set out in section 1.4.4. However, the Canadian securities administrators and other Canadian self-regulatory organizations would have access to MCP information.

⁴ See Consolidated Rule 8300 for the process for selecting hearing committee members, Consolidated Rule section 8408 for the process for selecting hearing panel members and Consolidated Rule 1200 for the definition of "public member".

In addition, Staff would be permitted to rely on the admission at a future disciplinary proceeding involving the Approved Person, if warranted, as an aggravating factor.

1.4.3 Hearing Panel Decision

If the one-member hearing panel accepts the MCP Agreement, it becomes binding on all parties. If the one-member hearing panel rejects the MCP Agreement, Staff would retain the ability to enter into a subsequent settlement agreement or commence a disciplinary hearing. Staff and the respondent would not be permitted to enter into a subsequent MCP Agreement.

1.4.4 Anonymous Reporting

Staff would report on our website the number of MCP Agreements accepted each calendar year. Staff would also issue a quarterly public notice specifying the contravention and a summary of the facts set out in each MCP Agreement, without identifying the name of the Approved Person.

1.5 Criteria for Minor Contravention Agreements

Staff would consider the following criteria when determining whether to issue an MCP Notice:

1. the contravention is technical
2. the contravention is an isolated incident
3. the contravention resulted in:
 - limited or no harm to clients or other market participants
 - limited or no harm to market integrity or the reputation of the marketplace
 - limited or no benefit to the firm or individual engaged in the conduct or any related parties, and
4. the conduct was unintentional or inadvertent.

If the above criteria are met, Staff would consider the following additional factors:

1. the conduct is admitted
2. the conduct is self-reported
3. the conduct has been the subject of internal discipline by the Dealer,
4. corrective or remedial measures were taken in response to the contravention, and
5. there have been voluntary acts of compensation, including voluntary disgorgement of commissions, profits or benefits.

The one-member hearing panel would consider these same criteria and factors in determining whether to accept an MCP Agreement.

2. Early Resolution Offers

2.1 Background

Currently, enforcement cases may be resolved by entering into a settlement agreement that is subject to approval by a hearing panel. A settlement agreement is typically reached after a full investigation is completed and extensive negotiations between Staff and the respondent have taken place. We have always encouraged early settlement of cases and have adopted measures to facilitate timely resolution, including:

1. **the Staff Policy Statement on Credit for Cooperation**, which provides for the imposition of a reduced sanction if a respondent demonstrates proactive and exceptional cooperation, and
2. **the Enforcement Mediation Program**, which provides for the use of an independent third-party mediator to facilitate the settlement of proceedings or proposed proceedings.⁵

Despite the implementation of these measures, the settlement process has not been significantly impacted. While there are often valid reasons for delayed or protracted negotiation in certain circumstances, we believe there is an opportunity to achieve early resolution in more cases and that early resolution would benefit both parties involved, protect investors and deter future wrongdoing.

2.2 Purpose

An Early Resolution Offer would constitute Staff's best settlement offer by granting a reduction of 30% on the sanctions Staff would otherwise seek in a settlement agreement. Early Resolution Offers would promote the timely resolution of cases, increase the application of the Staff Policy Statement on Credit for Cooperation and encourage Dealers to implement timely compensation and remedial measures.

After considering the public comments we received on Notice 18-0045, we decided to enhance the preliminary Early Resolution Offers proposal by disclosing the 30% sanctions reduction Staff would seek. As such, respondents will have a clear understanding of the credit Staff would give them for agreeing to a timely resolution of a proposed enforcement proceeding. In addition, the amount of credit granted in a settlement agreement will be transparent to the hearing panel, the industry and the public.

⁵ Enforcement Mediation Program, <http://www.iroc.ca/industry/enforcement/Pages/mediationprogram.aspx>

2.3 Process and Key Features

An Early Resolution Offer is a type of settlement offer which Staff would make at an earlier point in time in the enforcement process.

While an Early Resolution Offer may be subject to negotiation between Staff and the respondent, the time for acceptance of the offer would be strictly limited. If an Early Resolution Offer is rejected or the time for acceptance expires, the matter would proceed through the normal enforcement process. In any subsequent settlement negotiations or penalty hearing, Staff would take into account the terms previously offered pursuant to the Early Resolution Offer.

We are proposing the Staff Policy Statement (**Attachment C**) for transparency to respondents, the public and other stakeholders on why and how credit would be granted pursuant to an Early Resolution Offer.

A settlement agreement reached through an Early Resolution Offer would still be subject to acceptance by an IROC hearing panel pursuant to Consolidated Rules 8200 and 8400. The adoption of this proposal does not entail any change or amendments to the Consolidated Rules or the practices and procedures currently in place with respect to enforcement proceedings.

2.4 Criteria for making an Early Resolution Offer

Staff would consider the application of the following criteria in determining whether to make an Early Resolution Offer:

1. Staff reasonably believe that the extent, scope and harm of the misconduct, non-compliance, or regulatory breach, has been determined
2. the extent to which the subject has demonstrated proactive and exceptional cooperation in accordance with Staff's Policy Statement on Credit for Cooperation
3. the extent to which the non-compliance which is the subject matter of the case has been remedied or will be remedied as part of the settlement,
4. where there are clients losses, compensation must be paid
5. where there has been a financial benefit, the full amount of the profit or loss avoided must be disgorged
6. in the case of individuals, whether they have been internally disciplined, and
7. whether the respondent, through counsel, an agent or otherwise, has expressed a willingness to resolve the matter in a timely manner.

3. Implementation

3.1 Technological Implications

We do not anticipate the Proposed Amendments and Staff Policy Statement will have material technological implications.

3.2 Implementation plan

Provided we make no material changes to the Proposed Amendments based on the comments we receive, we would implement the Proposed Amendments as soon as they are approved by our Recognizing Regulators.

After considering any revisions to the Staff Policy Statement based on the public comments, we intend to implement the Staff Policy Statement immediately.

4. Policy Development Process

4.1 Alternatives considered

We discuss the alternatives considered to the MCP in Notice 18-0045. As described in section 1.2, we also considered the comments we received on Notice 18-0045 and the consultation we conducted with Canadian investors.

4.2 Regulatory process

IIROC's Board of Directors (**Board**) has determined the Proposed Amendments and the Staff Policy Statement to be in the public interest and on March 27, 2019 approved them for public comment.

After considering the comments received in response to this Request for Comments together with any comments of the Recognizing Regulators, IIROC may recommend revisions to the Proposed Amendments or Staff Policy Statement. If the revisions and comments received are not of a material nature, the Board has authorized the President to approve the revisions. The Proposed Amendments as revised will be subject to approval by the Recognizing Regulators. If the revisions or comments are material, we will submit the Proposed Amendments, with revisions if made, to the Board for approval for republication or implementation as applicable.

5. Appendices

[Appendix A](#) – Proposed Amendments to Consolidated Enforcement, Examination and Approval Rules, Rule 1200, Rule 8200 and Rule 8400 (blackline)

[Appendix B](#) – Proposed Amendments to Consolidated Enforcement, Examination and Approval Rules, Rule 1200, Rule 8200 and Rule 8400 (clean)

[Appendix C](#) – Staff Policy Statement – Early Resolution Offers

[Appendix D](#) – Response to Public Comments on Notice 18-0045