

July 23, 2019

Charles Corlett
Director, Enforcement Litigation
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, ON M5H 3T9
ccorlett@iirc.ca

Madeleine A. Cooper
Policy Counsel, Member Regulation Policy
Telephone: 416-646-7203
mcooper@iirc.ca

Dear Sirs and Mesdames:

Re: Minor Contravention Program and Early Resolution Offers

The Investment Industry Association of Canada (the “IIAC or “we”) appreciates the opportunity to respond to the request for comments on IIROC’s Minor Contravention Program and Early Resolution Offers initiatives. The IIAC is the national association representing the investment industry’s position on securities regulation, public policy and industry issues on behalf of our 120 IIROC-regulated investment dealer members in the Canadian securities industry¹.

Minor Contravention Program (MCP)

In our previous submission in 2018, the IIAC outlined its concerns regarding the MCP achieving IIROC’s stated goals. However, given that IIROC has decided to proceed with the MCP, we would like to offer the following suggestions on ways to enhance the program:

¹ For more information visit, <http://www.iiac.ca>

Transparency of Hearing Panel's Decisions

The IIAC understands that a one-member hearing panel would review all MCP agreements between IIROC and the respondents in writing after which the panel would provide a yes or no answer regarding the acceptance of the agreement under the MCP. Our first concern is regarding the lack of transparency in this process. Under subsection 8218(7) of the proposed amendments to Consolidated Rules 1200, 8200 and 8400 (the "Proposed Amendments"), a rejection by the panel does not require disclosure of the reasons for the decision. Although we understand the purpose of the MCP is to have timely resolution of cases and requiring panel members to provide reasons for the rejection of an agreement may slow down this process, we feel it is a necessary component of the process.

While we do not want to stall the MCP process, it makes sense that the panel should provide reasons for the rejection as they may assist with future negotiations should the matter be escalated to a formal proceeding. It is also necessary in order to inform counsel on how to best approach MCP agreements for the purpose of offering informed counsel to respondents. This would also assist firms and registrants in terms of setting expectations as to when matters may qualify for the MCP, which would benefit both IIROC and registrants.

Opportunity for Subsequent MCP Agreement

We would also like to request clarification on the process once an MCP agreement is rejected by the one-member hearing panel. Subsection 8218(7) of the Proposed Amendments states that the parties may agree to enter a settlement agreement if an MCP is rejected by the hearing panel. However, although we note that the definition of "settlement agreement" in section 1200 of the Proposed Amendments specifically excludes an MCP, conversations with IIROC staff had indicated that subsequent MCP Agreements may be permissible. We would like to request that there be an appeal process for a rejection by the one-member hearing panel and those reasons be documented. This practice will allow IIROC and the registrant to review that reason and submit another MCP, which addresses any concerns that were documented with the first review.

Use of One-Member Hearing Panels

The IIAC also questions whether it is sufficient to have a one-member hearing panel as opposed to three members to promote a more balanced approach to cases under the MCP and requests further guidance regarding the one-member hearing panel proposal. Contested and settlement hearings under IIROC are constituted of a three-member hearing panel which we believe is the appropriate standard and request that the MCP maintain this consistency. Furthermore, we believe it is crucial for the enforcement process to be consistent across its three main stages which are case assessment, investigations and prosecutions. The IIROC website's Enforcement Process page defines an IIROC hearing panel as "an expert administrative panel consisting of an independent chair from the legal community and two industry members," which is in line with the common industry understanding of a hearing panel. We recommend that the same definition be applied to cases under the MCP, in that the hearing panel should consist of three members.

Eligibility

It still appears that IIROC has significant discretion when assessing the criteria for eligibility under the MCP and while the proposal provides high level points for consideration, we request that IIROC provide more specific examples to offer additional transparency to registrants. This is especially important where the dealer has already implemented internal discipline against the registrant.

Increase in Fine

The IIAC is concerned regarding the proposed increase in the fine amount for minor contraventions from \$2,500 to \$5,000. We believe that with respect to violations which are minor in nature, in which respondents are agreeing with IIROC's assessment of the contraventions that have occurred, the fine amount of \$2,500 is sufficiently high. We recommend that either the fine amount be lowered, or a guideline be issued that outlines a tiered fine approach, similar to the Montreal Exchange's List of Fines for Minor Violations² where the fine amount matches the seriousness of the contraventions along with an explanation for the charge. This would provide more transparency with respect to the process.

External Memberships

There is still uncertainty regarding how various professional regulatory bodies would treat an admission under the MCP. We would like to request further clarification on how these admissions would trigger disclosure requirements to organizations such as the CFA Societies Canada or FP Canada. The impact of the MCP on a registrant's standing with these external organizations will certainly have an impact on their willingness to consider the MCP. Further, we remain uncertain how admissions to IIROC could be used or considered in civil actions.

Timeline

The proposal does not reflect how much time registrants will have to accept an offer under the MCP. We request that any amount of time must be sufficient to allow the registrant, the firm and legal counsel to thoroughly review the proposal, the circumstances and its impact. We would like further clarity on whether the same registrant can be subject to more than one MCP provided that the circumstances are not the same.

Early Resolution Offers (ERO)

The IIAC welcomes IIROC's initiative to grant a 30% reduction in sanctions sought by Staff in settlement agreements and a speedier resolution of enforcement proceedings. We understand that IIROC has the ability to instruct their Staff to implement EROs and appreciate that IIROC is soliciting feedback as to how they can implement these offers in a transparent way for all participants and the public to understand what credit is provided as a result of an ERO.

² https://reg.m-x.ca/pdf/list_of_fines_for_minor_violations_20170510_en.pdf

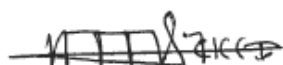
We also support IIROC's objective of resolving matters, where possible, earlier in the process to minimize the costs associated with full investigations that result in extended engagement in the process. We also appreciate IIROC's goal of providing certainty around sanctions that would be administered through its ERO initiative. In our view, EROs would be most beneficial if they were discussed early in the enforcement stage to reduce the burden on firms.

While we understand that IIROC anticipates that an ERO will be a one-time offer, we would expect that if new information is learned during the course of the investigation, that IIROC would have discretion to revisit an early settlement offer and base a new offer on the facts rather than be limited to an amount that is not proportionate given the newly acquired information. However, we would request more information regarding the timeline of EROs in terms of the deadline to accept the offer from a respondent's perspective and the time duration for an agreement under an ERO to take effect. We would also like to request clarity on the process in the event that the initial offer is declined, forgoing the 30% sanctions reduction, on whether this would automatically disqualify the respondent from being able to settle with IIROC for any amount less than 100% of the original fine amount.

In the event that a respondent declines an ERO and proceeds to an enforcement hearing, we would like further detail on whether those hearing panelists would be informed that an ERO was made available from which the respondent walked away. We would also request guidelines on details that respondents can present as these could impact the decision of the hearing panel. Further to this point, we would also like clarity on whether the hearing panel would be made aware of the sanctions amount on which the 30% discount was offered as well as any other sanctions relief offered to respondents. We believe this information should be made available to subsequent hearing panels to provide full transparency and a balanced view.

We thank IIROC for considering our comments and if you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at msaleem@iiac.ca or 416-687-5476. Thank you.

Sincerely,



Mustapha Saleem
Policy Analyst
Investment Industry Association of Canada