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Sent by electronic mail

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

Thanks for the chance to comment on your proposed rule amendments. I cannot verify whether all of the CSA CFR requirements have been faithfully integrated into the IIROC rule book. I assume they have. However, nowhere in all the proposed rules amendments did I find mention of the words “senior investor”, “vulnerable investor” or “systemic issue”. This is surprising to me.

IIROC should consider introducing appropriate senior-specific rules into the rule book. It is not clear that guidance notes have any weight when IIROC takes enforcement action against its Member Firms. REF *Guidance on compliance and supervisory issues when dealing with senior clients*
https://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=87C0E6D580544E889B569A079B8C35AA&Language=en

Is the failure of a broker to notify clients concerning scheduled RESP contributions a valid complaint? Should there not be an obligation to provide a Trusted Contact person service? What happens if a Firm doesn’t provide a prospectus? There are questions regarding the provision of *services* as opposed to recommendations.

Inserting the Client-Focussed Reforms (CFR) rules into the IIROC rule book is important but the rules can only have a meaningful impact if IIROC operationalizes them. Unless IIROC provides implementation guidance and oversight over key advisory processes, CFR will not lead to materially improved investor outcomes or industry conduct.

When IIROC permit discount brokerages to collect trailing commissions for services that cannot be provided, it sends the message to industry that such a practice is OK. It required the statutory regulators to finally put an end to this abusive practice. For many years nearly all major IIROC registered Firms overcharged fee- based account clients by collecting mutual fund trailer commissions in addition to account fees. Even without CFR rules this should have been detected and prosecuted but until recently it was not. Even in those cases it was the Ontario regulator that led the prosecutions. IIROC must step up its vigilance or CFR rules will be just another piece of paper sitting on the shelf. IIROC must take a more pro-active stand on issues that harm retail investors.

CFR rules require KYC to acquire a client's risk profile but this requires a process. An empirical study sponsored by the OSC Investor Advisory Panel found that a shocking 83.3 % of industry risk profiling processes was unfit for use. A good example of such a process guide would be a document from England's securities regulator *Assessing suitability: Establishing the risk a customer is willing and able to take and making a suitable investment selection* https://www.fca.org.uk/publication/guidance-consultation/gc11_01.pdf Such a document would make it clear what IIROC's risk profiling expectations are.

CFR often uses the term "best interests" but merely parroting CFR language will not lead to better conduct by the industry unless IIROC provides guidance and timely compliance oversight of how this terminology is interpreted by IIROC. See *A FIRM'S GUIDE TO THE IMPLEMENTATION OF REGULATION BEST INTEREST AND THE FORM CRS RELATIONSHIP SUMMARY* https://www.sifma.org/wp-content/uploads/2019/09/SIFMA-Reg-BI-Program-Implementation-Guide.pdf Such a guide would be useful re CFR implementation. Giving examples of "best interests" decision making would be useful for Firms.

When IIROC interprets complaint handling practices in such a way that its compliance practices allow Firms to misdirect client complaints to fake internal "ombudsman" and permit CSA ombudsman compensation recommendations to be ignored , it demonstrates the old adage " There is no speeding, where there are no cops ". A proper complaint handling guide is required. A benchmark for such a guide would be the guide provided by the Australian securities authority *RG 271 Internal dispute resolution* https://download.asic.gov.au/media/5720607/rg271-published-30-july-2020.pdf Formally adopting the CSA authorized ombudsman loss calculation methodology into IIROC rules would be a giant leap forward in complaint handling and would demonstrate a focus on clients. This methodology is entirely consistent with an industry whose key deliverable is personalized financial advice. The book-loss methodology in use today applies to a stock broker industry that long ago has been extinct.

CFR permits conflicts-of-interest to exist but IIROC must provide interpretive guidance on how such conflicts can be resolved in the best interests of clients. Firms introduce financial inducements to nudge Representatives towards higher profit products and services. IIROC guidance and enforcement actions must make it clear how it intends to address this challenging scenario, not just have a rule.

Certain conflicts-of-interest cannot be resolved in the best interests of clients such as deferred sales charge (DSC) mutual funds. There should be a specific rule for DSC mutual fund sales as seniors savings have been most adversely impacted by this fund purchase option. It is hard to imagine any scenario where a DSC fund would be in the client's best interests today, never mind under CFR rules. Selling such funds is actually a disservice to clients. This is disconcerting. See *DSC sold fund doomed in IIROC channel - if IIROC rules followed and enforced*
http://www.canadianfundwatch.com/search?q=Iiroc+DSC

RECOMMENDATIONS

Prohibit representatives from acting as POA or executor for client accounts. When a representative acts as an executor or POA for clients, conflicts- of- interest easily arise. Quite often, there is a close relationship of trust with their clients. IIROC rules should explicitly ban Representatives from acting as executors and trustees. Can a representative be expected to ever be unbiased with such a dual role? I recommend that IIROC CFR rules be clear on this point as it is a self-evident conflict-of-interest. It is my understanding that the self-regulator for mutual fund dealers restricts such duties to immediate family members.

Is a KYC update every 36 months really an appropriate service level for a retiree or senior? I recommend that it be annual, at least for people over 60 years old. It is assumed that IIROC as an entity acting in the Public interest can set standards higher than the minimums prescribed by CSA CFR.

Set out clear guidelines for effective risk profiling, conducting robust KYC information accumulation and properly supervising registered representatives will make CFR 'real'.

The existing IIROC complaint handling rule is not designed to serve clients well, so unless it is concurrently amended, CFR's regulatory intent will be hamstrung. It should be brought up to CFR standards.

Intensify compliance monitoring to detect and resolve deficiencies and problems as early as possible before small problems become big ones.

Focus enforcement on Firms and their executives rather than on individual representative cases of malfeasance. Use enforcement to eliminate the root causes of investor harm, not just apply sanctions and fines. Enforcement should make investor restitution integral to its practices. Work closely with the CSA designated ombudsman to better understand how Firms are actually applying IIROC rules .In some cases it may well be that IIROC / CFR rules are deficient or unclear.

Introduce a rule that would require Firms to cover any fines not paid by their representatives .This will incent Firms to provide better internal controls, supervision, compliance and staff training.

Introduce a specific rule that requires Firms to consider certain factors when advising clients to switch to a fee-based account. Such a switch from a commission- based account involves conflicts-of-interests that need to be resolved in the best interests of clients. Seniors and retirees are most impacted as they generally seek income and have relatively low portfolio turnover. The cumulative impact of the wrong type of account could materially impact retirement savings, so an explicit IIROC rule is in the best interests of clients.

Introduce a rule that specifically deals with borrowing money from clients. Borrowing from clients represents an irreconcilable conflict-of-interest, and as such should be expressly prohibited under IIROC CFR rules. Vulnerable investors are typically the targets of such practices.

Representatives should be required to successfully complete a course on KYC. See for example *The Principles and Practice of Know Your Client* http://oliverslearning.com/pdfs/kyc/know_your_client.pdf. The source of many client complaints and dissatisfaction with outcomes is a faulty KYC process.

The rule amendments must address the financial advisory services provided by its members where the CFR is silent. This would include such components as financial planning, RESP administration and taxation i.e. not just limited to advising on securities.

The bottom line is that the CFR rules are a necessary but insufficient condition for investor protection. IIROC must step up to the plate to ensure that the rules are operationalized to improve Firm conduct and behaviour. Merely copying CSA rules into IIROC rules is an empty exercise. The public want an effective watchdog not just a fancy sounding set of rules.

I sincerely hope these comments are useful. It is fine to publicly post these comments.

Respectfully,

Ruth Elliott

Reference: *Listen to the Voices:* Small Investor Protection Association (SIPA This report visits the trauma and mental health effects upon victims of financial assault, when it is learned that they have little chance for fair and honest treatment by the industry and those who enable it.
http://www.sipa.ca/library/SIPAsubmissions/Listen_totheVoices_20180402.pdf