



Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

February 26, 2018

Lisa Mahoney
Proficiency Specialist
Investment Industry Regulatory Organization of Canada

And

Market Regulation
Ontario Securities Commission

Sent via e-mail to: lmahoney@iiroc.ca and marketregulation@osc.gov.on.ca

RE: Continuing Education Rules – Proposed Amendments

FAIR Canada is pleased to offer comments in response to IIROC's consultation on changes to Continuing Education ("CE") rules.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. General Comments

- 1.1. Before giving feedback on issues highlighted in the IIROC Notice, FAIR Canada wishes to make some general points on issues related to proficiency and continuing education.
- 1.2. First, CE requirements should not be considered in the absence of a review of initial proficiency requirements. FAIR Canada recommends that IIROC engage in a thorough, public review of proficiency standards, rather than only engaging with stakeholders on revising CE requirements. We caution IIROC from simply substituting consultation on certain aspects of CE for a comprehensive proficiency standard review. IIROC should work with the CSA to review proficiency of its registrants as one of the Proposed Targeted Reforms.
- 1.3. Second, when considering changes to proficiency, including continuing education, IIROC should consult with retail investors and their advocates, since retail investors will have their own valuable perspective on the proficiency of those they deal with. National Instrument 31-103 provides that "[a]n individual must not perform an activity that requires registration unless the

individual has the education, training and experience that a reasonable person would consider necessary to perform the activity competently.” It is essential that proficiency standards are reworked to meet the basic needs and expectations of retail investors.

- 1.4. Third, consultations on proficiency and CE must be presented in a comprehensive manner so that stakeholders can assess the form, content and substance of the changes. FAIR Canada finds IIROC’s timeline and method for changing CE requirements confusing, particularly since certain substantive CE changes have been proposed through the PLR Rule Book, and other changes through separate notices and consultations. The short timeframes for consultation in some instances – in this case, 30 days – is problematic as it does not give stakeholders adequate time to assess the potential effects of the proposed changes. Moreover, the piecemeal approach to the issue is not helpful.
- 1.5. Finally, FAIR Canada believes that when evaluating a proficiency assurance model, it is essential to not only compare the delivery models and costs, but also the standards used in other jurisdictions and regulatory regimes. Any benchmarking by IIROC to other jurisdictions should be disclosed to stakeholders in consultation materials so that stakeholders can assess how IIROC proficiency and CE requirements compare to other jurisdictions. FAIR Canada notes that the U.K. should be studied, as it is viewed as a leader in proficiency requirements through the Retail Distribution Review reforms.¹ IIROC has indicated that it has reviewed the Australian Securities and Investments Commission, the Financial Industry Regulatory Authority, The Law Society of Upper Canada and the Chartered Professional Accountants of Canada’s continuing education requirements, but not those in the U.K. A summary of this benchmarking should be disclosed.

2. Comments Related to CE

- 2.1. FAIR Canada believes that core competencies should always be required and reflected in IIROC’s CE program. FAIR Canada does not believe that individuals should be able to extend the validity of certain essential courses, exams and other requirements by being allowed to take courses that may be unrelated to their core competencies. Furthermore, it does not make sense for a former Approved Person to be able to participate in the voluntary participation program to extend the validity period of the Canadian Securities Course (“CSC”) without regard to when the former Approved Person originally wrote the CSC.
- 2.2. FAIR Canada also recommends that IIROC’s CE include mandatory courses that identify and address cognitive decline, and possible elder financial abuse, if such courses and topics have not already been included. Our consultations for the joint FAIR Canada/Canadian Centre for Elder Law Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and

¹ For example, see the U.K. Retail Distribution Review, online: <<http://www.fca.org.uk/your-fca/documents/policy-statements/fsa-ps11-01>>. See also Appendix A – Reforms in Other Jurisdictions, and paras 4.27 and 4.28 in FAIR Canada’s Comments on CSA Consultation Paper 33-404, online: <<http://faircanada.ca/wp-content/uploads/2016/10/160930-Final-FAIR-Canada-Submission-33-404-Best-Interest.pdf>>.

Diminished Mental Capacity found overwhelming support for mandatory training and education.²

- 2.3. Firms should be required to ensure that their representatives and staff have competency-based training in the areas of elder abuse, undue influence, mental capacity issues, enduring powers of attorney and ageism, as well as the required proficiencies. We recommend that securities regulators and self-regulatory organizations take the lead in establishing content and competencies required of representatives and legal and compliance personnel at investment firms in the areas relevant to vulnerable investors. The securities regulators should provide a gatekeeper role of ensuring that minimum proficiency in this area is set and met. Please see the joint report for further details and discussion.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Frank Allen at [647-256-6693](tel:647-256-6693)/frank.allen@faircanada.ca, Marian Passmore at [647-256-6691](tel:647-256-6691)/marian.passmore@faircanada.ca or Samreen Beg at [647-256-6692](tel:647-256-6692)/samreen.beg@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights

² FAIR Canada and the Canadian Centre for Elder Law, "Report on Vulnerable Investors: Elder Abuse, Financial Exploitation, Undue Influence and Diminished Mental Capacity" (November 2017), online: <http://faircanada.ca/wp-content/uploads/2017/11/171115-Vulnerable-Investor-Paper-FINAL-1.pdf>.