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Robert Keller, Policy Counsel
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
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Dear Mr. Keller:

RE: IIROC Draft Guidance regarding compensation structures for retail investment accounts

We are writing in response to the Investment Industry Regulatory Association of Canada's (IIROC's) Request for Comment on its draft guidance regarding compensation structures for retail investment accounts (the Guidance Note).

Advocis: Who We Are

Advocis, The Financial Advisors Association of Canada, is the oldest and largest voluntary professional membership association of financial advisors in Canada. Through its predecessor associations, Advocis proudly continues a century of uninterrupted history of serving Canadian financial advisors, their clients, and the nation. With over 11,000 members organized in 40 chapters across Canada, and almost 6,200 in Ontario, Advocis serves the financial interests of millions of Canadians.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to an established professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain appropriate levels of professional liability insurance, and put their clients' interests first.

Across Canada, no organization's members spend more time working one-on-one on financial matters with individual Canadians than us. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future. Almost all Advocis members are regulated under provincial securities commissions, and many are employed by IIROC members.

Comments

Keep it simple, IIROC, if at all possible.

We are concerned that straightforward, positive principles that are meant to ensure the suitability of compensation arrangements between dealers and clients could be applied in a way that imposes excessive compliance burdens and costs. Most assessments of the suitability of compensation arrangements and of contemplated changes to compensation arrangements will be straightforward. Most such assessments are arrived at almost intuitively, with correct conclusions as to suitability, without requiring an elaborate overlay of criteria, decision support and supervision.

We urge IIROC to make sure that compliance with the principles remains simple and straightforward, and does not impose significant new compliance costs.

Compensation arrangements should always be suitable for the client, and should always be in the client's interests, and the client should be informed about the choices that are available, in order to be able to make an informed decision about compensation arrangements.

Compliance by the dealer with these obligations - by informing the client about compensation options and to making sure that the compensation arrangement is suitable and in the best interests of the client – should be kept as simple as possible. In most cases, oversight of the ongoing suitability of compensation arrangements should not require a substantial investment of compliance resources. In most cases, we believe, it should be possible for the dealer and their representative to answer a few simple questions: “Does this arrangement make sense (or still make sense) for this client? Is it suitable for, and in the best interests of the client?”

The criteria that are set out in the Guidance Note regarding the assessment of the suitability of commission-based versus fee-based accounts when an account is opened all make sense to us. What we find troubling, however, is the prospect that the criteria could be applied in a prescriptive way, and that dealers and representatives might be expected to ensure that every one of the criteria has been considered and every step in applying the criteria has been documented and reviewed.

The Guidance Note sets out a lengthy and detailed list of factors that Dealer Members should take into account when assessing the relative suitability of commission-based versus fee-based accounts on behalf of a given retail client. These include:

- whether the client engages in, or plans to engage in, frequent trading of account positions or, instead, tends to be a conservative, “buy-and-hold” investor;
- whether the client typically makes—or plans to make— frequent requests for investment advice or other enhanced services (e.g. quarterly meetings, monthly portfolio summaries, ongoing distribution of research reports, financial planning) that go beyond making and executing suitable investment recommendations for the client;

- the client's time horizon, i.e. whether the client expects to hold the account for a long period of time or, instead, expects to draw on the funds in the account or close it within a relatively short period of time;
- whether the client tends to invest primarily in assets that have "trailer" or other embedded fees, such as certain mutual funds, fixed income products, and new issues (e.g., initial public offerings), assuming the client was previously aware of the existence of such fees;
- whether the client is comfortable with the prospect of variable charges over time, stemming from a varying amount of activity in the account, or, rather, places a premium on certainty and consistency of fees or charges; and
- the relative size of the assets in the account, which should be used to weigh the other factors noted above, especially when both a flat fee and a percentage-fee-based option are offered, since account value may weigh either in favour of—or against—switching a client out of a commission-based account, depending on the particular fee structure being considered and in light of other relevant factors. For example:
 - a client with a smaller account may be better off in a percentage-based fee account, as compared to either a flat fee or a commission-based account, assuming a certain minimum number of trades will be executed over the relevant period;
 - a client with a larger account value who intends to do the same number of trades may be better off with a flat fee account, as compared to both a percentage-based fee and a commission-based account;
 - a client who intends to trade infrequently may be better off in a commission-based account, as compared to both a flat and percentage-based fee account, unless the account size is relatively small, in which case a percentage-based fee may be more economical for the client.

We believe that it should be sufficient for the Dealer to implement an appropriate process to make sure that compensation arrangements are suitable, and that dealer representatives understand the obligations regarding the suitability of compensation, without having to build an elaborate new compliance framework.

We urge IIROC to adopt a principles-based approach that encourages compliance with the principles regarding the suitability of compensation but does not in effect treat the Guidance as a mandatory code, in respect of which detailed compliance must be exhaustively documented as if it were a rule. We do not mean to suggest that there should be less than full compliance with the obligations to ensure that compensation arrangements are suitable and in the best interests of the client. The root of our concern here is that, while we believe that in most cases, industry professionals who serve clients will understand their obligations and will apply the guidelines faithfully, we hope that it will be possible to avoid piling excess compliance baggage, on what should in most cases be straightforward assessments of suitability.

Provide examples

We suggest that IIROC should supplement general statements in the guidance with specific examples of compensation arrangements or changes to compensation arrangements may not be suitable, or may not be in the best interests of the client.

Advocis appreciates this opportunity to provide comments on IIROC's Request for Comment on its draft guidance regarding compensation structures for retail investment accounts. Should you have any comments or questions, please do not hesitate to contact the undersigned, or contact Ed Skwarek, Vice President Regulatory and Public Affairs at eskwarek@advocis.ca, or by calling 416-342-9837.

Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO



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