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BY EMAIL

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Dear Sirs:

Re: IIROC Notice 18-0045 Request for Comment - *Enforcement Alternative Forms of Disciplinary Action* (the “Notice”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Notice. We support the initiatives set out in the Notice as a means to achieve fair, effective and timely enforcement. We applaud IIROC’s approach in proactively seeking input from retail investors across Canada regarding this Notice, as investor protection is of fundamental importance to the CAC.

We would like to respond to the following specific questions raised in the Notice.

Minor Contravention Program (MCP)

1. Do you believe that the proposed MCP would be useful?

We support the proposed MCP since it would be a middle ground between a cautionary letter and a costly contested disciplinary hearing. In our view, this proposed initiative is significant because a contested hearing where a full evidentiary record is tested may not be warranted for some matters, while on

¹The CAC represents more than 15,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC’s website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors’ interests come first, markets function at their best, and economies grow. CFA Institute has more than 155,000 members in 165 countries, including more than 148,900 CFA charterholders and 149 member societies. For more information, visit www.cfainstitute.org.

the other hand, a cautionary letter may not have the desired impact in terms of deterrence.

In order to ensure the fairness of the program, the controls used and overall governance regime with respect to the discretion exercised by staff to use the MCP will be important. The program should also be reviewed after a year to assess the appropriateness of cases selected.

2. Should a Dealer Member be eligible for the MCP?

Yes, Dealer Members should be eligible for the MCP. We are not aware of any compelling reasons that give rise to the belief that the MCP should only be available to Approved Persons. Dealer Members, similar to Approved Persons, should be eligible for the MCP provided they meet the same criteria. This may provide accountability for the Dealer Member firm in instances where there is a technical violation but the violation occurred through no fault of any one individual of the firm, and an inexpensive mechanism for the same.

With respect to the eligibility for MCP, we note that the Notice provides a list of considerations that Staff would consider in recommending the use of MCP including for example, isolated occurrences and technical breaches. For the MCP to be successful, the application of any criteria on eligibility must be transparent and objective.

3. What aspects of the proposed MCP, if any, should be public?

In our view, one of the drawbacks of cautionary letters is that they are opaque from the public's view. In order for the MCP to be an improvement over cautionary letters, we believe that the name of the dealer should be made public instead of providing a summary of MCP Notices on a quarterly basis without naming the dealer. Market participants will recognize that MCP Notices relate to minor infractions which are generally isolated occurrences and technical in nature. We are of the view that the importance of market transparency will outweigh the potential negative impact on a dealer's business.

4. What legal or regulatory effect should acceptance of a MCP Notice have?

We support the idea that by agreeing to the MCP Notice, the contravention would not constitute a formal disciplinary record for the Approved Persons or the Dealer Member. This would ensure that there is a greater likelihood that individuals and companies would use the MCP program and more readily make admissions and agreements. However, we query whether there should be limitations to the derivative use of admissions in MCP Notices namely, the

circumstances in which those admissions can be used in disciplinary proceedings and/or in any claims in civil courts. In our view, there should be limitations on the derivative use of admissions in MCP Notices.

5. Do you agree that the sanction should be a fixed amount?

A sanction of a fixed amount may result in some Approved Persons or Dealer Members seeing the MCP as a cost of doing business. However, as the MCP program would likely not be available to an individual that has repeated offences, or when the conduct is intentional, we do not feel these concerns are warranted. Accordingly, we support the certainty that a sanction constituting a fixed amount brings to the marketplace.

6. Do you agree with the quantum of the proposed sanctions?

We do not oppose the quantum of the proposed sanctions, however it would be useful to disclose how the quantum was determined and in particular, whether there is a range or other empirical evidence of IIROC settlements with respect to minor violations and how the proposed sanctions fit within that range. Further, it would be valuable to provide some flexibility that in extenuating circumstances, the quantum may be higher and in those instances, IIROC would be required to provide written reasons for the rationale regarding higher sanctions.

Early Resolution Offers (ERO)

1. Do you believe that the Early Resolution Offers initiative is necessary? Will it meet its objective?

We are uncertain of the scope of the problem set out in the Notice with respect to the length of time that it takes to reach a settlement. To the extent that the Early Resolution Offers initiative will facilitate more timely settlements, then it would be a worthwhile initiative. Nevertheless, it would be valuable for Staff to provide more reasoning why a program constituting Early Resolution Offers is necessary.

2. How can Staff best demonstrate the credit given for accepting an Early Resolution Offer?

One way that Staff can demonstrate the credit given for accepting an Early Resolution Offer is by ensuring that failure to accept an Early Resolution Offer

is more costly for respondents later on and such offer and terms would no longer be available.

3. To what extent should Staff factor internal discipline into the decision to make an Early Resolution Offer?

If an individual has been disciplined internally with respect to the alleged conduct, it is a factor that should be considered in the Early Resolution Offers. This can motivate firms to ensure that they have effective compliance and oversight systems in place to deal with complaints and misconduct. Nevertheless, we do not think that this factor ought to weigh more than other factors unless the internal discipline sanctions, along with the Early Resolution Offer, would result in a punitive outcome towards the respondent.

Overall, it seems that the MCP and the ERO, if implemented, could save on costs that would otherwise be generated by a full evidentiary hearing. It would be helpful to know whether IIROC has considered (subject to regulatory limitations) the allocation of any potential savings toward assisting investors in recouping investments as a result of misconduct and/or improving the organization's fine/penalty collection process. Further, it would be useful for IIROC to track and analyze information regarding the type of infractions issued under MCP Notices as well as the number and type of cautionary letters in order to better understand the effectiveness of the program.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for
Canadian CFA Institute Societies*

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