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RE: Re-Publication of Proposed Amendments of Requirement to Disclose Membership in IIROC as a Dealer Member

FAIR Canada is pleased to offer comments on the Investment Industry Regulatory Organization of Canada's ("IIROC") republication for comment of revisions to previously published proposed amendments to IIROC Dealer Member Rules, setting out, among other things, requirements for Dealer Members to disclose that they are regulated by IIROC (the "Dealer Member Amendments").

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

1. Executive Summary

- 1.1. FAIR Canada supports efforts to promote and raise awareness of IIROC and its regulatory function as doing so helps investors assess the regulatory status of member firms and/or individual registrants.
- 1.2. FAIR Canada agrees with IIROC's revisions which include the IIROC Disclosure Policy requirement for Dealer Members to disclose their membership in IIROC on account statements. We reiterate our support for such a requirement as it will improve the degree to which clients are aware that IIROC is the regulator of their Dealer Member and that the Dealer Member is a regulated entity.

- 1.3. However, we question IIROC's decision to not include in its Dealer Member Amendments the requirement that IIROC's logo appear on client trade confirmations. In particular, we question the validity and adequacy of the cost/benefit analysis that has been performed in order to determine that "...the inclusion of the IIROC logo on these documents would be very costly to Dealer Members and, in some cases, may result in higher ongoing fees if the redesign substantially changed the layout of the relevant document."¹ It seems very surprising that the addition of IIROC's logo on trade confirmation slips would be "very costly" to implement – at all, or in relation to the benefits to be gained from promoting client understanding about who is their dealer's regulator.
 - 1.4. FAIR Canada supports IIROC's requirement for Dealer Members to distribute the IIROC Official Brochure to clients and include a hyperlink to the IIROC *AdvisorReport* database on their homepage.
 - 1.5. FAIR Canada continues to suggest that IIROC work with other regulators to make the system for checking registration a user friendly, comprehensive, "one stop" national system for the investing public. Prioritizing this initiative could enhance investor protection by increasing the percentage of investors who check registration before investing, thereby reducing the incidence of fraud.
 - 1.6. Furthermore, while FAIR Canada supports IIROC's efforts to raise awareness of Dealer Members' membership in the Canadian Investor Protection Fund ("CIPF"), we believe IIROC should do more to ensure that investors are made fully aware of what is and what is not covered by CIPF, including informing clients that CIPF coverage does not apply to instances of fraud. In addition, given the significant limitations to its coverage, we encourage IIROC and other regulators to push for a review of compensation fund coverage available to investors who make investments through IIROC dealer members in order to offer meaningful protection to harmed investors.
 - 1.7. Finally, FAIR Canada questions why this seemingly straightforward initiative has taken such an extraordinary amount of time to finalize. We urge all stakeholders to give greater priority to investor protection related initiatives in light of IIROC's primary mandate to protect investors in securities regulation.
2. **Proposed Changes to the new IIROC Membership Disclosure Policy should be carried out after a fair and transparent cost/benefit analysis is completed**

IIROC Logo

- 2.1. FAIR Canada supports efforts to promote and raise awareness of IIROC and its regulatory functions among investors. By doing so investors should be better equipped to assess the regulatory status of member firms and/or individual

¹ IIROC Notice 15-0248, "Re-publication of Proposed Amendments of Requirement to Disclose Membership in IIROC as a Dealer Member" (November 5, 2015) available online at: <http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=4B387279A5C34AB0BA23B2DE412BB1A2&Language=en>.

registrants. We believe that prominently displaying the IIROC logo on information disseminated by Dealer Members to their clients is essential to any strategy working to achieve this goal.

2.2. FAIR Canada is therefore pleased to see in the Dealer Member Amendments that IIROC intends to revise its Disclosure Policy to include an obligation for Dealer Members to disclose their membership in IIROC on each account statement. If clients regularly see the IIROC logo on their account statements they are increasingly likely to be made aware that IIROC is the regulator of their Dealer Member.

2.3. FAIR Canada is disappointed that IIROC has not required the IIROC logo to be included on client trade confirmations. FAIR Canada believes that limiting the circumstances where clients are shown the IIROC logo will also limit client awareness of IIROC as the regulator of their Dealer Member, as well as reduce the client's familiarity with IIROC.

Cost/Benefit Analysis Deficient

2.4. FAIR Canada questions the validity and adequacy of the cost/benefit analysis that resulted in the conclusion that it would be too costly to have IIROC Dealer Members include the IIROC logo on client trade confirmations. FAIR Canada does not think IIROC's "discussions with a vendor that designs, prints and/or circulates client account statements and trade confirmations on behalf of...Dealer Members" constitutes a cost-benefit analysis. Our letter to IIROC dated January 12, 2015 raised several concerns, including:

- No details have been provided about what costs and benefits were considered to arrive at this determination. We also wonder how IIROC determined that "...the inclusion of the IIROC Logo on these documents would be very costly to Dealer Members and, in some cases, may result in higher ongoing fees if the redesign substantially changed the layout of the relevant document." It seems very surprising that the addition of IIROC's logo on trade confirmation slips would be "very costly" to implement – at all, or in relation to the benefits to be gained from promoting client understanding about who is their dealer's regulator.
- FAIR Canada cautions that according to the OECD, "it may be appropriate to proceed with regulation even though the costs appear to be greater than the benefits – this may occur if most benefits are gained by the target group."² We note that much of the intended benefit of securities regulation will accrue to less-sophisticated, vulnerable consumers while many of the costs will primarily affect members of the investment industry (although some of these costs may be passed on to consumers), and, therefore, it is important not to simply determine whether the benefits outweigh the costs. Consideration must be given to the distribution of the costs and benefits of any regulatory proposal.

² Organisation for Economic Co-operation and Development, "Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)" (Version 1 – October 2008), at page 7, available online at: <http://www.oecd.org/gov/regulatory-policy/44789472.pdf>.

- Since the costs of securities regulation are much more readily quantifiable than the benefits, there is a real risk that limiting regulation to situations where the benefits outweigh the costs it imposes may result in policy that does not provide an adequate level of investor protection.

2.5. FAIR Canada therefore urges IIROC to carry out a transparent cost-benefit analysis that takes into account the above noted questions and comments in order to determine whether the cost of including the IIROC logo on the trade confirmations are reasonable in relation to the benefits to be gained. FAIR Canada asks IIROC to make the findings publicly available.

3. IIROC Official Brochure

3.1. FAIR Canada supports IIROC's Disclosure Policy requirement to distribute the IIROC Official Brochure (the "Brochure") to new clients when they open accounts, and to existing clients upon request. However, we note that since existing clients may be unaware of the Brochure or may not think to ask for a copy, IIROC should require Member Dealers to make existing clients aware periodically that the Brochure is available upon request.

3.2. FAIR Canada agrees that IIROC's proposal to provide electronic copies of the Brochure is reasonable; however, we ask that IIROC also require Dealer Members to provide clients with hard copies of the Brochure upon request and at no additional cost. IIROC should consider clients who may not wish to or may not be able to receive electronic materials; and IIROC should ensure that the system for distributing important information like the Brochure is accessible to all clients.

4. IIROC AdvisorReport

4.1. FAIR Canada fully supports IIROC's requirement for Dealer Members to include a hyperlink to IIROC's AdvisorReport database on the Dealer Member's homepage and any other webpage that includes a profile of an IIROC-regulated investment dealer. In doing so we hope that Canadian investors will be encouraged to check the background of IIROC-regulated individuals from whom they may wish to seek advice or other investment information.

4.2. In addition to promoting AdvisorReport, FAIR Canada suggests that IIROC work with other regulators to make the system for checking dealer registration easier for investors to use. Canadian regulators should immediately take steps to provide an informative, comprehensive, "one-stop" national system for investors to check registration, background information (including proficiency and disciplinary history), SRO membership for all firms registered with securities regulators and members of SROs, and to identify non-securities licenses for individuals licensed under different regimes (such as insurance agents) with different sponsoring firms.

4.3. This system should include plain language explanations of the information provided and the database should be searchable under business names as well as proper legal names. Additionally, it should provide assistance to investors who do not have access

to the Internet and those who are not computer savvy. There should be one phone number where a consumer can call to have the relevant information explained. Additionally, it would be beneficial to incorporate CSA members' investor alerts into such a system, to ensure the most current information available is provided to investors.³

- 4.4. Prioritizing such initiatives should enhance investor protection by increasing the percentage of investors who check registration before investing, thereby reducing the incidence of fraud.

5. **CIPF**

- 5.1. FAIR Canada continues to support IIROC's Dealer Member Amendments as they relate to CIPF, including requiring Dealer Members to distribute the CIPF Official Brochure ("CIPF Brochure") and have Dealer Members provide explanations about CIPF and its protections.
- 5.2. However, we believe IIROC should do more to ensure that investors are made fully aware of what is and what is not covered by CIPF, including informing investors that CIPF coverage does not apply to instances of fraud when there is also insolvency.
- 5.3. We encourage IIROC to examine the CIPF Brochure that is distributed to investors, as it currently only provides basic information. Specifically, the CIPF Brochure does not explain to investors the circumstances where CIPF coverage does not apply. FAIR Canada thinks that, in order to be useful for investors, the CIPF Brochure should be revised to accurately show investors the coverage and protection that is available to them. We are concerned that the current brochure may provide investors with a false sense of security by allowing investors to believe there is investor protection coverage for them in a broad range of circumstances when in reality CIPF coverage is quite narrow and limited in scope, or non-existent.
- 5.4. FAIR Canada also urges IIROC to do more to ensure that clients are made fully aware of what is and what is not covered by CIPF when Dealer Members explain CIPF coverage. This should include informing clients that CIPF does not cover losses as a result of fraud.
- 5.5. More broadly, FAIR Canada urges regulators, SRO's and governments to work together to conduct a review of compensation fund coverage in circumstances of insolvency precipitated by, or intermingled with, fraud or other wrongdoing in order to provide some level of coverage for investors. FAIR Canada believes that investors should be protected by a compensation fund when there is fraud or other wrongdoing and the firm is insolvent. We encourage IIROC and other regulators to push for a review of CIPF coverage so that it can offer meaningful

³ FAIR Canada, "Report on A Canadian Strategy to Combat Investment Fraud" (August 2014) at page 52, available online at: <http://faircanada.ca/wp-content/uploads/2014/08/FINAL-A-Canadian-Strategy-to-Combat-Investment-Fraud-August-2014-0810.pdf>

protection to harmed investors. Such a review should be conducted in light of the dual mandate of securities regulators to foster fair and efficient capital markets and confidence in capital markets while also ensuring adequate protection for 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 Kate Swanson at 416-214-3442/kate.swanson@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights