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June 6, 2019

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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/iiroc_20190425_notice-rfc-minor-contravention-program.pdf

I would like to publicly voice my concerns with these proposals.

According to IIROC's 2017-2018 Annual report https://annualreport.iiroc.ca/2018/pdfs/IIROC_AR_2017-18_EN.pdf IIROC received 516 complaints related to business conduct and another 430 complaints related to trading. 127 enforcement investigations were pursued. There were only 42 disciplinary hearings of which 39 were against individuals and 3 against firms. These enforcement statistics seem incredibly low since IIROC oversees 29,284 approved persons and approximately 176 firms. With only 42 hearings I'm not convinced either of these programs are even warranted.

Although IIROC levied a modest \$3.29 million in fines, it collected only \$615,000. 100% of the fines against the three firms was collected which amounted to \$420,000 of the \$615,000 total. These miniscule figures do not support strong deterrence for either firms or individuals.

It is clearly the duty of the Member firm to put robust systems and controls in place to prevent and/or promptly detect any breaches to the rules and regulations. The contractual relationship is between the Member firm and the client. Therefore, Member firms must be held accountable by IIROC for the recommendations and activities of their representatives. Fine firms and many of these problems will be quickly solved and future deterrence will improve which is, after all, the goal is it not? If firms then wish to pursue administrative or legal action against their representatives that is their prerogative to do so.

That being said, I have no problem with IIROC also disciplining representatives who breach the rules.

Since you state cautionary letters have little deterrence value, I assume those who have received them in the past either continued on with their behaviour or perhaps worse.

You did an online survey of Canadian investors http://www.iiroc.ca/industry/enforcement/Documents/IIROC-Alternative-Discipline-Investor-Survey-2018_EN.pdf because as you rightfully state "It's important that Canadian investors have a voice and the ability to provide their input on our regulatory proposals," said Elsa

Renzella, Senior Vice-President, Registration and Enforcement. "We will carefully consider this input, along with the comments received, in refining our alternative discipline proposals."
http://www.iiroc.ca/Documents/2018/9ec72535-e331-4073-aca7-f5f81485c2de_en.pdf

There are other far more meaningful ways to engage investors beyond the limited scope of an online survey that IIROC needs to pursue. I'm also mindful that throughout the survey often times more than 10% of those being questioned answered they 'did not know'.

Your survey states "Half of investors (49%) believe a minor violation program should be used when a breach is 'unintentional or inadvertent'. I think that is a very liberal conclusion to make but even so, what about the remaining 51%? Does this mean 51% believe a minor violation program should not be used?"

You state "Over half (56%) of investors believe that IIROC should publish the names of firms and individuals in all cases of breaches of their rules. Why is IIROC not listening? According to your survey "Almost one-third (31%) of investors also oppose reduced penalties."

IIROC states "The impact of these changes would be an increase in confidence levels for all five factors tested: (Percent saying 'would increase my confidence')

- How well the industry is regulated in Canada; 32%
- How well investors are protected; 28%
- The integrity of the Canadian investment industry; 28%
- The fairness and integrity of markets in Canada; 27%
- Your willingness to invest through Canadian markets; 22%

If that is what you conclude then the following should be of real concern.

What about the other 68% whose confidence in how well the industry is regulated would not be increased?

What about the other 72% whose confidence in how well investors are protected is not increased?

What about the other 72% whose confidence in the integrity of the Canadian investment industry is not increased?

What about the other 73% whose confidence is not increased regarding the fairness and integrity of the markets in Canada?

What about the whopping 78% whose willingness to invest through Canadian markets will not be increased?

The specific breaches posed in the client survey where IIROC concluded "For the balance of the situations tested, there is more limited consensus. But, in most cases, less than half believe a full formal hearing should take place. Overall, these results suggest that investors believe that a range of alternative disciplinary approaches are appropriate depending upon the situation, even if they do not agree on what the best approach should be."

Since the following types of cases were included in the SURVEY OF CANADIAN INVESTORS' VIEWS ON ALTERNATIVE DISCIPLINARY PROPOSALS are we to then conclude these are the

kinds of cases IIROC is considering for the purposes of either their suggested Minor Contravention Program and or Early Resolution Offers?

1. "An investment advisor buys or sells an investment without the approval of the client, but the advisor admits the mistake."
2. "For several years, an advisor engages in a practice where as a matter of convenience, he signs account documents on behalf of his clients. Notwithstanding that this is a breach of IIROC rules, his clients are aware of this practice and have given him verbal approval. There was no harm to his clients."
3. "An advisor at an investment firm makes an investment for a client that has a higher risk than the client's risk tolerance and the client loses money. The advisor and the firm fully cooperate with IIROC's investigation, apologize and compensate the client for his or her losses."
4. "When the risk profile of a client changes, an advisor is required to update the Know Your Client form and have the client review and sign. An advisor had for many years discussed fully with clients any changes to their risk profile and had invested accordingly. The advisor neglected to have the client review and sign the appropriate updated documents. Clients did not complain about this oversight, but the advisor breached IIROC rules by not completing the documentation."
5. "An investment firm discovers that it has been over-charging clients for each trade. It identifies all the cases where this has occurred and pays back investors. It also notifies IIROC of its actions to correct the situation."

http://www.iiroc.ca/industry/enforcement/Documents/IIROC-Alternative-Discipline-Investor-Survey-2018_EN.pdf

Several commenters in 2018 requested examples of cases that would be resolved by way of the MCP to assist them in determining their support for the program. IIROC responded "Setting out specific examples is in our view too prescriptive and undermines the more principled approach of this program." http://www.iiroc.ca/documents/2019/24040bdd-3cd2-4efc-b464-a8aaf69f6c23_en.pdf

Yet the survey cases presented above are quite specific and quite serious.

In light of the above, as well as other concerns I do not agree with this proposal moving forward. I also agree with the concerns expressed by the OSC IAP, securities lawyer H. Geller and others. I do not believe a convincing case has been made for either of the two proposals.

Debra McFadden

http://www.iiroc.ca/Documents/2019/e8708b5e-3787-4bf5-bc79-ea63ba934379_en.pdf

http://www.iiroc.ca/Documents/2018/dcf3af16-1ea7-4e64-b49b-12e05eb9bce7_en.pdf