December 1, 2020

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Client Focused Reforms – Proposed Rule Amendments for Public Comment 20-0238 November 19, 2020 https://www.iiroc.ca/Documents/2020/0212672e-b195-40d7-a9a9-e1c045b7b223_en.pdf

I would like to offer some high-level comments on the present situation that should be seriously considered when recruiting for improvement directions in the proposed Client Focused Reforms amendments:

The rules state that clients are responsible for investment decisions based on reliance of the advice provided. Can one even imagine using such language in the context of a patient doctor relationship? The reason client's engage industry Financial Advisor participants is to obtain professional advice. They pay hard earned money in the form of fees and commissions for advice and then IIROC expect them to be held responsible for accepting the advice from a registered Financial Advisor. This wording comes across as a set up in order to deflect industry accountability.

These rules relate primarily to transactions involving securities while the wealth management industry has moved on to include financial, tax and estate planning.

While the rules specify some aspects of conduct, they provide little direction for industry or how they should be applied. For example, the rules specify that a risk profile should be made before a recommendation is put forward yet there are no criteria provided on how this could be achieved. Empirical studies show that risk profiling in Canada is basically unfit for use.

There are too many examples that suggest that KYC is more of a tick box exercise than a true Client-Firm conversation to understand the Client's personal situation.

The IIROC sanctions for KYC failures are not effective deterrents and do not get at root causes. The breakdowns include use of blank/partially filled in forms, adulteration of forms and biases towards making KYC match up with what the Firm wants to sell. Our own RRIF portfolios first-hand experience confirms the damage that can be done with the latter issue of unsuitable investments being sold to the investor in order to match the KYC Risk Profile that was determined and entered into the Application Form *by the Financial Advisor.*

It's amazing that a Financial Advisor can claim to have assisted an investor create a KYC profile when it turns out there is *no mandatory written record* of all the personal information that should have been considered by the Financial Advisor in providing the advice.

The conduct standards are not consistent with what IIROC allows. For example IIROC is aware that Firms award titles based on sales production, supervisors collect compensation based on the sales volume of salesperson sales and discount brokers collect sales commissions for advice not provided. Such a system puts client- facing staff in an impossible situation to resolve conflicts of interest in the client's best interests.

IIROC's complaint handling rules are not meeting contemporary client expectations for fairness. Complaints are not being resolved in the best interests of Clients and hence the practices are inconsistent with CFR.

While the November 19th 2020 IIROC Rules Notice 20-0238 refers to a considerable range of details of CFR descriptions cleaning up explanations and many other subjects of interest looking for comments, I will centre my comments down to one subject where I have had considerable unsatisfactory experience with IIROC short-comings that intensely needs the IIROC corrective attention. That subject is -

- The issue of how IIROC responds to reports of the non-delivery of Prospectuses related to mutual fund sales to trusting and unsuspecting vulnerable Senior investors.

If IIROC wishes to be recognized as the SRO watchdog with *Client Focused Reforms* geared to protecting retail investors, it will have to up its game on Rule-making, Compliance Monitoring, Complaint Handling and Enforcement.

The proposed 1.1 Client Focused Reforms (CFR) are most commendable when they emphasize the IIROC expectations of improved treatment of Clients from members of the financial services industry. Delivering on those IIROC expectations is paramount to the continuing faith in the SRO oversight of financial institutions.

> **1.1 Client Focused Reforms**
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> The Client Focused Reforms reflect the concept that in the client-Dealer relationship, the client's interest comes first. Under the Amendments and in conjunction with existing IIROC rules, Dealers will be required to:
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> - address material conflicts of interest in the best interest of the client,
> - put the client's interest first when making a suitability determination, and
> - do more to clarify for clients, what they should expect from their registrants.

The focus of this submission: To put forward reasons why IIROC policies and practices should fully apply higher principles and standards of enforcement against violators that are already defined in the relative Securities Rules, Regulations and Guidelines. In other words, there are already statutory Securities Regulations, Rules and Guidelines that should be, but in the past have not been fully enforced by IIROC.

- **Non-delivery of Prospectuses when making Mutual Fund sales to investors**

  The current IIROC response standards were encapsulated in the following written statements after IIROC were advised that Prospectuses had not been delivered by a Bank-owned Retail Investment Dealer, or its Financial Advisor employee, related to the sale of mutual funds to that investor.

From IIROC's perspective they stated, ***"An isolated instance of a client not receiving a prospectus does not warrant IIROC pursuing disciplinary action against a dealer. There are things outside of the dealer's control that may result in a client not receiving material".***

With the wording of this response, IIROC effectively claim that its policies only operate on systemic issues to the detriment of the financial investor Complainant. This policy therefore only protects the Retail Investment Dealer and their Financial Advisor employees. The implementation of this IIROC policy is in conflict with the following Securities Regulations.

Below is the wording of the ***"The Securities Act* (Ontario) RSO 1990** defining the conditions for the delivery of mutual fund Prospectuses. As you can see, the IIROC policy is in conflict by ignoring the OSC ***Securities Act*** publication.

Here is the Ontario Securities Commission Securities RSO 1990, c. S5 S. 5. s 71 (1) regarding the Investment Dealers obligation to deliver mutual fund Prospectuses

Obligation to deliver prospectus

71. (1) A dealer not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which subsection 53 (1) or section 62 is applicable shall, unless the dealer has previously done so, send by prepaid mail or deliver to the purchaser the latest prospectus and any amendment to the prospectus filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after entering into such agreement. R.S.O. 1990, c. S.5, s. 71 (1).

There can be no IIROC excuse here. The IIROC response wording, ***"An isolated instance of a client not receiving a prospectus does not warrant IIROC pursuing disciplinary action against a dealer"*** fails to accept that the Client of the Financial Advisor can be denied valuable decision making information that could alert the Client to protecting their own financial interests. IIROC must recognize that it could be just that one single Not-Delivered Mutual Fund Prospectus source of information that could reap financial disaster for the Client. We have living proof to demonstrate it has actually taken place, especially with **DSC sales** to the Client.

This issue of the Non-Delivery of Mutual Fund Prospectuses is especially pertinent when the Retail Investment Dealer includes the following self-protecting escape clause in its relationship with the investing Client.

This dealer escape clause reiterates that it is the obligation of the investor to read and accept all the facts and conditions included in a Prospectus before investing. **That's of course if by chance the investor actually receives the Prospectus from the same Investment Dealer [before investing].**

4. Unit Holder Responsibility: Although we will make every effort to inform the client of applicable trading details, it is the unit holder's responsibility to fully review the fund's prospectus or Fund Facts and take note of all applicable fees (e.g. management fees, early redemption penalties, commissions [front or deferred loads] and trading procedures).

This Investment Dealer escape clause absolutely transfers the onus reponsilbility away from the seller to the investor to be pre-informed before investing. Ergo, the investor has no right to complain about the unsatisfactory investment issues if the investor did not read the Prospectus that was NOT delivered by the same Investment Dealer. The IIROC descibed ***"An isolated instance"*** policy thereby only protects this Dealer policy.

There is one other written IIROC statement that incidentally exonerates and excuses the Investment Dealer from the evidential fact that the Investment Dealer did not comply with the Ontario Securities Commission Securities RSO 1990, c. S5 S. 5. s 71 (1) regarding the Investment Dealer obligation to deliver mutual fund Prospectuses.

That IIROC statement is***, "there are no indications that*** [redacted] (the Dealer) ***does not have adequate policies and procedures in place to mail the necessary documents to clients".***

This IIROC statement hardly fits the fact when IIROC were informed that the said Investment Dealer had not delivered **over a dozen** Mutual Fund Prospectuses to the same investing Client.

The forgoing investor information can hardly be classified by IIROC as nonessential with a response that ***"An isolated instance of a client not receiving a prospectus does not warrant IIROC pursuing disciplinary action against a dealer.".*** With these facts in mind, it is imperative that the IIROC Client Focused Reforms include rules and measures that truly enforce the IIROC intent that the "client's interest come first".

I recommend that IIROC update its own procedures, practices and guidance in parallel with updating rules for its Members. Without substantive internal changes, IIROC will not be able to effectively support the regulation of CFR . In particular, IIROC should amend its approach to investor complaints and bring its Client complaint handling rules for Members up to a standard congruent with CFR intent.

In this regard, IIROC rules should require Members to resolve client complaints fairly and consistent with CSA recognized OBSI loss -calculation methodology (opportunity loss). That would be in the best interests of Complainants and supportive of CFR.

I also recommend that IIROC consider increasing its compliance frequency and intensity as investment dealers begin CFR implementation. In the past, there have been too many undetected system collapses - for example, the decades-long time period that many IIROC Member Firms were double- billing fee-based clients.

I sincerely hope you find these grass roots comments of value.

I would greatly appreciate it if this letter was publicly posted on your website.

Respectfully submitted

Peter Whitehouse
Retail Investor