



Canadian Foundation *for*  
Advancement *of* Investor Rights

August 31, 2015

Doug Harris  
Vice-President and General Counsel  
Investment Industry Regulatory Organization of Canada  
Suite 2000 – 121 King Street West  
Toronto, Ontario  
M5H 3T9

Dear Mr. Harris,

**RE: IIROC Notice 15-0145 – Request for Comments on Strategic Priorities**

FAIR Canada is pleased to provide this response to a request from the Investment Industry Regulatory Organization of Canada (IIROC) for comments to assist IIROC with its strategic planning process.

FAIR Canada is a national, non-profit organization and registered charity dedicated to putting investors first. As a voice for retail investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

We note that IIROC's strategic planning process appears to already be significantly underway. The present request for comment was issued following the release of IIROC Notice 15-0094, which summarized several activities and initiatives IIROC intends to focus on during 2015-2016 in support of seven strategic goals. Those strategic goals appear to have been formulated based on responses to surveys of IIROC Members, and were outlined as follows:

- Promoting a culture of compliance
- Protecting and educating the investing public
- Delivering effective and expert regulation
- Strengthening the fairness, integrity, efficiency and competitiveness of Canadian capital markets
- Acting in an accountable, transparent and fair manner
- Being a cost-effective and efficient organization
- Being an employer of choice

We note also that the present request for comment confines itself to posing three specific questions, namely:

1. What are the important trends in the investment industry and regulatory environment that will impact IIROC and its public interest mandate?
2. What value does IIROC create and what benefits does it deliver? and
3. How should IIROC's role evolve over time?

### Context for Response

FAIR Canada believes these questions, or any others relating to IIROC's strategic priorities, should be approached from the perspective of IIROC's mandate as set out in its Recognition Orders:<sup>1</sup>

*IIROC must regulate to serve the public interest in protecting investors and market integrity. It must articulate and make sure it meets a clear public interest mandate for its regulatory functions.*

In accordance with those terms, IIROC's strategic priorities must focus on protecting investors and market integrity.

This focus must remain IIROC's super-priority. It must be central to, and should permeate, every aspect of IIROC's activities and operations. In other words, investor protection and market integrity together should remain the lens through which IIROC views all things, and how well IIROC protects investors and market integrity should be the measure by which IIROC's competency is evaluated.<sup>2</sup>

Additionally, this focus should be more than merely contemplative or aspirational; it should be action-oriented. IIROC should insist that its Dealer Members and the advisors they employ must

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<sup>1</sup> See e.g. Ontario Securities Commission IIROC Recognition Order, as varied May 28, 2010, Appendix A, Schedule 1, Criteria for Recognition, subsection 2.

<sup>2</sup> It is noteworthy that the Recognition Order does not mandate IIROC to promote or protect its Dealer Members' interests, except in the general sense of promoting just and equitable principles of trade and fostering fair, equitable and ethical business standards and practices. Quite arguably, promoting or protecting Dealer Members' private interests would be contrary to IIROC's public interest duty.

demonstrate integrity and a focus on investor protection in all aspects of *their* activities and operations – especially those that are client facing.

### **Question 1: Key Trends Impacting IIROC’s Public Interest Mandate**

As the availability of workplace pensions diminishes across Canada, and as rates of return on savings products remains stuck virtually at zero, increasing numbers of individuals with low levels of financial sophistication are being effectively forced out of savings products and into investment markets with which they have little or no familiarity. These markets brim with a proliferating array of products, many of them complex and difficult to understand. Their risks and costs are not readily apparent, and many if not most retail investors struggle to comprehend the choices available to them.

Recent decisions by Canada’s securities regulators to significantly expand the exempt market will only exacerbate this problem. It does not help that product risk disclosure often continues to be communicated in language that average investors cannot understand or in formats that such investors simply find too daunting.

Thus, despite the popularity of OEO services among a relatively sophisticated segment, most retail investors need advice about how to invest, what to invest in, and the risks involved. Most investors continue to be highly dependent on their investment advisors and remain extremely vulnerable to suasion by those advisors.

Efforts to raise the general level of Canadians’ financial literacy might reduce this vulnerability slightly at the margins, but given the very low level of financial literacy that currently exists and the significant degree of information and knowledge asymmetry that prevails between advisors and their clients, it is unrealistic to expect the trendline to move away from dependency and vulnerability.

Instead, FAIR Canada believes that real progress on investor protection will be realized only through raising standards so that IIROC Member Dealers and the advisors they employ must complete the transition from being part of an investment industry to being investment professionals. It will take more than just improvements in proficiency to accomplish this. Fundamentally, an ethos of professionalism and an insistence on integrity must be cemented in place – both within Member Dealers and within regulators, including IIROC.

The key trend, therefore, is this: the need for investment advice – and with it, the need for investor protection – is growing, not abating. IIROC should explicitly recognize this trend and

IIROC's strategic planning should reflect it. More importantly, going forward IIROC's actions must address it.

**Question 2: What value does IIROC create and what benefit does it deliver?**

As noted above, FAIR Canada believes IIROC's strategic priorities should be approached from the perspective of IIROC's mandate, which is the protection of investors and market integrity. We do not believe it is incumbent upon IIROC to create value or provide benefits beyond that.

A "value proposition" may be essential if one wishes to boost Member satisfaction, but FAIR Canada believes it is somewhat incompatible with IIROC's role and responsibility as a regulator. We feel, therefore, that the question is not helpful to the exercise of defining IIROC's strategic priorities, and answering it will only muddle the results.

**Question 3: How should IIROC's role evolve over time?**

FAIR Canada does not see a need for IIROC's role to evolve. Rather, we see a need for IIROC to more fully embrace its existing role.

Nowhere is this more evident than in the area of setting appropriate professional standards. Simply put, IIROC will best protect investors by requiring that IIROC Dealer Members and advisors must act in the best interests of their clients at all times. Accordingly, FAIR Canada believes IIROC should not remain on the sidelines of the fiduciary duty debate. IIROC's strategic priorities should include articulating clear support for a statutory best interest standard and adopting rules requiring all Dealer Members and advisors to comply with a best interest standard.<sup>3</sup>

To show leadership in this area, IIROC also must insist on integrity as a condition of membership. This will require a reassessment of whether certain business models and practices are acceptable, particularly those that rely on management of conflicts of interest rather than strict avoidance of them. It also will require a re-evaluation of the limits of tolerance for misconduct - i.e., what types of violation can properly be dealt with through warnings, fines or

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<sup>3</sup> Rules to this effect would accord with the terms of IIROC's Recognition Order - see *ibid.* sub-section 9 a. (F): "IIROC must establish and maintain Rules that... promote the protection of investors"; and also (C): "promote... the duty to act fairly, honestly and in good faith", and (E): "foster fair, equitable and ethical business standards and practices."

suspensions, and what types must be treated as indicative of a lack of integrity incompatible with continued inclusion in the profession and IIROC membership.

Insisting on integrity will also compel IIROC to more aggressively hold Member Dealers responsible when their supervision, or lack of supervision, allows advisor misconduct to occur. Beyond that, IIROC will need to insist that Member Dealers significantly improve their practices in all areas that pose potential hazards for clients. Examples of these potential hazards include the use of misleading business titles<sup>4</sup> and permitting advisors to engage in outside business activities.<sup>5</sup>

IIROC itself will have to improve some of its own practices and procedures in order to be in position to insist on integrity. For example, as noted in the CSA's December 2014 Oversight Review Report,<sup>6</sup> IIROC has lacked procedures, or lacked adequate procedures, in its Business Conduct Compliance examinations to:

- Select client accounts with a high concentration in particular issues or industries to review for suitability,
- Identify advisors recommending high risk products across clients, and
- Confirm the accredited investor status for distributions of exempt products outside the corporate finance module.

FAIR Canada believes IIROC can better embrace its role as a protector of investors by ensuring that its board of directors includes one or more public directors sufficiently experienced in and knowledgeable about the concerns of retail investors that they can articulate those concerns in board level discussions. In addition, FAIR Canada recommends that IIROC establish an independent Investor Advisory Panel, along the lines of the one utilized by the Ontario

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<sup>4</sup> It is insufficient to prohibit only titles that mislead regarding registration levels, proficiencies or qualifications. Titles that mislead as to executive authority, seniority or level of responsibility within the Member Dealer's business structure may be more apt to induce trust, reliance and a suspension of disbelief when indications of misconduct begin to arise.

<sup>5</sup> IIROC must look critically at the capacity of Member Dealers to adequately manage the actual or potential conflicts of interest arising from these activities, as well as the risks that clients will be misled regarding responsibility for them. It is insufficient to merely examine the Member's policies and procedures or other documentation. A deeper look at their actual practices is required.

<sup>6</sup> Oversight Review Report of the Investment Industry Regulatory Organization of Canada (December 4, 2014), page 25.

Securities Commission, to advise IROC's board of directors on the needs and expectations of retail investors and to assist IROC's board and staff in formulating policies that may impact retail investors.

We thank you for the opportunity to present 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. Should you have further questions, please contact Neil Gross at [neil.gross@faircanada.ca](mailto:neil.gross@faircanada.ca) or Marian Passmore at [marian.passmore@faircanada.ca](mailto:marian.passmore@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights