

OSC Investor Advisory Panel
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Re: Response to IIROC's Request for Comments on Strategic Issues

The Investor Advisory Panel ("IAP" or "Panel") is an independent body formed by the Ontario Securities Commission in August 2010. It is charged with providing input on the Commission's policy initiatives, including proposed rules and policies, the annual Statement of Priorities, concept papers and specific issues. Its mandate is to represent the views of investors and make recommendations to the Commission on matters affecting investors.

We are pleased to provide our perspective in response to IIROC's request for comments on the organization's strategic issues. IIROC is presently reviewing how it can best fulfill its public interest regulatory mandate in a changing landscape. The organization is re-evaluating and adjusting its current strategic objectives and priorities and is seeking public input to assist with the strategic planning process.

We are pleased that IIROC has chosen to reach out to the public for input on its role. In our view, there is a significant imbalance in its priorities that must be addressed. IIROC today does not demonstrate the focus on investor protection that is needed to allow it to achieve its mandate as set out in the recognition order: "to regulate in the public interest by protecting investors."

It should be noted that IIROC's mandate is as follows: "*IIROC must regulate to serve the public interest in protecting investors and market integrity. It must articulate and make sure it meets a clear public interest mandate for its regulatory functions.*" The Panel would echo FAIR Canada's previous submission urging IIROC to raise its standards and foster a culture of investment professionalism that puts the needs of investors and investor protection first. This focus is lacking in its current priorities, a reality made all the more evident by the lack of new or effective investor protection initiatives in the "scorecard" section of its most recent Annual Report.

Recommended Focus Areas

The Panel recommends four major areas IIROC must prioritize in its strategic plan going forward.

Governance

IIROC cannot fulfill its investor protection mandate without major changes to its governance structure. IIROC's current governance allows ample opportunity for industry involvement but is closed to retail investor participation and engagement.

IIROC offers no formal opportunity for retail investor involvement/input into its operations, its policy development or its Board of Directors. While the Ontario Securities Commission, for example, has created an Investor Advisory Panel in addition to individual retail and institutional investor representation on its policy committees, IIROC has no retail investor representation on its five industry Policy Committees or 10 member firm District Councils.

We recommend that IIROC create an Investor Advisory Committee to ensure effective and ongoing consultation and input from investors. We also recommend that IIROC review its board governance to ensure that its Board of Directors includes public directors who are experienced in and able to articulate the views of the retail investor. This is not the case today.

At the same time, in order to involve retail investors in its policy and consultation process, IIROC must raise its profile among the retail investing public. Retail investors generally do not know how to access IIROC to receive information or request assistance. IIROC is doing little to help improve this unsatisfactory situation. Reaching out to clients of IIROC-regulated firms and raising IIROC's regulatory profile need to be IIROC priorities.

While clients of IIROC-regulated firms will know that their account is protected by the Canadian Investor Protection Fund (CIPF) because IIROC requires this information to be included on all client account statements, they won't as easily be able to find out who regulates their firm or advisor. IIROC recently withdrew a policy proposal that would have required firms to self-identify as IIROC-regulated firms on their client account and transaction monthly reports in the same way that they identify as CIPF-covered. It should be noted that distributing IIROC bookmarks at Canadian libraries is no substitute for requiring firm self-identification to investors. IIROC should reintroduce this policy.

Enhance registrant professionalism

Modernize and raise proficiency standards

As the industry moves away from a transactional sales business model to focus on wealth management advice, its regulator must address badly outmoded professional standards. Titles must be properly regulated, reflecting advisors' training and scope of business practice. Educational and training standards must be raised.

IIROC should launch a comprehensive review to update and modernize registrant retail proficiency requirements, which have been in place since the early 1970s. It is

simply inadequate in today's complex marketplace to require an online examination and 90-day job internship as entry standards.

Regulate use of titles

Investors need better protection than a standard that permits registrants to choose their own business titles based on meeting minimal standards of accuracy and misrepresentation. Imagine if regulators in the health care field allowed individuals with the training and experience of massage therapists to call themselves physiotherapists or heart surgeons. And yet this is what the average investor faces when seeking important investment advice.

Note that the recent "Mystery Shop" research undertaken by the Ontario Securities Commission, IIROC, and the Mutual Fund Dealers Association recorded no fewer than 48 different titles used by advisors. This is unacceptable.

IIROC should also develop and introduce a new rule governing the use of registrant business titles.

Fair and Timely Client Complaint handling and Restitution

Ensure fair and timely complaint handling

IIROC must make fair and timely complaint handling and restitution a priority for itself and for the firms it regulates. IIROC introduced a new rule some six years ago that was intended to accelerate the complaint handling process and provide a fairer and faster outcome for investors. To ensure it is working, IIROC should conduct a comprehensive review of this policy to identify strengths and weaknesses in its implementation and operations. This review should consider such issues as the effectiveness of firms' communications to clients, as well as the timeliness, fairness and quality of firm responses.

The CSA's 2014 audit of IIROC's own complaint handling identified serious concerns with investigation practices specifically with regard to suitability and supervision violations. IIROC should urgently undertake a review of its practices that will enable it to improve its performance. IIROC should also set performance targets that will enable it to track and measure improvements in investigations and enforcement actions regarding suitability and firm supervision.

Restitution

IIROC-regulated firms are required to fully cooperate with the Ombudsman for Banking and Investments (OBSI) in its consideration of client complaints received from IIROC-regulated firms. Recently, some IIROC firms have rejected OBSI client compensation recommendations and OBSI has also reported increasing numbers of low-ball offers.

IIROC cannot continue to sit silent and inactive as some member firms defy OBSI, leaving clients with no recourse except to go to the courts for compensation. IIROC must make fixing the current OBSI impasse a top priority.

IIROC Enforcement disciplinary decisions show that disgorgement of firm profits is rarely included in disciplinary decisions. IIROC should conduct a review of its Enforcement procedures to identify how its Enforcement Counsel can more often include disgorgement in its penalty recommendations to Disciplinary panels.

Suitability: Product Recommendations, Supervision and Conflicts of interest

Spearhead the introduction of a best interest standard

The Investor Advisory Panel supports the introduction of a best interest standard. The current suitability standard is inadequate to protect investors.

We believe that IIROC should participate in and take a leadership role in the current regulatory and public discussions led by the CSA about improving advice standards for Canadians. This is what IIROC's U.S. regulatory counterpart FINRA has recently done.

Until such time as a best interest standard is introduced, IIROC must address the serious business conduct compliance and enforcement failures documented in the CSA audit to ensure that its firms are in full compliance with the current suitability standard.

Unsuitable complaints are the number one investor complaint that IIROC receives. As the exempt market expands and regulatory arbitrage becomes an even more frequent reality with the introduction of CRM2, IIROC's inability to identify and address issues of unsuitable product recommendations should be a grave concern to it.

Focus on conflicts of interest

IIROC should also make it a Compliance and Enforcement priority to review retail accounts dealing with conflicts of interest and the supervisory arrangements that firms have in place to address these issues. Conflicts of interest, especially with respect to compensation-driven conflicts of interest as well as with regard to outside business activities, should be a key compliance and enforcement focus.

Conclusion:

The Investor Advisory Panel is pleased to have the opportunity to participate in IIROC's first-ever public consultation process on its strategic direction. The investing public has never before been given the chance to express its views on IIROC and its role, a fact which serves to underscore the need for profound changes to the organization's governance

structure. IROC's doors have been closed to investor input for too long, making it very difficult for it to fulfill its ultimate mandate of serving the public interests and protecting investors. Now that the doors have been open for the first time, the Panel hopes that IROC continues to seek external retail investor views going forward. Only in this way can it effectively operate in the best interests of the investing public.