



JOANNE DE LAURENTIIS

President and CEO *Présidente et chef de la direction*

jdelaurentiis@ific.ca 416 309 2300

April 18, 2016

Delivered By Email: mgerhart@iiroc.ca

Ms. Marsha Gerhart
Vice President, Member Regulation Policy
Investment Industry Regulatory Organization
of Canada (IIROC)
Suite 2000, 121 King Street West
Toronto, Ontario, M5H 3T9

Dear Ms. Gerhart:

RE: IIROC White Paper - The Public Policy Implications of Changes to Rules Regarding Proficiency Upgrade Requirements and Directed Commissions on the IIROC Platform

We are writing to provide comments to IIROC's White Paper entitled The Public Policy Implications of Changes to Rules Regarding Proficiency Upgrade Requirements and Directed Commissions on the IIROC Platform. The paper seeks comments on two proposals:

1. Eliminating the current IIROC requirement for firms and individuals to be qualified to offer a full range of investment products, and instead allow firms and individuals to offer only mutual funds and exchange-traded funds [in the IIROC channel]; and
2. Allowing all firms and individuals under IIROC's oversight to direct a portion of commissions earned to a personal corporation, often referred to as "directed commissions".

Rule Change Implications

IIROC's stated purpose for releasing the paper is to look for:

"ways to make the delivery of securities regulation in Canada more efficient by reducing regulatory overlaps and harmonizing their requirements and standards with those on other regulatory platforms, while pursuing the public interest and maintaining or enhancing investor choice and investor protection."

The paper acknowledges there may be negative implications to the proposed rule changes since they will lead to fewer mutual-fund-only firms on the MFDA platform, which, in turn will reduce the economic viability of the MFDA. It further notes that some mutual fund dealing representatives whose sponsoring firms take advantage of the relief may choose to exit the business rather than go onto the IIROC platform.

Similar implications were identified in 2007 by the OSC when it was asked to consider the removal of the 270 day rule:

“... as our securities regulatory system is presently structured, it is the role of the MFDA to act as the self-regulatory organization (the SRO) for firms and individuals whose dealer activities are limited to sales of mutual funds. The consequences of removing the 270 Day Requirement would be to permit a business model that would be inconsistent with the design of the existing regulatory system. Also, if a sufficient number of the MFDA’s larger members were to transfer their operations to IDA affiliates, the ongoing viability of the MFDA could be undermined. We therefore believe that it is appropriate to maintain the 270 Day Requirement until such time as the role of these SROs in our regulatory system is re-evaluated.” (Notice of Amendment to OSC Rule 31-502 Proficiency Requirements for Registrants, March 9, 2007).”

It is clear that removing the 270 day rule would begin to unravel the current SRO system. Such a major structural change should occur through a deliberate, fulsome process rather than as a supplemental outcome of a specific rule change.

Responses to White Paper Questions

IIROC has posed several questions – IFIC’s responses follow each question:

1. Would you support this proposal as being in the public interest?

The proposal has two parts to it, the first proposes to remove the 270 Day Requirement, and the second would allow directed commissions.

The 270 Day Requirement: Removing this requirement is not in the public interest. It might create efficiencies for some members of IIROC; however, it would destabilize the MFDA and its membership, causing a disorderly and costly restructuring of the SRO regulatory system. We do not support moving forward with removal of this requirement.

Directed Commission Proposal: This proposal is of interest to advisors; however, there are complexities that need to be considered and understood as the proposal moves forward. These include: questions regarding tax implications and treatment, securities law issues, and the status of the advisor under employment law. We support having IIROC undertake the work needed to address these questions and others that it may identify. Once this work is complete, we recommend that IIROC issue its findings and recommendations for further comment so the public interest question can be considered and an assessment made of the impact on all stakeholders, particularly investors.

2. What impact would the adoption of this proposal have on each of the following: investors, registered firms, registered individuals, and Canadian regulatory and financial industry structure?

Directed Commission Proposal: The impact of the proposal and the benefits it may provide cannot be assessed until further information is brought to the fore for public comment, as suggested above.

270 Day Requirement: A destabilized SRO structure will have a largely negative impact on stakeholders.

3. How should these impacts be addressed?

Our response is outlined below.

Recommended Next Steps

As a first step, we recommend that IIROC separate the two proposals. Next, IIROC should move ahead with exploration of the Directed Commission proposal, as recommended above.

We recommend that IIROC abandon the 270 Day Requirement proposal because the implications and the potential impact on a wide range of stakeholders will be profound.

By putting the 270 Day Requirement proposal forward, the white paper has raised the question of whether the current SRO structure should be reviewed. This is an important and legitimate question to consider, but it must be done in a fulsome and deliberate manner. It is important that such a task be led by the members of the CSA, as they are the senior regulators and the SROs derive their power from the CSA members. To ensure the review is robust, and that any new structures identified are workable and able to better meet the needs of the current and evolving securities industry, the SROs, the industry and other stakeholders must also be engaged.

The mandate for such a review should take the 'blank page' approach and be broad and flexible so that a full range of options can be considered. More specifically the review should:

- review the scope and functions of the SROs, and the objectives they are meant to fulfil;
- identify emerging regulatory and market evolution needs, such as the regulation of financial planning and the oversight and regulatory framework required for EMDs, Portfolio Managers, etc.;
- examine how oversight of the SROs should be provided through provincial securities regulators and the new CMRA and,
- create parameters for assessing an appropriate future SRO structure(s) – e.g., should there be one SRO or several.

There is no question that there is a plethora of structural and policy and market conduct matters that need attention; so embarking on such a review sooner rather than later is desirable. However, given the importance of having the CSA take a leadership position, this initiative is likely best left to be undertaken once the CMRA is operational. As the timing for that appears uncertain, the CSA could put this task on its list of priorities and begin to identify areas of research and analysis that the SROs and the industry could work on.

* * * * *

We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me or Ralf Hensel by email at rhensel@ific.ca or, by phone 416-309-2314.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Joanne De Laurentiis
President & CEO