

# IIROC NOTICE

## **Rules Notice Request for Comments**

Dealer Member Rules

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## **Summary of comments received on the draft Guidance Note “The Role of Compliance and Supervision”**

On December 15, 2011, the Investment Industry Regulatory Organization of Canada (“IIROC”) issued for public comments draft guidance *The Role of Compliance and Supervision* (IIROC Notice 11-0361).

This summary responds to the three comment letters received relating to the Notice that was published for comment on December 15, 2011. We have considered the comments received and we thank all the commenters for their submissions. The comments specific to the Notice have been summarized by issue, followed by IIROC staff’s response to each comment.

### **1. Responsibilities of the Chief Compliance Officer (“CCO”):**

- Two commenters were concerned with the following phrase “The mandate of the CCO is to provide the board of directors (or equivalent) with reasonable assurance that all standards and requirements of applicable laws and regulations are met”. The commenters noted that in IIROC Dealer Member Rule 38.7 and National Instrument 31-103 *Registration Requirements, Exemptions and ongoing registrant obligations* (“NI 31-103”) the CCO’s responsibility to report matters to the board of directors is with regard to non-compliance with the



Corporation's Dealer Member rules and applicable securities laws. The commenters suggested amending the Guidance Note for consistency with the above noted rules. [RBC DS and TD Waterhouse]

**IIROC staff response:**

We agree and have amended the Notice to state that "The mandate of the CCO is also to provide the board of directors (or equivalent) with *reasonable* assurance that all standards and requirements of applicable securities laws and regulations, and the Corporation's requirements, are met."

- One commenter requested that IIROC amend the Guidance Note to allow for assurances provided by the CCO to exclude anti money laundering considerations in those situations where anti money laundering responsibility has been relegated to another group within a Dealer Member's corporate group. [TD Waterhouse]

**IIROC staff response:**

As noted above, the CCO's mandatory annual report to the Dealer Member's Board of Directors must address all compliance issues related to the Corporation's requirements and securities laws, but does not extend to matters relating to anti-money laundering legislation ("AML").

However, where there are issues of non-compliance relating to AML legislation, and the CCO has been delegated the responsibility for compliance with AML legislation, then IIROC expects the CCO to make the board aware of non-compliance issues relating to AML legislation.

## **2. Division of responsibilities between the CCO and the Chief Financial Officer ("CFO")**

- One commenter requested that the SROs clarify that the CCO's responsibilities do not extend to financial rules, in order to reflect the division of responsibilities between the CCO and the Chief Financial Officer (the "CFO") [RBC DS]

**IIROC staff response:**

IIROC staff agrees that the CCO's responsibilities relate to the non-financial rules of the Corporation. This division of responsibilities between the CCO and the CFO is reflected in Dealer Member Rule 38.6(c) which requires the CFO to monitor compliance with the Dealer Member's policies and procedures relating to the financial rules of the Corporation. Although section 38.7, relating to the CCO's responsibilities, does not specifically state "non-financial rules", IIROC is of the view that the CCO's responsibility for compliance with the Corporation's requirements does not include the Corporation's financial rules, given that the CFO is responsible



for the financial rules.

However, as mentioned above, the CCO's reporting responsibility includes an assessment of the Dealer Member's compliance with all of the Corporation's rules and applicable securities laws and not only those for which the CCO is personally responsible. As such, the CCO's report must include the reporting of both financial and non-financial matters. We have amended the language in the Notice to clarify this division of responsibility between the financial and non-financial rules by stating that the Dealer Member's policies and procedures should ensure that the CFO reports to, or is available to discuss the CCO's report, with the Dealer Member's board of directors if it is more appropriate for the report to be presented by the CFO rather than the CCO.

- One commenter recommends that the Notice also refer to the financial rules of IIROC or refer members to question 1 of the *capital & margin rules-Frequently asked questions* as set out on the website of IIROC. [RBC DS]

**IIROC staff response:**

Frequently asked questions are not official interpretive guidance and as such IIROC staff do not generally refer to the question and responses set out in any FAQ postings. If guidance and interpretation is needed on a matter, IIROC staff generally discuss it within the content of a Guidance Note. In this case we note that *question 1 of the capital and margin rules- Frequently asked questions* is a question and response on where IIROC's financial rules can be located. This information is readily accessible and is therefore not included in the Guidance Note.

**3. Compliance Officers:**

- Another commenter is concerned that the Notice suggests that failures “to identify rule violations” and “to sufficiently escalate and follow-up” are the exclusive liabilities of the compliance officer. The commenter suggests that IIROC should highlight the responsibility of Supervisors in this respect and that Supervisors are well-positioned to identify and escalate regulatory findings. The commenter suggests using language similar to UMIR 10.16 provision relating to *Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons*. [TD Waterhouse]
- The commenter notes that compliance officers and legal counsel are categorized as “non-line” personnel who typically do not require approval in a Supervisory category, which suggests that offering day-to-day guidance and direction is not sufficient to attribute supervisory authority or supervisory liability to someone in the role of General Counsel or compliance officer. The commenter questions whether this categorization is consistent with the portion of the guidance note which attributes responsibility to compliance officers if they fail to identify rule violations or fail to sufficiently escalate and follow up. [TD Waterhouse]



- One commenter would like clarification from IIROC to understand the circumstances in which IIROC would have authority to exercise jurisdiction against non-registered individuals such as a compliance officer (excluding the CCO) or a non-registered delegate of a Supervisor. [RBC DS]

**IIROC staff response:**

The Notice discusses the role of compliance officers generally and distinguishes their role and responsibilities from that of a Supervisor. Compliance officers, given the nature of their job, among other things, are responsible for identifying rule violations and escalating those matters to either a Supervisor and/or the CCO, depending upon the Dealer Member’s policies and procedures dealing with the escalation of rule violations.

If a compliance officer fails to identify rule violations, the compliance officer has not fulfilled one of their primary assigned tasks.

However, we recognize that IIROC does not have direct regulatory authority over an unregistered employee of a Dealer member, and as such have amended the notice to better reflect our intention and jurisdiction.

- One commenter requests clarification of when IIROC would initiate enforcement proceedings against a number of individuals including Directors, Executives, UDP, CCO, CFO, Supervisors and “compliance officers or anyone else with supervision or compliance responsibilities”. [RBC DS]

**IIROC staff response:**

The question of whether IIROC will initiate an enforcement action in any given circumstance is entirely dependent on the facts of each case.

- One commenter asked IIROC to clarify the intended target in scenarios where the Notice discusses situations in which compliance officers and supervisors are one and the same individual.[TD Waterhouse]

**IIROC staff response:**

The discussion of the scenario in which a compliance officer and Supervisor are one and the same is in reference to circumstances in which a Dealer Member’s compliance officer has been approved as a Supervisor and designated to supervise activities such as opening new accounts or account activity.

- One commenter suggests better phrasing the following statement on page 7 of the Guidance Note “they fail to satisfy supervisory obligations that they have been specifically delegated or



they have assumed supervisory authority for particular business activities or situations.” [TD Waterhouse]

**IIROC staff response:**

IIROC staff have amendments to the above noted section to clarify our intention. We have also amended the Guidance Note to clarify that enforcement action may only be brought against those who are Approved Persons such Supervisors, Executives, CCO and CFO.