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Angie F. Foggia, Policy Counsel
Investment Industry Regulatory Organization of Canada
121 King Street West, Suite 1600
Toronto, ON M5H 3T9

Email: afoggia@iiroc.ca

Dear Ms. Foggia:

RE: updated draft IIROC Guidance Notice MR0281: “Guidelines for the review, supervision and retention of advertisements, sales literature and correspondence”

Advocis is a national professional association that is committed to preparing, promoting and protecting financial advisors in the public interest. We are Canada's largest association of financial advisors, representing life and health insurance licensees, and mutual fund and securities registrants across the country for over a century.

Having read both IIROC Rule 29.7 and the updated draft Guidance Notice MR0281, we wonder whether a very prescriptive approach to ensuring compliance with IIROC's rules regarding communications is effective and necessary.

Pursuant to Rule 29.7, as elaborated by guidance, every conceivable client communication – from a national advertisement to the last email and tweet - has to be recorded, retained, tracked, monitored and supervised. Some communications also must be pre-approved. Policies and procedures must be established, implemented and periodically reviewed and revised. Approved Persons must be apprised of the policies and procedures, and their duties. Supervisors have to be appointed to ensure that everything is being recorded, retained, tracked, monitored and supervised, approved, reviewed and revised, and trained. The manifest purpose of the IIROC rules seems strikingly similar to the requirement in securities legislation for prospectus disclosure that is full, true and plain. Subsection (1) of IIROC Rule 29.7 spells out in seven sub-clauses the responsibility of the Dealer Member to ensure that its advertisements, sales literature and correspondence are true and fair and not false or misleading. These are all undeniably worthy goals.

We question whether it is really necessary to explicitly prescribe requirements for supporting policies and procedures, data retention, tracking, monitoring, supervision, review and revision and training, and of course for IIROC to monitor closely its Dealer Members' compliance with these requirements?

We do not mean to suggest that Dealer Members should not implement appropriate policies, procedures, data retention measures and supervision, in order to make sure that client communications are true and fair and not false or misleading. However, we wonder whether the current approach is excessive, and whether it would be better to simply articulate the requirement that is in IIROC Rule 29.7 and its sub-clauses, to make sure that client communications are true and fair and not false or misleading.

We would venture to suggest that a truly principles-based approach could protect consumers while imposing far less cost and compliance burden on both IIROC and its Dealer Members, and ultimately on consumers. The basic obligation of putting out communications that are true and fair and not false or misleading should be articulated, and it should be left to the Dealer Member to comply. The penalty for failure to comply should include the possibility that IIROC will impose explicit requirements to develop supporting policies and procedures, to retain all communications, to track, monitor, supervise, review and revise and train, along with the possibility of close monitoring by IIROC staff. The risk of such measures alone should be sufficient to ensure compliance by the vast majority of Dealer Members.

Social media

We note that IIROC's prescriptive guidance, which in effect spells out requirements, could have a chilling effect on the use of social media by Approved Persons of Dealer Members, at a time when creative uses of such media are being explored and expanded.

We see the following requirements as likely to chill the use of social media:

- The requirement for Dealer Members to retain records of content posted on social media web sites, such as Twitter, Facebook, blogs, chat rooms and all material transmitted through emails.
- The requirement for Dealer Members to prohibit access to social media web sites that do not allow for compliant retention practices.
- The requirement for Dealer Members to pre-approve static content, such as a profile, background or wall information, as advertisements pursuant to IIROC Dealer Member Rule 29.7(3).
- The requirement for Dealer Members to supervise all participation in interactive electronic forums that include real time discussions such as Facebook and Twitter.
- The requirement for Dealer Members to supervise all use by Dealers and their representatives of social media web sites to communicate with clients and the public for business purposes.

Faced with these requirements, we would expect that most Dealer Members will largely prohibit their Approved Persons communicating through social media, and will likely only permit very limited pre-approved communications.

In pointing out the possibly chilling effect of the proposed IIROC guidance on the use of social media, we do not mean to suggest that the use of social media by Approved Persons should not be monitored and supervised. However, we believe that IIROC should take that

possibility into account when considering what approach will be most effective to promote dealer communications that are true and fair and not false or misleading.

We also note that the highly prescriptive approach embodied in IIROC Rule 29.7 and the updated draft Guidance Notice MR0281, which subjects every communication to an air-tight scheme of supervision, monitoring, retention and review, imposes a disproportionate compliance burden on smaller Dealer Members. It is easier for a large Dealer Member with a large compliance structure to develop and maintain the additional compliance infrastructure. We would suggest that a more principles-based approach could help to ensure that communications in advertisements, sales literature and correspondence are true and fair and not false or misleading, without placing a disproportionate burden on smaller dealers.

Advocis appreciates this opportunity to provide comments on updated draft Guidance Notice MR0281.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a long horizontal line that ends in a small arrowhead pointing to the right.

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

A handwritten signature in black ink, appearing to read 'Robert McCullagh' in a cursive, flowing script.

Robert McCullagh CFP, CLU, CH.F.C., RHU
Chair, National Board of Directors