November 17, 2014

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RE: IIROC Republication of Request for Comments re Client Relationship Model – Phase 2, Performance Reporting and Fee/Charge Disclosure Amendments to Dealer Member Rule 200 and to Form 1

FAIR Canada is pleased to offer comments on the Investment Industry Regulatory Organization of Canada's ("**IIROC**") Request for Comments regarding IIROC's proposed amendments to Dealer Member Rule 200 and Form 1 (collectively the "**IIROC 2015 and 2016 CRM2 Amendments**") wherein public comment is sought on a revision to the proposed IIROC rule requirements that IIROC has been requested to make by the Canadian Securities Administrators (**"CSA")** in order to harmonize the scope of the client positions that are to be included in IIROC's "Report on client positions held outside of the Dealer Member" with the scope of the client positions that the CSA will require be included in its "Additional Statement" which is in the CSA Amendments to National Instrument 31-103 (the "**CSA CRM2 Amendments**").

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. FAIR Canada Supports Cost Disclosure and Performance Reporting

1.1. FAIR Canada supports the proposed cost disclosure and performance requirements contained in the CRM2 and the commitment that regulators have made to the provision of this crucial financial information to financial consumers.

1.2. Canadians have become increasingly responsible for ensuring their own financial security in retirement and are required out of necessity to enter into the financial marketplace to invest their savings. When doing so, they face huge asymmetries in the amount of information and resources available to them as compared with those of financial intermediaries. It is rightly the responsibility of financial intermediaries to provide (and be required to provide) clear, complete, standardized and meaningful information as to what costs the consumer has incurred and how the investment(s) has performed.

2. FAIR Canada's Comments on the IIROC 2015 and 2016 CRM2 Amendments

(a) *Report on Client Positions Held Outside of the Dealer Member*

2.1. FAIR Canada supports the proposed amendment contained in the IIROC 2015 and 2016 CRM2 Amendments which will result in investors being provided with more complete information regarding their investments than the previous IIROC proposed amendment. The amended Rule 200.2(e)(i) provides that if the Dealer Member is the dealer or adviser of record for the client, then information must be provided regarding a security issued by a scholarship plan, a mutual fund or an investment fund that is a labour-sponsored investment fund corporation or labour-sponsored venture capital corporation, even if no ongoing compensation is received by the Dealer Member. This is consistent with section 14.14.1(1) of the CSA CRM2 Amendments.

2.2. FAIR Canada's understanding of the CSA CRM2 Amendments is that as of July 15, 2015, if there is no dealer or adviser of record for an investor on the records of a registered investment fund manager, then the investment fund manager must deliver this information to the investor in accordance with Section 14.15. In this situation, the investor will receive the required information once every 12 months (rather than quarterly from the dealer or adviser of record).

2.3. FAIR Canada has been advised that some investment fund managers do not have up-to-date records about the dealer or adviser of record. For example, they may have, as part of their records, dealers or advisers of record who in fact no longer carry on business in Canada. Presumably, this results in investors not receiving information about these investments as the dealer is no longer in business while the investment fund manager's records indicates otherwise. FAIR Canada recommends that securities regulators (the CSA,IIROC and MFDA ensure that the spirit of the rules are adhered to so that investors receive information about their investments, and are not left uninformed due to inaccurate records or oversights, by ensuring that such loopholes are closed.

2.4. FAIR Canada notes that in two comment letters received by IIROC in response to its Notice 13-0300 dated December 12, 2013, it was recommended that NI 31-103 be amended "...to require that investment fund managers and other issuers or holders of securities held outside registered dealers provide to registered dealers the necessary position information (including position quantity, market value and cost information) to meet their

client reporting requirements on a timely basis"[1]. FAIR Canada is not in a position to determine if the investment fund managers or others have this information. Regardless, in FAIR Canada's view regulators should require the efficient allocation of responsibilities so as to reduce costs to the greatest extent possible and with the end goal in mind that the necessary information will get into the hands of the investor, and the proposed requirements should be drafted accordingly. FAIR Canada notes that IIROC supported the two comment letters' recommendation, and passed the recommendation along to the CSA.

(b) Exemption Requests

2.5. FAIR Canada notes that IIROC will try to ensure that "this revision does not result in Dealer Members having to build a new capability to report on off-book positions to an immaterial number of clients and/or to report on an immaterial dollar amount of off-book client positions", by considering exemption requests from Dealer Members "who can demonstrate that the costs of building and administering this new client reporting capability significantly outweigh the benefits to the client of also receiving off-book position information from their "dealer of record"."[2] The Notice goes on to list a number of factors that staff will consider in determining such requests.

2.6. FAIR Canada's understanding, as per Section 14.15 of the CSA CRM2 Amendments (and as discussed above), is that clients will receive this information from an investment fund manager if there is no dealer or adviser of record. However, if there is a dealer or adviser of record, there is no requirement for the investment fund manager to provide this information. Accordingly, FAIR Canada recommends that IIROC should consider the following factors as part of its assessment of the costs and benefits and its determination of whether to grant an exemption:

- (i) whether, in practice, investors are receiving this information from investment fund manager(s) or not;
- (ii) the benefit to investors of receiving this information on a quarterly basis pursuant to Rule 200.2(e)(i) rather than annually from the investment fund manager(s);
- (iii) the benefit to investors of receiving more complete information from one source rather than receiving multiple statements from various parties; and
- (iv) the likelihood of clients obtaining this information on their own if it is not received from the Dealer Member, including their ability to access such information.

2.7. FAIR Canada also recommends that such exemptions should be a rarity and that IIROC publish information disclosing the number of such requests, the number of exemptions granted, and the basis on which they are granted.

[1] IIROC Rules Notice 14-0214, July 4, 2014, Attachment D, at page 5.
[2] The Notice at page 6.

3. FAIR Canada's Comments on IIROC Notice 14-0233 dated October 16, 2014: CRM Frequently Asked Questions (FAQs)

(a) Pre-Trade Disclosure of Charges for Securities and Other Investment Products (Question 2)

3.1. FAIR Canada recommends that IIROC *require* that client reporting of pre-trade disclosure, trade confirmations and account statement information be the same for all investment products (both securities and other investment products such as GICs) as IIROC indicates is the current "long-standing street practice". FAIR Canada agrees with IIROC that investors will not understand why there will be pre-trade disclosure in respect of some trades and not others.

3.2. While IIROC must have rules which are substantially similar to those of the CSA in order to be exempted from the requirements of the CSA CRM2 Amendments, this does not mean that IIROC should sanction the lessening of disclosure that is already occurring on those investments that are not securities. Arguably, such narrowing of the rules would go against the spirit of CRM2 since it would result in less information being provided to investors about some of their investments. This should be avoided. FAIR Canada recommends that IIROC formalize in rule amendments its "expectations" that the disclosure on investment products that are not securities will be consistent and will continue.

3.3. The financial services industry has seemingly embraced "transparency", calling the initiative a "new era of investor information"[3] noting that it will provide "clear and full information to investors"[4] and will require "disclosure of all fees and commissions....and the effective unbundling of fees and charges, both pre-trade and annually."[5] Given this view shared by those who represent the mutual fund and investment industry and their firms, the CRM2 rules should require pre-trade disclosure and annual account statement disclosure about all of the investor's investments with the dealer or adviser, whether they be securities, GICs, segregated funds or other investment products. How will investors know or understand that they will receive disclosure about the performance or costs of some investments held through the dealer but not others?[6] FAIR Canada made comments to this effect earlier, (please see our letter of April 10, 2014 regarding CSA Staff Notice 31-337 FAQs and Additional Guidance at paragraph 3.3[7]).

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[3] For example, see "Help Clients Understand CRMII, Joanne De Laurentiis, August 2014, available online at http://www.advisor.ca/my-practice/help-clients-understand-crmii-161189; "Change is coming…will you be ready?, Joanne De Laurentiis, available online at http://informedinvestor.ific.ca/investment-funds/change-is-coming

[4] Supra, note 3.

[5] Letter from the President of the IIAC, "CRM and More Streamlined Disclosure – Effective Measures to Address the Worst Aspects of Investor Behavioural Psychology", October 2014, available online at http://iiac.ca/wp-content/uploads/IIAC-Letter-from-the-President-Volume-78.pdf.

[6] These comments are consistent with our comments on the CSA's Staff Notice 31-337 FAQs and Additional Guidance provided in our letter to IIROC dated April 10, 2014 and in our letter to the MFDA September 10, 2014.

[7] Available online at http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-IIROC-CRM2-Proposals.pdf.

(b) CRM-Related Initiatives

3.4. FAIR Canada notes that IIROC has performed field examination work regarding the level of compliance with new CRM-related requirements. To date, this work has focussed on the new account relationship disclosure and the conflicts of interest management requirements. IIROC Notice 14-0233 states, "one finding of note is that there appears to be differences (from one firm to the next) in the level of detail of the relationship disclosure information provided to clients relating to: (1) where applicable, the process used by the Dealer Member to assess investment suitability; and (2) the process used by the Dealer member to manage conflicts of interest situations as they arise. Further discussion of this and other findings from this CRM-related compliance review work will be included in the Annual Consolidated Compliance Report that will be issued by IIROC at the end of the year."

3.5. FAIR Canada looks forward to reviewing the findings in the Annual Consolidated Compliance Report. We would like to caution that CRM2 does not address the serious conflicts of interest that impede the development of a healthy, competitive marketplace and does not impose an adequate approach to addressing conflicts of interest and the misalignment of incentives that currently are pervasive in the industry. Please see our earlier comment letter to IIROC of April 10, 2014 and our letter to the CSA on its Consultation Paper 33-403: The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty when Advice is Provided to Retail Clients[8] wherein we discuss the issue of conflicts of interest at some length and its impact on investors.

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 Neil Gross at 416-214-3408 (neil.gross@faircanada.ca) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,

Canadian Foundation for Advancement of Investor Rights

[8] Both available online at http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-IIROC-CRM2-Proposals.pdf and http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-Submission-re-CP33-403-Statutory-Best-Interest-Duty.pdf.