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February 3rd, 2014

Dear Sirs and Mesdames:

RE: Request for Comment on Revised Sanction Guidelines and related Staff Policy Statements (Revised Sanction Guidelines)

The Investment Industry Association of Canada (IIAC or the Association) appreciates the opportunity to comment on the above noted Revised Sanction Guidelines, as outlined in Notice 13-0269.

The IIAC supports IIROC's goal to consolidate the previous sanction guidelines and to provide transparency to Dealer Members regarding the general principles and key factors for determining appropriate sanctions. While the Revised Sanction Guidelines remove ambiguities regarding discrepancies between the general principles and factors in the previously separate Dealer Member Disciplinary Sanction Guidelines (Dealer Member Guidelines) and the UMIR Disciplinary Sanction Guidelines (UMIR Guidelines), the IIAC does have some concerns regarding certain changes in the Revised Sanction Guidelines, which are outlined below.

Part I - Sanction Principles

Principle 2: Principle 2 states that a respondent's prior disciplinary record can be a possible aggravating factor; however, it is not clear what would be considered to be part of the disciplinary record. The disciplinary record should only include previous matters that involved enforcement proceedings. IIROC can issue warning letters to a Registered Representative or Dealer Member with respect to an issue and these warning letters should not be considered to be part of the disciplinary record. Neither the Registered Representative nor the Dealer Member is able to defend themselves against any allegations made in a warning letter as there is no disciplinary process that results from the warning letter. However, despite the lack of process involved with a warning letter, IIROC states that warning letters can be taken into consideration in the future. Such letters should not constitute part of a disciplinary

record as no allegation was put forth to a disciplinary panel. IIROC should clarify that only conduct which results in enforcement proceedings should be considered part of the disciplinary record.

Furthermore, there may be respondents with multiple licenses who are subject to various regulatory bodies. Is it only IIROC matters that are included in the disciplinary records? Would internal discipline matters reported by Dealer Members be included for individual respondents? We request clarification regarding what matters are included in the disciplinary records.

In addition, Principle 2 does not appear to distinguish between individual respondents and Dealer Member respondents. The Dealer Member's prior disciplinary records should be considered in the context of the firm's size in terms of the number of Registered Representatives under the Dealer Member, and the types of previous offenses to ensure that this principle does not unfairly penalize larger Dealer Members.

Principle 3: This principle requires clarification regarding the reference to multiple violations. For example, if there is one type of misconduct affecting several accounts, is that considered multiple violations? Or does the principle refer to incidences where a respondent is alleged to have violated multiple different rules?

Principle 5: We agree with the considerations outlined in Principle 5 related to suspensions. Suspensions must be considered by IIROC Staff and the Hearing Panel to be a significant sanction reserved for serious contraventions. To that end, we are seeking clarification on the types of "serious contraventions" that would lead a Hearing Panel to consider suspension. The IIAC is concerned that despite these considerations, suspensions are becoming commonplace and given to respondents for less serious contraventions. Suspensions are a severe form of sanction and should not be applied routinely. Further, the wording in Principle 5 should be revised to reflect that suspensions should only be applied where there is a pattern of *serious* misconduct.

At the IIROC CLS Conference, IIROC Staff suggested that a suspension under 30 days does not have much of a deterrent effect, and that they would generally recommend a suspension of 30 days or greater. We disagree with that sentiment. Any length of a suspension has an immediate impact on a respondent. There is a stigma associated with a suspension, and it can impact not only the respondent's current and future employment opportunities but also their relationship and reputation with clients. Suspensions should not be measured by only the immediate financial impact they may have on the respondent, but should be understood to be a deterrent in and of themselves.

The FINRA Sanction Guidelines include specific recommendations of suspensions of less than 30 days in many circumstances. There are recommendations of suspensions for *up to 5 days*. FINRA's use of shorter suspensions suggests that it recognizes that any length of suspension is a deterrent.

Principle 6: While we are not in disagreement with the general considerations in Principle 6, the phrase "members of the investing public have been abused" is vague and overly broad. It is not clear what abuse may mean. We recommend that this phrase be removed. The initial consideration could be revised to incorporate the investing public concerns as follows: "contraventions involve significant harm to the investing public, to the integrity of the market, or the securities industry".

Further, we believe the wording "there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole" should be revised, as it is too vague. We recommend that IIROC revise the phrase to "based on the key factors outlined in the Part II, the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole".

In addition, Principle 6 should include whether or not the respondent has demonstrated remorse and personal accountability when considering a permanent bar. The UMIR Guidelines and the Dealer Member Guidelines each incorporated those elements as factors. There may be exceptional circumstances when a permanent bar should not be given as a result of these factors.

Principle 7: It is stated that where the misconduct is egregious, Hearing Panels should consider the weight that should be given to a firm's size or risk adjusted capital position in determining the appropriate monetary sanction. We seek clarification on the policy considerations for including this aspect into the principles. Firms should not be sanctioned based on its size or its risk adjusted capital position, rather it sanctions should be based on the contravention. In addition, the severity of a breach should be clearly explained in the decision to ensure the public understands the context.

Principle 8: Please see our response to IIROC Staff Policy Statement, Credit for Cooperation.

Overall, we suggest that the grounds for the determination of sanctions should be clearly outlined in the decision.

Part II - Key Factors in Determining Sanctions

The Revised Sanctions Guidelines should include language to reflect that the Key Factors are to be considered in addition to case-specific factors.

Factors 1 and 2: Where a firm has a large number of registered individuals, we suggest that Factors 1 and 2 could be considered in light of that fact and that the number of transactions and acts may have been performed by various registered individuals on separate, unrelated occasions.

Factor 8: Please see our response to Principle 2. Similar to our concerns regarding Principle 2, the IIAC would like clarification provided regarding what is considered to be included in the disciplinary record.

Factor 12: The IIAC agrees that whether a respondent was subject to internal discipline is *a key factor* for the Hearing Panel in determining an appropriate sanction. This will ensure that respondents do not receive unequal treatment and it will encourage a culture of compliance for Dealer Members. Please see our response to IIROC Staff Policy Statement, Internal Discipline by a Dealer Member regarding why the IIAC believes this must remain a key factor.

Factor 18: It is not clear if this factor refers to: (i) a situation before an alleged contravention occurs, if adequate training with respect to the misconduct at issue had been developed by the Dealer Member, or (ii) if after a potential contravention occurred, a Dealer Member instituted training and policies to

rectify that potential issue from reoccurring. In addition, this factor requires clarification regarding what IIROC's expectations are for adequate training and if for example memos or firm policies and procedures would be considered training. Examples regarding what is considered training would be useful.

Factor 20: This factor requires clarification regarding the reference to the term "regulatory guidance". Is this factor referring to IIROC Guidance Notes? If it does refer to Guidance Notes, the IIAC is concerned that Guidance Notes are not rules and that this may inappropriately penalize respondents who can comply with the rules through alternative means from the Guidance Notes. IIROC has stated that Dealer Members can comply with IIROC rules in a variety of ways. Guidance Notes may provide useful information regarding how to ensure compliance, but that guidance should not be interpreted as an enforceable rule. If this factor is referring to another source as regulatory guidance, it should be clearly stated. We suggest that Factor 20 be excluded from the list.

IIROC Staff Policy Statements

Suspensions & Bars

In general, the IIAC does not disagree that a suspension of five years will in effect bar a respondent from re-entry into the industry, and that in most cases if a five year suspension is warranted, a permanent bar would also likely be warranted. However, a general recommendation that a five year or more suspensions should be permanent bars could fetter the discretion of the Hearing Panel, resulting in jurisdictional error. The policy statement did note that there may be extraordinary circumstances where a five year suspension should not result in a permanent bar. Consequently, the IIAC questions if such a blanket policy statement is necessary.

Internal Discipline by a Dealer Member

The language of this policy statement is of concern to the IIAC. While the policy statement states that it encourages Dealer Members to effectively address the conduct of its employees, it also states that internal discipline *may* reduce the quantum of regulatory sanctions. IIROC has repeatedly stated the importance it places upon creating a culture of compliance among Dealer Members. The Dealer Member Guidelines explicitly states that credit should be accorded for any fine or suspension that may have been imposed and the UMIR Guidelines list internal discipline as a mitigating factor. This policy statement greatly undermines that message. Dealer Members used the sanction guidelines as tool to determine what discipline is appropriate, and expected that their sanctions would be factored into the Hearing Panel's decision. Respondents may be unequally treated if internal discipline by Dealer Members is not taken into consideration by the Hearing Panel. The IIAC appreciates that IIROC may want to further penalize the respondent; however, the language in the policy statement should be revised similarly to the Dealer Member Guidelines to provide credit to the respondent for internal discipline.

Credit for Cooperation

With respect to the credit for cooperation policy statement, further specific examples of what are the expectations of IIROC Staff would be helpful, as the examples listed were quite general. The Ontario

Securities Commission's (the OSC) draft Credit for Cooperation Program specifically states staff's expectations, provides examples of what is not considered to be cooperation and provides greater information about the type of credit that respondents may receive for their cooperation. The policy statement as drafted is not clear whether a respondent can receive sufficient credits to reduce a fine to zero, receive partial credits for cooperation or can still receive credit for cooperation in the event the investigation proceeds to a contested hearing.

We note that some regulatory inquires and investigations may involve extensive, complicated issues, e.g. files that require data dated a number of years or require coordination of cross-border information. Given that such cases would often demand more resources and time from the firm in order to comply with the information requests, we would like to confirm that firms that are in constant communication with IIROC Staff to provide case status and seek extension requests in a timely manner following the receipt of requests would still be considered as being "proactive" in their cooperation.

The IIAC encourages IIROC to make this policy statement more comprehensive to provide greater guidance for respondents.

Request for Public Comment

1. As outlined in our response to IIROC Staff Policy Statements, Suspensions and Bars, in order to avoid potentially fettering the discretion of the Hearing Panel, we do not think this policy is necessary.

3. As stated in our response to Principle 6, factors such as remorse and personal accountability should be considered with respect to a determination if a suspension or permanent bar is appropriate. The IIAC would support the inclusion of more specific guidance regarding what factors would result in the recommendation of a suspension or permanent bar.

4. As stated in our response to IIROC Staff Policy Statements, Internal Discipline, we believe that internal discipline should have an impact on sanction recommendations to the Hearing Panel. Credit for internal discipline encourages a culture of compliance among Dealer Members and would prevent some respondents from receiving disproportionate sanctions. We would encourage IIROC to incorporate credit for internal discipline similar to the Dealer Member Guidelines.

General Concerns

While the IIAC appreciates that the Revised Sanction Guidelines consolidated the UMIR Guidelines and the Dealer Member Guidelines, we are concerned that many useful aspects of each set of guidelines were removed. These guidelines contained specific sanction guidelines broken down by contravention. The IIAC disagrees that IIROC disciplinary decisions are easily accessible. The decisions are not categorized by the type of contravention and respondents would need to search all decisions related to a contravention and compare the various sanctions. This is a difficult and time consuming exercise. In addition, the majority of the disciplinary decisions are settlements and the sanctions may be lesser than what would have been recommended by the Hearing Panel. There are very few examples of contested hearings for Dealer Members. Respondents will not have access to the reasoning why a Dealer Member or individual respondent received the specific penalty and will accordingly not know what sanction

would be reasonable at a hearing. Conversely, those actions that are contested often involve respondents that failed to attend settlement hearings, or are more egregious cases and may again not be comparable. The IIAC understand that the guidelines are not binding; however, it was very useful tool for respondents and for Dealer Members when imposing internal discipline.

Furthermore, the UMIR Guidelines identified aggravating and mitigating factors for respondents. Again understanding those factors are not binding, Dealer Members find them useful in assessing what might be an appropriate internal disciplinary response. We would encourage IIROC to include specific sanction guidelines for various contraventions and to include aggravating and mitigating factors in its list of key factors.

The IIAC suggests that IIROC clarify who the Revised Sanction Guidelines apply to. It is not clear if the Revised Sanction Guidelines apply only Dealer Member and Registered Representatives, or also to access persons, participants, etc.

We would be pleased to meet with IIROC Staff to discuss this response and the Revised Sanction Guidelines at your convenience.

Yours sincerely,

"Adrian Walrath"

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