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John Rossi
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Compliance and Enforcement Branch
Financial Consumer Agency of Canada
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Dear Mr. Rossi:

Re: Application of Deposit Type Instrument (DTI) Regulations to Investment Dealers

The Investment Industry Association of Canada is the professional association for Canada's securities industry, representing over 170 investment dealers. Our members collectively manage over $1 trillion for retail investors, of which approximately $170 billion is held in deposits (Cash, GICs, and High Interest Savings Accounts). Our industry, therefore, represents an important channel for diversified savings and investment among Canadians.

We understand that the Financial Consumer Agency of Canada (FCAC) has determined that:

- federally regulated financial institutions that distribute Deposit Type Instruments (DTIs) such as GICs through investment dealers (dealers) must demonstrate that the information prescribed under the DTI Regulations is communicated to the dealer and:

  1) have a contractual arrangement requiring the dealer to communicate the information to the investor, or

  2) can show that the financial institution has done an assessment confirming the dealers' provincial regulatory obligations meet the federal disclosure requirements.

- Where the financial institution has communicated the information to the dealer and the dealer has not relayed the appropriate information to the client, the FCAC has indicated it will pursue the complaint with the applicable provincial regulator, for possible action against the dealer.

While the IIAC understands the high priority the FCAC has placed on financial consumer protection, we have serious concerns with the FCAC's position in respect to the application of the DTI Regulations on dealers and their clients. Specifically, the FCAC's position risks considerable disruption to the market for DTIs (ie. GICs) sold through dealers, adversely impacting these financial consumers.

First, we believe that the DTI regulations were drafted without consideration of their application on DTIs distributed through dealers. Nor did market participants envisage during the public consultation period that the final regulations would be interpreted so broadly to include products distributed to financial consumers beyond those dealing with federally regulated financial institutions. Given the significant divergence in business practices, product offerings, client profile and regulatory framework between federally regulated financial institutions and dealers, simply overlaying regulations designed for deposit taking institutions onto dealers will have unintended and undesirable effects. Further, we believe that the FCAC may have inappropriately concluded that inadequate sales or disclosure practices that may have been prevalent on the sale of DTIs by federally regulated financial institutions also exist in the dealer channel. We would be very interested in the nature of discussions the FCAC has had with securities regulators or supervisors that supported this conclusion. From our longstanding dealings with these organizations, we believe that there are few client complaints within the securities industry pertaining to the sale of conventional deposit products such as GICs. An examination of ComSet[1] data would support our view. Given the many other significantly more sophisticated products distributed by our members, we believe that their resources are better utilized ensuring a positive client experience in this area of their business.

Second, the principles behind the disclosure mandated by securities laws are consistent with those required under DTI Regulations. We view that the FCAC has not acknowledged the competencies of securities regulators in overseeing this area of the market and perhaps made its determination without fully appreciating the current and evolving regulatory framework dealers are subject to.

The Investment Industry Regulatory Organization of Canada (IIROC) is the national self-regulatory organization for Canada's securities industry. Dealers are subject to detailed IIROC rules related to KYC, suitability and disclosure - all aimed at investor protection and fostering confidence in our securities industry. IIROC also oversees the business conduct and trading activity of all its dealers. To this end, IIROC has imposed high proficiency and professionalism

[1] ComSet (Complaints and Settlement Reporting System) is an IIROC system that enables reporting of client complaints and disciplinary matters by dealer Members to IIROC (IIROC firms). With ComSet, IIROC staff can identify new and emerging compliance or regulatory issues, as well as patterns and trends in the industry, at the national, regional and firm level that help to direct focus on potential problems, areas that require enhanced compliance review, or events that warrant enforcement action.

standards on all its registered individuals dealing with the investing public. IIROC's comprehensive set of requirements center around ensuring that clients understand the products they invest in, and that those investments are suitable for them. Several sample client account statements and confirmation statements utilized by dealers have previously been provided to FCAC staff to illustrate the current level of high disclosure provided to clients. However, we should also note that IIROC, in collaboration with the Canadian Securities Administrators (CSA), has approved additional new regulations under their *Client Relationship Model* (CRM) initiative to further strengthen dealers' fundamental obligations to deal fairly, honestly and in good faith with clients. We refer you to IIROC Notice 12-0107 and 12-0108 for a detailed description of the CRM requirements and its impact on dealers' obligations to clients[2]. Once fully implemented, CRM will provide clients of dealers with a level of relationship, account, cost and performance disclosure the likes of which are unparalleled in this country.

IIROC also takes steps to ensure that dealers and registered representatives adhere to the high standards it imposes. First, IIROC rules require its dealers to "use due diligence to ensure that the acceptance of any order for any account is within the bounds of good business practice." Second, members must use due diligence to ensure that any recommended transaction is suitable for the client, having regard to the client's particular financial situation, investment knowledge, investment objectives and risk tolerance. Third, transactions in client accounts must be reviewed by the dealer daily to identify unsuitable transactions. Additionally, consistent with IIROC rules, an independent compliance function conducts a second tier of trade reviews and conducts regular visits to branches to test the effectiveness of supervisory controls. Finally, IIROC itself engages in business conduct compliance reviews and regulatory sweeps to make certain that dealers and registered representatives meet their obligations under the rules. **This regulatory regime is one that simply does not exist for federally regulated financial institutions.**

In addition to IIROC oversight and examination, securities dealers are subject to regulation by the provincial securities commissions that administer and enforce securities legislation in their respective provinces. The various securities commissions have a mandate to protect investors from unfair, improper and fraudulent practices and to that end will set and enforce requirements for the maintenance of high standards of business conduct by market participants, including investment dealers. Under the auspices of the CSA, the securities commissions should be commended for their work in identifying pertinent issues specific to the securities industry and in ensuring investor protection to consumers in this channel.

Third, should clients of dealers have a negative experience in relation to the distribution of a DTI by the dealer, the client has more comprehensive redress mechanisms available to them than in the case of DTIs bought from non-dealers. These redress avenues are explained in an IIROC publication that dealers must provide to clients and which can also be found on the IIROC website. Dealer clients can turn to: the dealers' in-house recourse avenues, free external complaint-handling channels through IIROC or securities commissions, IIROC approved

[2] These Notices are publicly available on the IIROC website.
http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=C168CD670F80468EB38BC6EF773ECC41&Language=en
http://docs.iiroc.ca/DisplayDocument.aspx?Language=en&DocumentID=3785CCE9B029435BB11D401FD5154D9E

arbitration programs, or the Ombudsman of Banking Services and Investments (OBSI). One important distinction between investment dealers and other financial institutions is that **all** IIROC regulated dealers are required to be participants of OBSI (IIROC Rule 37.2).

Extending the DTI regulations to GICs sold through broker dealers will not likely have a material impact on the level of investor protection over what is or will be provided by securities regulations. On the contrary, the FCAC's position risks introducing duplicative, costly and possibly contradicting requirements on to dealers that would: i) potentially confuse clients; and ii) reduce the choice of investment products available to them. It would also impede dealers' ability to provide their clients liquidity through secondary markets for GICs. Moreover, imposing the DTI regulatory requirements on dealers would detract from current dealer efforts to meet new investor protection requirements posed by securities regulators (e.g., CRM, Point-of-Sale, etc.). We believe that FCAC resources should remained focused on financial consumers directly dealing with federally regulated financial institutions – that is, consumers not protected from the robust disclosure and regulatory regime of the securities industry.

We recommend a more workable approach as follows: that federally regulated financial institutions be allowed to conclude, when dealing with IIROC registered dealers, that the dealers' product disclosure requirements are sufficiently consistent in effect with the DTI regulations. Federally regulated financial institutions should be permitted to rely solely on the dealer's regulatory framework to determine how best to disclose information about DTIs. Should any client issues result for the dealer on the sale of a DTI, they should be dealt with by existing consumer redress mechanisms available within the securities industry.

Thank you for considering our concerns and recommendation. We request an early opportunity to discuss the forgoing observations and promptly answer any questions you may have.

Sincerely,

"Jack Rando"

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