IIACACCVM
INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

701 West Georgia Street | Suite 1500
Vancouver, BC | V7Y 1C6
604.637.1677 | www.iiac.ca

www.iiac.ca

Susan Copland, B.Comm, LLB.
Managing Director

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Marsha Gerhart
Vice President, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
mgerhart@iiroc.ca

Darshina Amin
Senior Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
damin@iiroc.ca

Dear Mesdames:

Re: Re-publication of Proposed IIROC Dealer Member Plain Language Rule Book – Proposed Amendments (the "Proposals")

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the above noted Proposals. Our comments are in addition those provided in the IIAC submission relating to the IIROC Notice of March 2017.

The Proposals contain a number of provisions that may not have been characterized as substantive changes, but require significant system changes. We ask that IIROC be mindful of these types of changes, as well as ones affecting the Introducing and Carrying Broker dynamics and provide sufficient time for firms to adjust their systems to comply.

In respect of the provisions for which we have additional concerns, we have the following feedback.

Series 2000 – Dealer Member Organization and Registration Rules

Section 2502(1) - General requirements for Directors - We note that a provision has been added as **section 2502(1),** which indicates that "*No individual may become a member of the board of directors of a Dealer Member unless that individual has been approved as a Director by IIROC.*" It is unclear whether this is intended to change existing practice, to now require directors to be pre-approved prior to their appointment in that capacity. Currently directors may be appointed to the Dealer board of directors, subject to regulatory approval. They are not permitted to act as an IIROC Dealer board member until that approval is obtained. Requiring regulatory approval prior to the appointment of the director would

necessitate a number of administrative actions take place (including changes to the NRD) prior to the appointment, which introduces inefficiency into the process.

If the introduction of this provision was not intended to change existing practice, we recommend that the wording indicate that the Dealer Member "must ensure that the individual does not act in the capacity of a member of the board of directors unless the individual has been approved as a Director by IIROC".

Section 2602(xxvi) - Proficiency Requirements – We reiterate our concerns regarding the requirement that Supervisors designated to be responsible for research reports be required to complete three levels of the CFA or the CFA Charter. This proficiency requirement is very onerous, and the technical focus of the CFA does not reflect the responsibilities of the Supervisor, which are based more on appropriate disclosure. Further to industry discussions with IIROC on this issue, we will be submitting a more detailed discussion of this item for a March 16, 2018 deadline.

Section 2607(2)(ii) and 2607(3) - Transition of Registered Representatives (with a business type of portfolio management) into the new registration regime. We are concerned about the potential excessive penalty for a late filing under **section 2607(2)(ii) and 2607(3).** The proposed regime does not have a fee cap, and where the substantive requirements have been fulfilled by the Dealer and individual, but the filing may have been inadvertently missed, the lack of a cap on the total fee could represent a significant penalty, disproportionate to the regulatory failure. We recommend a fee cap for a late filing be capped at $2500.

Series 3000 - Business Conduct and Client Account Rules

Rule 3200

Section 3211 - Account Appropriateness – The IIAC supports the amendments to this rule, as the revised rule better reflects that it was a codification of Guidance Note 12-0109, rather than the introduction of new requirements. Nevertheless, Dealer Members would appreciate additional guidance to confirm the extent of the appropriateness obligation, as the new proposed rule does not mirror the language of the original Guidance Note resulting in some remaining uncertainty of its application.

While Dealer Members would have been compliant with Guidance Note 12-0109, it was not a rule and the documentation requirements to evidence compliance may have been different. Dealer Members will now need to evidence compliance with the rule and that will involve system changes, policy and procedure changes, as well as advisor training. Furthermore, we request that this requirement apply to new accounts only and that existing accounts be grandfathered. We recommend a minimum of a two-year transition period from the date of finalization for this rule.

This rule still represents the introduction of a new rule for OEO firms, because they were, and continue to be, exempt from the suitability obligation. As a reminder, the relevant portion of Guidance Note 12-0109 was guidance on the suitability obligation, which does not apply to OEO firms. We submit that rule 3211(2) should exempt OEO firms from clauses 3211(1)(i) and 3211(1)(ii), with corresponding changes to clause 3241(2)(i)(c).

Further, we support the introduction of s. 3211(3) to exempt carrying brokers from the account appropriateness requirements, but we question whether it is practically possible to satisfy the condition in 3211(3)(ii) that an account appropriateness determination has been carried out by the portfolio manager, when portfolio managers may not subject to this requirement. The portfolio manager has a fiduciary obligation to the client and this requirement is unnecessary.

Section 3212 – Account Information – The rule itself does not specify whether Dealer Members are required to maintain records of evidence of delivery of client account information. In Appendix 4 of the Proposals, IIROC noted that they expect firms to keep a confirmation of delivery. It is not clear if that is an actual requirement as it is not specified in any rule. If that is a requirement, it would represent a significant change to Dealer Member's practices. Dealer Members have said this may require an extensive (minimum two-year) transition period, as Dealer Members may need to build new systems or processes to track evidence of delivery. Further, the introduction of new requirements should be limited to "official rules" and should not be introduced in comments as it is difficult for Dealer Members to determine their requirements and ensure compliance.

Section 3214(2) – Opening new client accounts – The requirement that the designated Supervisor must not approve a new account unless all client account records have been collected will impact Dealer Member's systems, document flow, and advisors will need to be trained, as this change impacts the client experience. We recommend a minimum of a one-year transition period from the date of finalization for this rule.

Section 3217(2)(i) – Leverage Risk Disclosure Statement – Members had noted in previous submissions that it may not be practical in all circumstances to obtain a client's signature on the leverage disclosure statement, especially in situations where a client may advise the Dealer Member's representative of the use of borrowed funds by email or during a telephone conversation. In Appendix 4 to the Proposals, IIROC stated that they believe a client's signature would be best to evidence receipt of the leveraged risk disclosure document. This would represent a change to current practices and correspondingly Dealer Members would need an implementation period to update systems to capture the information and to revise policies and procedures. We recommend a minimum of a one-year transition period from the date of finalization for this rule. Further, IIROC should also considering providing additional guidance on electronic documents and signatures.

Section 3220(4) – Record Keeping – IIROC's response to public comments on the new requirement to maintain a record of persons with trading authorization over more than one account is that IIROC does not expect this subsection of the Proposals to result in Dealer Members having to change their existing processes. Dealer Members state that expectation is incorrect. While Dealer Members do maintain records with respect to persons who have trading authorization over an account, there is currently no record to track whether those persons have trading authorization over multiple accounts. This new requirement will require costly systems changes. It is not clear why IIROC expects firms to police whether a third party has breached securities laws, especially where those third parties and securities laws are not regulated by IIROC. In the past, the British Columbia Securities Commission (BCSC) had issued a notice setting out their expectation that registrants would inform them if a non-registrant had trading authority

over several accounts (NIN 95/07). The BCSC rescinded this notice, presumably because it was unreasonable to impose this obligation on registrants. We suggest that IIROC should similarly rescind this proposed new requirement.

Further, this proposed rule, as written, appears to be vague and does not properly explain, exactly what Dealer Members are expected to do in order to comply. As already outlined above, Dealer Members already have obligations to collect information in order to comply with AML requirements, yet the rule as written, implies that firms have additional responsibilities with respect to their collection and use of this information. The rule should be more specific, and firms should not be required to rely upon guidance, especially, given that there may be significant changes to internal systems, tracking and processes. Dealer Members will require a sufficient transition period as this requirement could be problematic in organizations with paper files and utilization of base level service providers. We recommend a minimum of a two-year transition period from the date of finalization for this rule.

Rule 3400

Section 3402(1)(iii) – Retail client suitability requirements - The 2017 and current re-published rule have added a new suitability trigger and would require a suitability determination when securities have been withdrawn from an account. While IIROC has stated that is not a new requirement, the original Rule 1300(1)(r) only required a suitability review when securities were received into the account. The IIAC is not objecting to the change, however it should be recognized that there has been a rule change and that Dealer Members need sufficient transition time to implement system changes to capture the triggering event and to update policies and procedures. We recommend a minimum of a one-year transition period from the date of finalization for this rule.

Section 3404(1) - Exemptions from and exceptions to suitability requirements – The IIAC supports the revisions made to clarify OEO's exemptions from suitability requirements.

Rule 3500

Section 3505 – Payment of commission fees – In Appendix 4 of the Proposal, IIROC states that their interpretation has been that Rule 900 applied to all trades and not merely service charges on the exercise of rights. If that is the case, then we believe IIROC staff were misapplying the existing Rule 900 which clearly only applies to service charges on rights. Section 900.2 uses the words "amount so paid" which refers back to 900.1, which only deals with the exercise of rights. The reference to "the issuing company" also clearly relates to the company issuing rights and not any company whatsoever. We are concerned that a misinterpretation of the rules may be codified with serious negative effects for Dealer Members and without a clear benefit. We note that if this provision if retained as proposed, it will prohibit the payment of any IIROC fees calculated on the basis of Dealer Members' revenue, since that revenue is "in connection with payments received from a client or issuer". We strongly encourage IIROC to reconsider this rule and suggest it be removed to avoid the unintended consequences.

Rule 3800

Sections 3808 and 3816 – Client Account Statements and Trade Confirms– The IIROC response to the IIAC's previous recommendations to the account statement and trade confirmation requirements was to state that further changes to CRM2 were out of the scope of the Proposals. However, we would like to point out that the version of the Proposals published in IIROC Notice 17-0054 included amendments to CRM2 related rules. Further, one of IIROC's touted benefits of the Proposals project is to "eliminate obsolete, duplicative and unnecessary requirements"; we submit that our requests would reduce obsolete and unnecessary requirements.

We reiterate our recommendations that IIROC add ordinary cash distributions paid on mutual funds, limited partnership and trust units to the types of transactions in Rule 3808(1)(ii)(b) that do not warrant a Dealer Member to send statements, similar to the current dividend or interest payments exclusion.

We recommend that for Rule 3816(2)(ix), IIROC provide an exemption from the requirement to disclose the relationship between the Dealer Member and a financial institution that sponsors a mutual fund, where the names of the Dealer Member and mutual fund are sufficiently similar to indicate that they are affiliated or related. A similar exemption is available in s. 14.12(3) of NI 31-103.

Rule 3900

Section 3909 – Responsibilities of the Executive – The IIAC has previously requested additional guidance regarding the expectations for Executives. While IIROC stated in Appendix 4 of the Proposals that they will consider providing guidance, we believe that the proposed rule is still too vague to interpret, and the rule should be updated to more specifically outline exactly what is expected of the Executive and how they are to discharge this responsibility. This rule is a material change and the industry should not be required to rely upon only a potential future guidance note, in order to fully understand these new responsibilities.

Section 3970(3),(4) – Supervision of managed accounts - Members would like additional guidance regarding the new requirements related to the direct supervision of an APM and the requirement for pre-approval of advice.

Section 3980(1)(iii) – Supervision of order execution only accounts - The IIAC supports the revisions to the rule as they reflect the exemption OEO firms have from suitability obligations tied to non-trading related triggered events.

Series 5000 - Dealer Member Margin Rules

With respect to the acceptable ratings agencies referenced in IIROC Series 5000 Rules, and elsewhere, we believe IIROC should consider the merits of adopting a definition more aligned with the CSA's definition of Designated Rating Organization (DRO) which means:

(a) each of DBRS Limited, Fitch, Inc., Moody's Canada Inc., and Standard & Poor's Ratings Services (Canada), including their DRO affiliates; or

(b) any other credit rating organization that has been designated under securities legislation

Furthermore, as it relates to Municipal debt securities we believe it appropriate to reference the long-term issuer rating. As such PLR rules 5614(2) and 5618(2) could be amended as follows:

Section 5614 (2) - Government debt securities of different issuers with same maturity band …

(2) In subsection 5614(1) "highly rated Canada Municipal debt securities" are Canada Municipal debt securities with a current long-term issuer rating equivalent to a single 'A' or higher by a Designated Rating Organization.

Section 5618 (2) - Other offsets involving government debt securities and Government of Canada notional bond futures contracts …

(2) In subsection 5618(1) "highly rated Canada Municipal debt securities" are Canada Municipal debt securities with a current long-term issuer rating equivalent to a single 'A' or higher by a Designated Rating Organization.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

Susan Copland