

August 1, 2018

**BY EMAIL**

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President, Policy  
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Dear Ms. Ward:

Re: **Request for Comment on Proposed MFDA Sanctions Guidelines (the “Proposed Guidelines”)**

The Canadian Advocacy Council<sup>1</sup> for Canadian CFA Institute<sup>2</sup> Societies (the CAC) appreciates the opportunity to provide the following comments on the Proposed Guidelines.

We support the principles espoused in the Proposed Guidelines and believe that transparency in the application of principles-based regulatory sanctions is of utmost importance. Several of our comments below result from our view that the Proposed Guidelines would be most helpful to the industry to the extent a few of the key factors and type of sanctions had expanded commentary that was more harmonized, to the extent possible, with the IROC Sanction Guidelines.

In the Proposed Guidelines, one of the key factors to be considered in determining sanctions is “the benefits received by the Respondent as a result of the misconduct”. This key factor should be expanded to include the principle that a Respondent should not financially benefit as a result of their misconduct. Alternatively, this proposed addition could be a separate key factor. As the IROC Sanctions Guidelines note in Part 1, paragraph 4, it is a fundamental tenet that wrong-doers should not benefit from their wrong-doing.

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<sup>1</sup>The 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>.

<sup>2</sup> 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](http://www.cfainstitute.org).

The ninth key factor in the Proposed Guidelines recommends a consideration of “the Respondent’s past conduct, including prior sanctions”. This factor could be revised to explicitly contemplate whether the respondent engaged in the misconduct over an extended period of time. A finding that the misconduct occurred over an extended period of time would tend to indicate additional culpability because it would demonstrate a commitment to misconduct, which can be more sanction-worthy than one-time misconduct.

Another consideration from the IROC Sanctions Guidelines, which may not quite amount to a key factor, is whether the Respondent had received adequate training from their sponsoring firm. If the Respondent’s dealer member firm had developed and delivered adequate training and educational initiatives with respect to the misconduct at issue, this would tend to increase culpability for an individual choosing to disregard such materials. It would be helpful for dealers to have additional guidance with respect to training expectations.

We have some concerns with respect to including as a consideration the Respondent’s ability to pay a fine. In those circumstances, there should be some consideration of whether it would be appropriate for the dealer member firm to be held accountable to pay for the Respondent’s misconduct. A dealer member firm’s obligation to pay may be appropriate in circumstances where there is inadequate oversight, inadequate compliance or other factors suggesting the firm was complicit or culpable in the misconduct. While the IROC Sanction Guidelines also state that inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed, the guidelines indicate that should not be considered a predominant or determining factor. In these circumstances, registrants might be required to re-examine their E&O insurance needs.

With respect to the type of sanction that may be utilized, we believe it would be helpful for the Proposed Guidelines to list the conditions under which a suspension should specifically be considered. The IROC Sanction Guidelines specify the circumstances when a suspension should be considered and list the conditions as where: (i) there has been one or more serious contraventions; (ii) there has been a pattern of misconduct; (iii) the respondent has a prior disciplinary history; (iv) the contraventions involved fraudulent, willful and/or reckless misconduct; or (v) the misconduct in question has caused some measure of harm to investors, the integrity of the marketplace or the securities industry as a whole.

Similarly, the IROC Sanction Guidelines specify the circumstances when a permanent bar should be considered and list the conditions as where (i) the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry; (ii) the misconduct had an element of criminal or quasi-criminal activity; or (iii) there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole. The comparable section in the Proposed Guidelines could reflect each of the above items in some form. The current draft refers only to harm to

investors, the reputation of the dealer member, the integrity of the mutual fund industry and the regulatory process.

### **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](mailto: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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