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Market Regulation
Ontario Securities Commission
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Toronto, Ontario, M5H 3S8

Dear Sirs/Mesdames:

**Re: Re–Publication of Proposed IIROC Dealer Member Plain Language Rule (PLR) Book**

The Investment Industry Association of Canada (IIAC)[1] appreciates the opportunity to provide comments in respect of the PLR Project. While we believe the intended benefits of this initiative are sensible, we have outlined below our concerns where its stated objectives are not met in the current draft due to lack of clarity or concision, duplication, structural issues or new substantive changes added that do not improve regulatory policy or conform to existing requirements. We also note that the review process was made especially challenging given the format of materials provided for review; the original rules were not blacklined and contrasted against the revised proposed PLR rules.

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[1] The IIAC is the national association representing the position of 138 IIROC–regulated Dealer Member firms on securities regulation, public policy and industry issues. We work to foster a vibrant, prosperous investment industry driven by strong and efficient capital markets.

**PLR 2000 Series – Dealer Member Organization and Registration Rules**

Although we support rigorous proficiency standards for IIROC registrants, it is important that the standards are harmonized and consistent with other registrants conducting similar activities. In respect of the proposed amendments, we are concerned that a number of the proficiency requirements have been increased without broad consultation and without an indication of the problems they purport to remedy. In many cases, the additional requirements represent a new and significant burden, which may discourage individuals from undertaking the process to become an IIROC registrant. It is in the interest of the industry and investors to provide an incentive for more advisors to be registered under the IIROC platform, which has the highest registration standards in the industry. Currently the requirements are sufficient to distinguish IIROC advisors from other registrants and to ensure investors can be confident in dealing with such advisors. Imposing additional requirements without a clear demonstration that they will address existing problems or substantially enhance investor protection may drive qualified individuals away from the IIROC platform and will increase the registration burden on existing firms and individuals.

- Re. 2505/2506/2602 - Chief Financial Officer (CFO) / Chief Compliance Officer (CCO) –
  - We are concerned about the provision that grants a 90-day period for another qualified person to be appointed to the CFO/CCO position only when the former position holder leaves the firm. This could present problems where a person holding the CFO or CCO position is promoted, or moved to another position within the firm. The lack of a transition period may put the firm in a difficult position where a fully qualified successor is not immediately available to fill that position. This would be a particular problem for smaller and mid-sized firms that are less likely to have qualified candidates able to take over on very short notice. We question whether this new provision is the result of actual issues that have arisen in such circumstances and had a negative effect on a firm, or in regard to a theoretical scenario. If no harm has been demonstrated under the current rule, we recommend that it be retained in order to allow firms the flexibility to promote and move staff in a way that best deploys their skills consistent with the firms' needs at that time.
  - We also recommend that IIROC retain the current provision to appoint an "Acting" CCO/CFO which allows otherwise qualified individuals 90-days to write or re-write required course(s).
  - In respect of the new proficiency and experience requirements for CCOs, we note that under 3.13(a)(i) in NI 31-103, individuals with professional designations such as lawyers, accountants and CFA Charter Holders qualify to be CCOs for a Portfolio Manager (PM). We recommend that the IIROC proficiency provisions be made consistent with NI 31-103 in respect of the recognition of these qualifications, in order to ensure a level playing field with CSA registrants and, in addition that the requirement for 3 years of experience within the past 3 years before approval is replaced with a requirement that the individual has 3 years of relevant securities experience while working at an investment dealer or a registered adviser, or provided professional services in the securities industry for three years and also worked for a registered dealer or a registered adviser for 12 months. The proposed requirement would disqualify many strong, experienced candidates. For example, a candidate with 8 years of CCO experience at an investment dealer would not meet the

proficiency requirement if he/she had not been registered for 6 months before applying for approval. The proposal will also lead to an influx of proficiency exemption applications.

- Re. 2552 - Individual Approval **-** We recommend that the term “Investor” be added to the Approved Persons categories to align with section 2602(3)(xxxi) and the IIROC Approval Category listed in Form 33-109F4, Schedule C. The term “Investor” should also be added to section 2552(3), as it seems possible that an “Investor” who is an Approved Person may not be a Dealer Member’s (DM’s) Director, Executive or employee.
- Re. 2554/2602 - Approval of Registered Representatives and Investment Representatives, Portfolio Managers and Associate Portfolio Managers and their obligations –
    - The reintroduction of specific registration categories for PMs and Associate Portfolio Managers (APMs) is appropriate and achieves consistency with the CSA categories of Advising Representative and Associate Advising Representative. In terms of the proficiency requirements applicable to these categories, we seek clarification as to whether two years experience as a registered representative or research analyst would qualify as adequate investment management experience, as was previously the standard. In order to ensure consistency in proficiency among all PMs and APMs, the proficiency requirements for IIROC-registered and CSA-registered Advising Representative and Associate Advising Representatives should be as similar as possible.
    - We are pleased to note that a CSA-registered PM can qualify as an IIROC-registered PM by completing the CPH. This appropriately recognizes the proficiency requirements of the CSA registration and may encourage more IIROC registrations in this category. It should be made clear that the CPH, however, should only be required for an APM or PM who is trading or advising in non-managed accounts, as the proposed rule does not require the CPH if the registered individual is trading or advising solely in managed accounts.
- Re. 2555 - Business activities outside of the Dealer Member - The guidance provided in this section is helpful for dealers in determining the scope of the regulation.
- Re. 2602 - Proficiency Requirements for Approved Persons –
    - The term “recognized foreign self-regulatory organization” should be clearly defined, with a list of such organizations that qualify to ensure firms will have current knowledge as to which Self–Regulatory Organizations (SROs) are recognized. We also suggest that consideration for inclusion be afforded to relevant SROs where the regulator is a member of IOSCO.
    - We believe that it is appropriate to include a transition policy within the rules that specifies that the Investment Dealer Supervisors Course need not be written by individuals whose Branch Managers Course is still considered valid under the current version of rule 2900 Part II.
    - In respect of the proficiency requirements for Supervisors of Registered Representatives dealing with institutional clients, (“Institutional Supervisors”), the proposed amendments add a number of new and significant education, experience, and continuing education (CE) requirements. For instance, we question why Institutional Supervisors would be required to complete the Effective Management Seminar (EMS), which has been a requirement for Supervisors dealing with retail Registered Representatives. We question what issues or gaps these amendments are intended to address, specifically related to Institutional Supervisors. The addition of the requirement for two

years of relevant supervisory experience, represents significant additional criteria for this position, which may limit the number of candidates available. We recommend that unless the EMS has specific relevance to the institutional supervisory function, the requirement for the EMS course be eliminated, and the experience requirement be retained.

- In respect of Designated Supervisors responsible for the supervision of research reports, we recommend that IIROC recognize the "Series 16" and "Series 87" courses administered by FINRA in the US, in addition to the CFA and CFA Charter courses. These courses should be automatically recognized as fulfilling proficiency requirements, without the need to obtain an exemption from the relevant District Council, which can take up to a month to process. We also recommend that the CIM designation be recognized in respect of this category of registration.
- We question the need for two years of relevant experience and the Investment Dealer Supervisors Course for Supervisors responsible for the pre-approval of advertising, sales literature and correspondence. In addition, the new requirement for 10 hours of compliance training was not flagged as a new provision in the Notice, and is very significant. It is unclear why this new requirement is necessary for this position. These positions do not require suitability assessment and no daily/monthly review is required. Further, unacceptable practices assessed in this Supervisory role are well-established and change infrequently. We are unaware of any regulatory issues arising in this position which would be remedied by such a requirement.
- Similarly, we note that the Supervisor for opening new accounts and discretionary accounts, as well as Registered and Investment Representatives for institutional and managed accounts only, and for the pre-approval of advertising, sales literature and correspondence including research reports are subject to the compliance course CE requirements. These are significant new changes that were not identified as such in the Notice. It is not clear why these new and onerous requirements were added. It would be helpful if IIROC could explain why such changes were made.
- Since these Designated Supervisors now require RIME, a new proficiency requirement, please add the same statement in the Experience and Other Requirements column as for all the other Designated Supervisor proficiencies and insert "or such other equivalent experience acceptable to the applicable District Council".
- In addition, we are concerned that the experience requirement for Supervisors designated to be responsible for the supervision of research reports has changed from allowing a corporate "Officer" to requiring a corporate "officer". This change from the generic "Officer" in the current Rule to the defined term "officer" in the proposed Rule has significant implications in that now that person must be an Approved Person. This has narrowed the group and requires that person to be "mind and management", which are not generally the same group of people that approve research. The current Rule 3400 provides flexibility as to whether the research analyst must be a Partner, Director or Officer. The proposed provision would make it mandatory that that person be a corporate officer. This level of qualification is not necessary for this position, and may have a negative impact, particularly on small and mid-sized dealers that may not have individuals with these credentials to fill that position. It is not clear whether this was the intended outcome when the changes were proposed. If so, we seek clarification as to what the term "corporate officer" is intended to cover,

and why it is applicable to this category. This appears to be the only category of Designated Supervisor for which “corporate officer” status is required. We recommend that the proposed requirement that such individuals be Director, Partner, Executive and/or a corporate officer be removed from the requirements, as it is not consistent with other Supervisory requirements.

  - In respect of the Proficiency Requirement for Investors, we note that Investor is an Approved Person category in PLR 2602(3)(xxxi) and is also an IIROC approval category on NRD. As such, it appears that “Investor” should be added to PLR 2552(2).

- Re. 2606 - In respect of the exemption from re-writing the Wealth Management Essentials in paragraph 2606(6)(viii), we suggest retaining the current exemption criteria which includes IMT and PMT.
- Re. 2650 - Continuing Education Requirements for Approved Persons - We note that new Approved Persons must now complete the 10 hours of compliance and 20 hours of professional development without the 3-year grace period that currently exists which recognizes that these individuals have just completed the 90-day training requirement. We believe that completion of this training requirement should be accepted as the compliance CE for the first cycle, as adding a further 10 hours after such a recent and rigorous program is burdensome and unnecessary.
- Re. 2653 - The requirement for the new 2-year CE cycle is set to begin on January 1, 2018. We note that the change from a 3 to a 2-year cycle will require significant technology changes for DMs, which may take up to a year, and as such, we recommend an additional transition period. We recommend that it be clearly stated that in respect of transition periods, if an individual is taking the Branch Manager Course during the transition period when the new Investment Dealers Supervisor Course is not offered, the Branch Manager Course should be recognized to fulfill the proficiency requirements.
- Re. 2655/56 –
  - In respect of the requirement in paragraph 2655(1)(iv) that the DM must evaluate a CE participant’s knowledge and understanding of the course materials for the Compliance course, and, per paragraph 2656 (1)(iv) for the PD course, we recommend retaining the current Rule where a firm must “determine its own method of evaluating” the CE Participant’s knowledge/understanding. The proposed requirements may not be practical as in many cases, the courses/programs do not lend themselves to a formal evaluation.
  - We also note that 2655(1)(iv) and 2656(1)(iv) introduce a new requirement for DMs to evaluate a CE participant's knowledge and understanding of course materials for both internal and externally provided courses. In addition, 2656(1)(iv) specifies that this must be though an examination, course work or case study. This is a substantive change and will add an additional burden to firms. We recommend that IIROC maintain the current policy which allows each DM to determine its own evaluative method and does not require additional testing by the DM of externally provided courses.
- Re. 2656(1)(ii) - This new provision requiring a DM to designate a supervisor in charge of training seems to suggest that this must be a registered supervisor. Is this what is intended? Currently there is no such defined “designated supervisor” position, so it is unclear what qualifications are expected for this role. We are of the view that the Rules should continue to allow DMs to have these courses approved and their relevance assessed by an “other responsible person”. In addition, since there is currently no

Designated Supervisor for Training, we suggest deleting the word “designate” and replacing it with “select”.

- Re. 2657(2) - In respect of the requirement that a DM must file notice of completion of CE requirements within 10 days from the end of the month of when the DM becomes aware of such completion, we request that this section provide some flexibility in this filing requirement in order to ensure that the CE credits are allocated in the most appropriate manner.
- Re. 2658 - We are concerned that this provision requires a newly Approved Person, approved in a current cycle, to meet the equivalent requirements as an Approved Person who has had the full 2 years to complete their CER. This is a significant increase from the current, and more appropriate requirements, which allow a pro-rata approach in terms of when they are approved in the cycle. This is quite onerous for new registrants.
- Re. 2659(1), (2) - In respect of the voluntary participation in the CE program, the rules should continue to exempt participating individuals from rewriting both the CSC and the CPH exam (rather than the CSC or the CPH exam).

**PLR 3000 Series - Business Conduct and Client Account Rules**

*Rule 3100*

- Re. 3115 – Personal Financial Dealings – The current rule indicates in a grey box that existing arrangements must be unwound or comply by September 13, 2016; there are pending amendments to this rule and a further notice was issued in May, 2016 to advise that existing arrangements must be unwound or comply within 180 days of implementation, so this should also be noted.
- Re. 3117 – Mutual fund sales incentives – Paragraph (3)(v) would be clearer if it retained the phrase “normal course” rather than “normal and reasonable” since it is not clear what “normal and reasonable” business promotion activities are.
- Re. 3119 – The OTC Fair Pricing Rule was included in IIROC’s separate best execution rule proposal such that it was proposed to be included in a new overarching rule on best execution. It is not clear, therefore, that it should be included in the section respecting general conflicts of interest.
- Re. 3150 – Compliance with all applicable rules – This may be better structured by including this provision at the outset of Rule 3100 since it is an overarching requirement. It is not clear why the rule makes reference to complying with the rules of more than one SRO as opposed to IIROC only, as the MFDA has no jurisdiction. Also, subsection (2) is new and purports to address rule “inconsistencies” however it is unreasonable to expect compliance with the “most stringent rule” where that other rule may not reasonably be known to exist or to be inconsistent at any material time or it may be unclear which rule is more “stringent” in any particular factual scenario. It should follow that IIROC Rules are to be complied with since it is the members’ SRO and IIROC should work with other organizations to harmonize rules, if necessary, or determine which rules take precedence over IIROC Rules if there is any conflict, rather than leave it to members to reconcile on a case by case basis. If no IIROC rule applies

and another listed organization's does apply to member activity, then compliance with that organization's relevant rules would be appropriate. As such, there is no need to include subsection (2).

- Re. 3151 – Provision of information – It is unclear why this did not remain in the examination/investigations rule section per the original rule. In our view it is more appropriate there than in a business conduct/conflicts rule.
- We also note that Conflicts of Interest remains a work in progress given review and/or consultation initiatives underway by IIROC and the CSA which may result in further changes to this rule.

*Rule 3200*

- Re. 3202(1)(i) – In regard to the phrase "Each Dealer Member must use due diligence to establish: the identity of every new client…" we query whether the intention is to be more restrictive than the anti-money laundering regulations (PCMLTFA), which provide exceptions for specific account types such as registered plans? The original rule referenced that the identification of each individual be in compliance with any applicable legislation and regulations of the Government of Canada or any province, so it was specific to direct compliance with anti-money laundering regulations. This reference has now been omitted from the proposed provision and we suggest that it should remain in the rule for clarity.
- Re. 3202(1)(ii) – Insider identification – It is unclear which other issuer that is a non–reporting issuer is publicly traded. We suggest it would be clearer to indicate that it should be determined if the client is an insider of an issuer under securities legislation. Guidance may be necessary to elaborate that insider identification for the purpose of account applications is based on the statutory definition, as opposed to order marking under UMIR for which other guidance has been issued and for which the "reporting insider" definition under NI 55–104 may be used to designate orders as "insider".
- Re. 3203 – We suggest that subsection (1) be revised to read: "When opening an initial account for a trust, a DM must: …", and deleting the repetitive phrase "a DM must…" in paragraphs (i), (ii) and (iii). We also suggest revising paragraph (iii) to read: "… and determines whether any beneficiary is an insider under securities legislation." There is inconsistent terminology used in respect of insider identification in rule 3202 and this rule.
- Re. 3204(1) – We suggest revising subsection (1) to read "When opening an initial account… the DM must:", and deleting the repetitive phrase "a DM must…" in paragraphs (i), (ii) and (iii). Paragraph (iii) may further be rephrased for consistency of terminology to read: "… and determines whether one or more of them are insiders under securities legislation".
- Re. 3207(4) – This is new and unclear. While all new account documents and records should reasonably meet applicable IIROC requirements, it appears that there was omission in drafting and that it should further read "…and <u>applicable</u> laws". It may assist to provide additional clarification by referencing federal anti–money–laundering and terrorist financing legislation.
- Re. 3208(1)(ii) – The original rule included a provision requiring the execution of the margin agreement by a guarantor if applicable; however this was left out and it is not clear why.

- Re. 3208(2)(ix) – We suggest revision for clarity to read: "that all transactions are subject to IIROC requirements and any securities exchange on which the transaction has been carried out." (The trade may in part or completely have been executed on an ATS rather than an exchange).
- Re. 3209(1)(ii) – This new requirement to obtain a retail client's written acknowledgement that they received the leverage disclosure statement was purportedly added for consistency with the margin account execution requirement, however the disclosure is not a contractual agreement like for a margin account and as such the signature of the client is not necessary. It may be onerous for dealers to obtain an executed copy of the disclosure if it is not provided at the time of account opening. An audit trail recording confirmation that the disclosure was provided to the retail client, as with other disclosure, should suffice in the circumstances.
- Re. Rule 3220 – Recordkeeping – wrong rule references are noted – 200.2(m) is the original rule.
  - Subsection (1)(i) is vague, it is not clear whether terms and conditions and relationship disclosure documents must be kept as part of the "complete set of documentation" for each account. We believe that only the new account documentation (NCAF) and those documents supporting the NCAF should be maintained for the account. It is unwieldy to retain more "generic" account documentation for each account (and this is not the practice now), nor would this appear to serve a reasonable purpose. Otherwise, we suggest that a list of the documents that make up a complete set of documents be included in the rule to facilitate compliance.
  - Further, subsection (4) is new and it is unclear what IIROC expects firms to do with the record of any identified TAs. Are TAs related to the account–holders to be identified? What does the proposed identification process consist of? Firms also will face operational challenges to identify and track TAs for multiple clients and accounts if they do not have automated systems for this purpose and we believe manual tracking will be difficult and impractical. Firms will have to develop automated systems and incur costs as a result. We believe in the circumstances that it would be more reasonable to limit this requirement only to unrelated TAs with trading authority over a threshold number of accounts, rather than requiring every TA to be identified.
- Re. 3221(I)(ii) – We suggest revision for accuracy to read: "ensure completion of proper documentation when opening new accounts".
- Re. 3221(2)(iv) – We suggest revision to conform with the original rule so that it reads that policies and procedures for verifying material changes to client information should be "independent of the RR" and we request confirmation that there is no requirement for clients to sign an acknowledgement in respect of updated information and that it remains only optional. We also suggest revision to paragraph (v) to replace "have a system in place" with "have procedures requiring recording of the designated Supervisor's review and approval."
- Re 3221(3) – The original rule read that the account be restricted where an account application is not fully completed after the initial trade in the account. The new rule indicates this should happen where all required documents are not received after the initial trade. This again appears vague and more expansive than the original rule. It is unclear what "all required documents" consists of and we suggest that the original wording which identified the account application specifically was clear. Otherwise, a list of "all required documents" should be included in the rule to facilitate compliance. Further, unlike

the original rule, the requirement to maintain records of supervisory review for 7 years is not included and as such it is not clear what the requirement is since it is no longer referenced in the rule.

- Re. 3222(l) – This new provision indicates that a complete account application must be received no later than the following business day after an account number is assigned; we suggest subsection (3) be revised for clarity to read: "a designated supervisor must approve each completed new account application no later than one business day after the initial trade; also the institutional account rule 2700 used the standard "promptly after the initial trade" – we agree that this distinction is no longer necessary.
- Re. 3223(5)(b) – This provision is new. Many current Relationship Disclosure Documents (RDDs) are not account specific and describe both advisory and managed accounts within the same document. We request clarification as to whether the intention is that firms will now have to create a separate RDD for each account type, which would be a significant change.
- Re. 3229(3)(i) – The wording has changed to require verification of client information to ensure it is "correct", whereas the original rule required the review to ensure it is "current". It appears that the more accurate term would be to review that the client's information is current when there is a change of RR or PM. We also would request clarification on whether IIROC is expecting that a registrant must speak directly with the client when reviewing the existing client information, as firms may only do so if it is necessary to clarify the information or obtain additional information or otherwise if the time elapsed since the last contact with the old RR/PM has been greater than one year.
- Re. 3230 – We note the term "Sub–account" should be hyphenated.
- Re. 3240(1)(ii) – We note that the reference to NI 23–101 was omitted from the rule, we suggest it is clearer and easier to understand if it is retained instead of using the generic "securities legislation".
- Re. 3240 – We suggest that adding subtitles in the rule would enhance clarity – for example the subtitle before subsection (2) "Account Opening" may be included before subsection (2), a subtitle "Identification of Certain Clients" may be added before subsection (4), and a subtitle "System of Books and Records" may be added before subsection (7). Also original rule 3200.4 regarding supervision was omitted in regard to taking account of the absence of intermediation and to apply Rule 2500 reviews other than suitability. We believe these were important clarifications to this more recently amended rule and should be included here rather than segregated in a separate supervision rule.
- Re. 3251(1)(i) – The phrase "pursuant to standardized terms" was in the original rule but is omitted in this draft. We suggest including it as it differentiates exchange–traded derivatives from OTC.
- Re. 3252(2) – For clarity we suggest that language in the original rule be included to indicate that the supervisor should determine whether the risk profile allows certain strategies and note on the account not to allow inappropriate strategies. We also note that supervisor responsibilities have been segregated in Rule 3900 and this fragments the process of rule review respecting futures and options.
- Re. 3257(2) – Similarly the original language respecting the supervisor assessing the risk profile and restricting the account accordingly was omitted and we suggest it be included here.
- Re. 3258(1)(viii) – We suggest that for clarity the rule should read "take the other side of the client's transaction".

- Re. 3271 – There is concern that as written, the rule would allow retail registrants to exercise price and time discretion on the basis of the pursuit of best execution. Retail registrants do not directly manage the achievement of best execution for client orders and there would be no reasonable way for firms to monitor the use of price and time discretion by retail registrants. As such, this should remain only within the purview of firms' traders and trading desks given the risks that otherwise may present for discretionary trading to occur.
- Re. 3272(1)(iii), (iv) – These provisions are new and impose the restriction that the firm cannot renew discretionary authority and the term cannot exceed 12 months. We suggest that more flexibility is needed to accommodate client circumstances and that the term be no longer than 12 months but over a specified period of years.
- Re. 3272(2) – The original rule language regarding DMs being obligated to accept discretionary accounts is omitted as well as the requirement to have proper documentation and supervisory procedures in place – a reference to Rule 3900 is made generally respecting supervision but we suggest that it would be clearer if a reference to Rule 3949 is made, which is specific to discretionary accounts in addition to general supervision requirements.
- Re 3272(2)(vi) – This new requirement that a DM must keep a record of the supervisor's approval is vague as it does not indicate for how long – if the retention period is in another section it should refer to that section for clarity.
- Re. 3273(1)(iii), (iv) – These provisions again say the discretionary account agreement term must be for no more than 12 months and cannot be renewed, as suggested above we believe more flexibility is required as this may disadvantage some firms and clients.
- Re. 3274 – We question why proficiency provisions are included in this rule and not in the general proficiency–related rule sections. We also question why registrants under the two-year requirement should not be permitted to exercise discretion, given that these accounts are already under heightened supervisory requirements under IIROC Rules.
- Re. 3285 – We suggest it would be clearer to retain the original rule language that refers to decisions made centrally and applied to a number of managed accounts. We note that the original rule was based on the principle that the trading, taking the form of block purchases allocated on an average price basis, is not amenable to taking advantage of client orders, regardless of whether the pro is involved in the investment decision process. In recognition, the rule did not mandate that those pro orders be separated, which could result in the unintended consequence that those pros involved in the investment decision process receive better fills than clients. A further unintended consequence of the proposed change may be product arbitrage. Pros involved in the investment decision process would be prohibited from participating in block trades only if their account is segregated, as with model portfolios, however, if those pros invested in a pooled structure the allocation to that pool would allow the professional to participate. This proposed change unfairly differentiates the use of the segregated accounts to the benefit of pooled structures and generally may be detrimental to clients.

*Rule 3400*

- Re. 3402(1) – Should read "Subject to the applicable exemptions and exceptions set out in section 3404…" and in paragraph (iii) we note that "non–trading" should be hyphenated.
- Re. 3402(2) – Paragraphs (i)–(iii) are repetitive with those in 3402(1) and the factors referenced can be included instead at the end of subsection (1).
- Re.3402(3) – It is unclear what it means to advise "at a minimum" not to proceed with order if not suitable. We suggest that this should simply read that if the order is determined to be unsuitable, the client is advised against proceeding with the order.
- Re. 3403(1) – Should read "Subject to the applicable exemptions and exceptions set out in s. 3404…"
- Re. 3403(2) – We suggest removing from this section the discussion of the review of a client's sophistication and the list of considerations and instead simply indicate that when a suitability determination must be made, the DM must take steps to ensure that the institutional client fully understands the investment product, including the potential risks. The review of client's sophistication and list of considerations can be included under exceptions to suitability in section 3404, under a new subsection (3).
- Re. 3403(3)(i) – Should include this provision in section 3404 re. exceptions to suitability and delete paragraph (ii).
- We suggest that a new subsection 3404(3) is added and the existing 3404(3) be renumbered to 3404(4). New subsection (3) would read: "A DM has no suitability obligation if the DM has reasonable grounds for concluding that the institutional client is capable of making an independent investment decision and independently evaluating the investment risk based on the following relevant considerations (i)–(vii) [from existing subsection (2)].
- Re. 3405 – We suggest that this section be relocated to be included with other sections dealing with order execution account requirements as it does not discuss suitability.

*Rule 3500*

- Re. 3504 – This new provision mandates that a "fee schedule" be provided for retail clients that includes commissions, and only interest charges would be exempt from 60–day prior disclosure. This would be a major change with a new class of disclosure that would require updating and distributing a new fee schedule to all clients. There is no supporting rationale for the change and we question whether it would be acceptable to provide disclosure of commissions by indicating "as negotiated" since it is not practicable to include particulars when there is no specific commission formula and given the variances for different trades. When the client receives the trade confirm and fee/charges report, the client will in any event receive the exact commission disclosure. This provision should be withdrawn as it would be costly to implement with no real benefit.
- Re. 3504(3) – It is not clear why this subsection is "reserved". It would be preferable to keep rules in numerical order.
- Re. 3505 – It is unclear whether it was intended to expand the rule beyond the original dealing with service charges on the exercise of rights?

- Re. 3506 – There appear to be words missing, the rule should indicate "buy all or any part of the securities at a price higher than the initial public offering price of the securities."
- Re. 3509 – The reference to filing with "relevant provincial securities regulatory authority" can be omitted so that it reads "…deemed filed when delivered or sent in accordance with applicable securities legislation."

*Rule 3600*

- Re. 3602 – We question the expansion of the definition of "correspondence" to include commercials, ads or commentaries that are not for distribution to the public as this was not in the original rule and are covered under other definitions.
- Re. 3603(6) – The original rule was limited to requiring a DM to provide for the education and training of registered and Approved Persons as to the DM's policies and procedures only where pre–use review is not required, as well as follow–ups to ensure that such procedures are implemented and adhered to – the proposed rule is now expanded to a general requirement however that appears to be too broad as when pre–use review is required it will be done by compliance. There is also the new requirement for "specific ongoing measures" to ensure compliance with policies and procedures. That would appear to relate to supervision and it is unclear what supervision measures are required if they are new; these measures should be directly referenced if they relate to the supervision rule.
- Re. 3603(7) – The period of record retention is not indicated and instead there is only to reference to Rule 3800 which is unclear. Does this mean Rule 3803 specifically, if so, this indicates a 7–year retention period. This is changed from the original rule which required 2 years for all advertisements, sales literature and related documents from the date of creation, and all correspondence and related documents for a period of 5 years from the date of creation. There is no rationale provided for this proposed extended retention period and it would appear to be unnecessary and create extra burden without any noted benefit, given the lack of disciplinary matters associated with the activity which otherwise would compel a longer retention period.
- Re. 3607(2)(i)(b) – The word "calendar" was struck out and it now indicates "10 days" – unless clarified in the definitions to the Dealer Member Rules that "day" is a "calendar day" it should be specified to be calendar days as in the original rule.
- Re. 3607(2)(iii) – The word remuneration should not be plural.
- Re. 3608(2)(ii)(c) – In regard to disclosure by "any person" involved in the "approval of the report", we query whether this requires Supervisors of Research to disclose conflicts of interest? If so, this would be a new requirement for which the rationale is unclear.
- Re. 3611(2)(ii) – Uses the phrase the DM is "unable to verify whether" the research was prepared per Canadian disclosure standards; we suggest the disclaimer read: the research may not be prepared according to Canadian disclosure requirements.
- Rule 3616 – We suggest that the rule be amended to allow the disclosure of the valuation method for compendium reports (6 issuers and up) to be satisfied practically as per section 3612.
- Re. 3619(1) – The last phrase should say that it is related to the subject security rather than issuer.

- Re. 3620(1) – The original rule included the word “directly” based, which we suggest remain in the rule. Removing the word “directly” may limit dealers’ ability to include any investment banking revenues in their compensation models tied in with other segments of the business.
- Re. 3622(3) – It is unclear what “other applicable laws” refer to – it appears that is not necessary.
- Re. 3624 – It is unclear what the point of this certification is if it is invalidated by any “inconsistency”; if familiarity and compliance with the CFA Code and Standard of Professional conduct is desired then the attestation should be provided and any “inconsistency” is irrelevant. It is also unmanageable to mandate this attestation but also make it contingent on not being “inconsistent”.

*Rule 3700*

- Re. 3701(1) – The reference to reporting “other matters” is too broad and undefined. The rule should be clear as to what are reportable matters.
- Re. 3707 – This provision says that it is necessary to maintain records but no retention period is indicated; this is inconsistent with other provisions where there is reference made to retention periods. In addition, the word “results” should be replaced with “findings” which describe the conclusion of the review. The results are the actions taken due to the findings.
- Re. 3710(2) – No record retention period is referenced.
- Re 3715(3) – We note that institutional clients were not subject to this subsection in the original rule. We also suggest that “same matter” be changed to “same or similar matters” since complaints will be based on similar facts but not be identical necessarily.
- Re. 3721(1) – The interplay between this subsection and the reporting requirements under 3702 are not clear since only written complaints are captured in 3702 but 3721 also references verbal complaints.
- Re.3722(2) – We query whether this new requirement to appoint an individual who is a “supervisor” to act as designated complaints officer will be subject to proficiency requirements as with other designated supervisors in the series 2000 rules? We believe that the status quo should continue such that DMs are able to determine which individuals have the experience, qualification and training to perform this function.
- Re. 3723(3) – Again, we suggest replacing “same matter” with “same or similar matters.” Also, for drafting consistency with section 3715(3)(ii), should state that recommendations to remedy the problem are submitted to “an Executive as appropriate”.
- Re. 3724 and 3726 – Consistent with the removal of approval of policies and procedures for advertising and analyst conflicts, we also suggest removing the necessity for approval of the complaint handling brochure by IIROC.
- Re. 3725 – It would be clearer to use the original language “complaint” acknowledgement letter (rather than client) in the title.
- Re. 3726(3)(ii) – We suggest again that the word results be replaced with findings. Also in regard to subsection (3)(iv)(d) and(e) the references to the ombudsman service is unclear; it should specifically indicate in (d) it is OBSI and include relevant time period.

- Re. 3728 – There is no reference to the record retention period which was indicated as 7 years in the original rule.
- Re. 3785–86 – In these sections the record retention periods are included, however this appears inconsistent with other sections in which there is no record retention period reference or there is a rule reference made to another section with that information.

*Rule 3800*

- Re. 3803 – This new general record retention period is not referenced in other sections where required.
- Re. 3804(3) – We would suggest that the manner requested by IIROC be followed by "acting reasonably".
- The guide to interpretation of existing rule 200.2 has been removed – it is not clear where the content is – will this be moved to guidance?
- Re.3846 – We query whether pre–trade disclosure of charges is placed in the appropriate rule as 3800 deals with trading records rather than disclosure.

*Rule 3900*

- Re. 3902 – We query why this section provides an outline of how the rule is divided when no other section does this. It appears inconsistent in style and unnecessary.
- Re. 3903 – It is unclear why a separate section with derivatives definitions is required when they are exactly the same as the definitions in 3251.
- Re. 3904(2)(i), (ii) – There is duplicative use of the phrase "establish, maintain and enforce written policies and procedures" we suggest it be used once with 2 sub–bullets to reference business conduct and supervision.
- Re. 3904(2)(iii) – This paragraph duplicates subsection (1) and we suggest removing the word "other" before applicable securities legislation.
- Re. 3904(3)(i) – It is unclear why the term "sales practices" and policies is used; also paragraph (iv) is repetitive of subsection (3); paragraph (v) is new and it is unclear what it means to have policies and procedures on timing of compliance notices as it would depend on developments.
- Re.3905(5) – The reference to "individuals" is not consistent with use of the terms employees and Approved Persons, and there should be reference to the minimum proficiency requirements as the original rule did.
- Re 3905(6) – The original rule was clearer to "...have procedures for follow–up and review to ensure that supervisory personnel are properly executing their supervisory functions."
- We suggest that sections 3928 and 3930 can be combined and that sections 3929 and 3931 can also be combined.
- Re. 3926(3) – The original rule required that changes to the supervision policies and procedures be approved by senior management to the extent that they would have a significant impact to the compliance program. The revised rule is broader and requires any change to these policies and procedures be approved by the CCO. We believe that it is appropriate to continue to only require CCO approval of significant changes.

- Re. 3929(1)(ii) – There is no reference to the Montreal Exchange rules which would apply and no indication as to which rules would take precedence if there is any conflict.
- Re. 3932 – This rule appears redundant; if a firm will offer this service then it would have to have qualified personnel to deal in futures. That is the same for every line of business that a firm engages.
- Re. 3945 – There is no reference to a tiered supervision program in the PLR. We query whether this will be moved to a guidance note.
- Re. 3945(2)(v) – We are unclear as to what conflicts of interest could arise between the client and an Investment Representative (IR) as the IR is not permitted to make any recommendations to the client and can only act on the instructions of the RR or client. We request clarification and guidance.
- Re. 3946 – The original rule only requires first-tier supervisors be informed of the items enumerated. The proposed rule appears to require all supervisors be informed, which would require a process change. It is questionable what the rationale for this new requirement is, and whether it is necessary, given the time and cost for implementation and recording.
- Re. 3948(1) – We are unclear also as to why the proposed rule requires supervision of IRs for suitability, as IRs are not permitted to provide recommendations. We do not believe this should be included in the rule.
- Re. 3949(2) – Similarly, we question why this proposed rule requires supervision of IRs who trade on discretionary accounts given they can only act on the client's instructions. IRs are not permitted to trade on a simple discretionary account at all. We believe this should be excluded from the proposed rule.
- Re. 3970(3), (4) – Supervision of Managed Accounts – This rule calls for "direct" supervision of an APM who can "only provide advice approved by a PM"; it is not clear what advice can be given, what the responsibilities of the designated Supervisor for managed accounts are, and whether supervision would be similar to what is done for new PMs now. We request confirmation that there is no change with "direct" supervision, as some firms employ a centralized model for supervision of managed accounts. Notably, also, if IIROC expects advice to be subject to "pre-approval", firms will experience significant negative implications concerning how this business is run. Dealer Member Rule 1300.15(c) does not prescribe pre-approval of advice in respect to supervision of RRs with less than two years' experience managing accounts, and most firms employ "post-trade" review. There has been no rationale provided for this new proposed standard which will eliminate APM discretion over client accounts and require firms to overhaul supervisory systems to facilitate Supervisor pre-approval of all advice given by an APM. This will at least delay if not cause missed trade execution opportunities with no benefit to clients, while increasing costs due to new compliance responsibilities for PMs and operations systems required to track PM pre-approvals. In the circumstances, we believe this new proposed requirement should be withdrawn, failing which IIROC should clarify its intention and provide the industry with the opportunity to provide feedback and comments on whether firms could implement such a Supervisory model and/or provide alternative suggestions.

**PLR 4000 Series – Dealer Member Financial and Operational Rules**

We note that there is a lack of consistency of terms used, in particular, "risk adjusted capital amount" is used in sections 4113 and 4115 but section 4460 employs the term "risk adjusted capital level". If there is any intended difference in meaning we would like clarification, otherwise we believe the terminology should be consistent throughout the rulebook.

*Rule 4100*

- Re. 4116 – Capital Adequacy Reporting System – The proposal states that a DM "must maintain a capital adequacy reporting system that includes the Executive's approved capital usage limits for each of these functional areas designed to ensure that its combined operations maintain adequate intraday and end of day risk adjusted capital amounts". We believe the wording should include "as needed, as per the firm's risk assessment".
- Re. 4131(1)(ii) – Definitions – The proposal states that "early warning excess" and "early warning reserve" have the same meaning as set out in Statement C of Form 1. We believe the wording should be changed to "early warning excess" and "early warning reserve" are calculated as set out in Statement C of Form 1, to avoid confusion.
- Re. 4136(1)(ii) – The wording noted is ambiguous: "Prohibiting the Dealer Member from opening new branch offices, hiring any new Registered Representatives, Investment Representatives, Portfolio Managers or Associate Portfolio Managers, opening any new client accounts, or changing in any material way the Dealer Member's inventory positions." We believe the wording should be changed to "changing in any material way the Dealer Member's inventory positions that would increase the risk exposure".
- Re. 4183 – Selection of Accounts for Positive Confirmation – The proposal states that "…the Dealer Member's auditor must send out the positive confirmation requests in an envelope bearing the Dealer Member's auditor's return address". We believe the wording implies that the confirmation has to be mailed and that the response should also be mailed. The wording should be changed to allow electronic confirmations and responses.

*Rule 4200*

- Re. 4202, 4206-8 – The provisions state that "A Dealer Member must provide a summary statement of its financial position, when requested, to any client who has traded in his or her account with the Dealer Member within the past 12 months". We believe the wording should be changed to: "to any client who has an active account with the Dealer Member" since a member may hold securities for a client without having executed a trade in a period of 12 months. The same comment applies to the list of current Executives and Directors to be made available to clients.
- Re. 4270 to 4276 – Business Conduct/Professional Opinions – Sections of original Rule 29 have been awkwardly placed in the PLR 4000 Series. We question whether their inclusion in the proposed Financial and Operational Rules is intended and appropriate as they relate to transactional business conduct and we request clarification in this regard. We suggest that they be submitted for review as part of the 3000 PLR series so that dealers can consider it in the appropriate context.

*Rule 4300*

- Re. 4356 to 4360 – Confirmations/Margining required for positions in difference accounts – In respect of the provision that the DM may need to "transfer the position to its difference account" if certain conditions are not met, we suggest that margining requirements be added to these sections to avoid confusion. Furthermore, IIROC may also wish to reference reporting requirements on the applicable lines of Statement B (Form 1).

**PLR 5000 Series - Margin Rules**

- Re. 5111 – This is a "suitability" requirement that has been awkwardly placed within operational rules for margining securities. IIROC Rules already provide for retail client suitability obligations in existing rule 1300 and proposed rule 3402, as well as through guidance. We also note DMs already have an obligation to provide a Leverage Risk Disclosure Statement any time that the dealer becomes aware of a client's intent to purchase securities using, in whole or in part, borrowed money. As such, we submit that the Leverage Risk Disclosure and existing suitability rules and guidance on the issue of leveraged trading are sufficient and that PLR 5111 should be entirely withdrawn. Otherwise the proposed rule should be submitted for comment as a change within proposed Rule 3402 so that dealers can consider and comment on it in the appropriate context and understand with certainty what the obligation and standard of assessment entails.

**PLR 7000 Series – Debt Markets and Inter-Dealer Bond Brokers Rules**

- Re. 7305(6) – This proposed rule states that "*The IDB must furnish to an IIROC-recognized organization that provides market transparency for domestic debt securities an electronic-record based digital feed of real-time market price, volume and other information…".* We concur, however, with IIROC Notice 16-0117 that it is the CSA (via NI 21-101), and not IIROC, that recognizes the designated transparency provider for domestic debt markets. As such, 7305(6) should be amended accordingly. PLR 7305(6) also includes a requirement for IDBs to furnish an electronic feed to the designated transparency provider. While this is consistent with IDB requirements under section 8.1 of NI 21-101, it does not recognize that the CSA has granted an exemption to the transparency requirements of Section 8.1 until January 1, 2018. IIROC should therefore revise the wording in rule 7305(6) accordingly.

*General Comments*

We encourage IIROC to employ a style of drafting that is consistent, for example there is use of either "each DM" or "a DM" in the drafting. It would be preferable to use "a DM" in all instances. In addition, we question why many sections are "reserved" which results in the rule book that does not follow numerical order. Finally, to the extent that we have identified instances of new substantive requirements included without clear rationale or prior consultation, or provisions that are misplaced out of context from their subject series sections, we are of the view that the proposed provisions should be submitted for a necessary fulsome review as rule changes and within the context of the appropriate rule series.

Yours sincerely,

"Naomi Solomon"