INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

August 27, 2010

Ms. Sherry Tabesh-Ndreka
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Investment Industry Regulatory Organization of Canada
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Manager of Market Regulation
Ontario Securities Commission
19th Floor, Box 55
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Toronto, Ontario M5H 3S8

Dear Ms. Tabesh-Ndreka:

RE: Request for Comments: Rules Notice 10-0155 "Proposed Personal Financial Dealing and Outside Business Activities Proposals" (the "Notice")

The Investment Industry Association of Canada (IIAC) appreciates the opportunity to comment on the Notice, issued on May 28, 2010.

The IIAC organized a Working Group to review the proposals put forward in the Notice. While the Working Group is generally supportive of the proposals, they have a few concerns and would like to request clarification on specific points which are outlined below.

Proposed Rule "X"- Personal Financial Dealings with Clients

The IIAC and our Working Group agree that a general rule against conduct unbecoming or detrimental to the public interest, which currently exists under IIROC Rule 29.1, is an essential concept that should be included in the IIROC rules. However, the Proposed Rule goes beyond this general idea and sets out a new concept by outlining situations that would be considered "personal financial dealings" and IIROC's expectations in these circumstances. IIROC proposes to either specifically prohibit the behaviour or, in certain

circumstances, provide for exemptions. Specifically, proposed Section X.2 states that "personal financial dealings *include* the following types of dealings." The Working Group requests more information as to what, other than the specific items listed, personal financial dealing includes. As drafted, the requirement is very vague and, if there are no other dealings meant to be included under the phrase personal financial dealings, then the Working Group requests that the word "include" be changed to the word "means."

Proposed Section X.2(1)(i) states that personal financial dealings include accepting any "*material consideration"* from any person other than the member for any activity conducted on behalf of a client. The Working Group requests further guidance as to how to determine whether something is considered a material consideration. For instance, if a registered representative rented a cottage from a client and paid the fair market price, would this be considered a material consideration and, as such, a personal financial dealing? This terminology is open to interpretation and further information would be helpful.

Likewise, Section X.1 states "a Registered Representative, Investment Representative, Director, Executive, Supervisor, or employee of a Dealer Member must not, directly or indirectly engage in or permit any *'associate'* to engage in any personal financial dealings with clients." The Working Group would appreciate guidance as to whom "associate" refers.

The Working Group also requests further clarification as to who IIROC is referring to when describing a client throughout the Notice. Is IIROC referring to a client of the firm or a client of the individual registrant, since issues arise depending on who the term refers to? The Working Group recommends that IIROC introduce a distinction between clients of the firm generally and clients who are directly serviced by the individual registrant. For instance, an advisor who makes a personal loan to a friend who also happens to have an unrelated discount brokerage account with the advisor's firm should not be captured under this requirement. In contrast, we agree that higher standards are warranted where the advisor makes a personal loan to a friend who is also a client directly serviced and advised by that advisor.

Sections X.2(3) and (4) of the Proposed Rule stipulates that borrowing from or lending money to clients is prohibited unless a number of exemptions are met. For instance, money can be borrowed or lent provided that it meets one of the exemptions and is disclosed and approved by the member. While the Working Group feels that this prohibition is generally warranted and that exemptions be allowed, issues arise with respect to personal financial arrangements with immediate family that may be caught by this rule. There are numerous situations where immediate family members routinely engage in personal financial dealings between themselves and as drafted, the proposed Rule would introduce unnecessary regulatory and administrative burdens where regulatory concerns are not present. For instance, a loan from a parent to a child will still require disclosure and approval by the member. The Working Group suggests that further exemptions be included so as to ensure that those situations not intended to be caught by the rule are excluded.

Proposed Section X.2(5) states that "acting as a power of attorney, trustee or executor is considered personal financial dealings and is prohibited unless the account is a discretionary or managed account or the client is a Related Person as defined under the *Income Tax Act* (ITA), and is disclosed to and approved by the Dealer Member."

The Working Group believes that the Proposed Rule amounts to an outright ban and believes this position is not warranted. The Working Group contends that the rule limits member flexibility to approve exemptions where needed and as such requests that exemptions be included. For instance, acting as an executor for a lifetime family friend would be prohibited unless the person was a Related Person under the ITA, which is limited in its application. Similarly, clients often demand that their trusted advisor act as a power of attorney or as executor. In many instances an advisor only learns he or she has been appointed to act following the client's death. The Working Group suggests that rather than having an absolute prohibition on acting as a power of attorney or executor, firms wishing to act in limited circumstances create policies and procedures around any conflict of interest that may arise, such as requiring the use of two power of attorneys or executors. As stated above, as drafted, the Proposed Rule may not allow for the wishes of clients to be carried out even where there is no conflict of interest, and where having the advisor act would ultimately be best for the client. Furthermore, even where the person to act was a Related Person under the ITA, their use would still need to be disclosed and approved by the member, which is time consuming and often a burden on resources.

We question whether IIROC encountered issues with allowing this behaviour to take place? Currently, other professions such as lawyers and accountants are not prohibited from acting as executor or trustee for their clients and as such we request that this prohibition be revisited.

As a housekeeping matter, the above sections all refer to the definition of Related Person under the ITA. The Working Group requests that the definition of Related Persons be expanded beyond the definition as included under the ITA as it is far too restrictive and, at a minimum, should include all extended family members such as aunts, uncles and cousins. The Working Group also suggests the definition of a Related Person as defined under the ITA be included in the Proposed Rule or as an attachment to the Proposed Rule for ease of reference for members.

<u>Amendments to IIORC Member Rule 18.14</u>

The Working Group requests more information as to what IIROC is attempting to capture under Proposed Rule 18.14 (d) and what ultimately would need to be reported to IIROC. Would the members need to report activities that are passive in nature and that do not represent a conflict of interest? For instance, would a representative who was also a director on a condominium board with no connection with the securities industry and who is not paid for being on the Board, and therefore poses no conflict of interest, be

required to report to IIROC? It appears that even situations not intended to be captured by the rule ultimately would be required to be reported, regardless of the rule's intent.

Furthermore, the Notice indicates that IIROC is trying to create consistency with National Instrument 33-109 - Registration Information "NI 33-109". However, the IIROC Rule only mentions registered representatives and investment representatives, yet those required to complete Item 10 of NI 33-109F4 goes beyond such individuals. The Working Group requests more detail as to whether the Proposed Rule extends beyond the listed parties to all positions within a member.

The IIROC Notice also indicates that changes have been made for consistency with the current expectations and practices established through NI 33-109. As such, it is unclear why Proposed Rule 18.14(d) makes it the dealer's responsibility to report the outside business activities within seven days, whereas under NI 33-109 it is the individual registrant's obligation to report within seven days.

Proposed Rule 18.14 (e) states that the outside activity cannot be with another dealer that is a member of a recognized self-regulatory organization unless the conditions listed are met. The Working Group proposes that Proposed Rule 18.14 (e)(ii) contain an exemption for registrants who have roles with parent companies, affiliates or subsidiaries that are not IIROC Members. This type of exemption is necessary in order to recognize that many IIROC Members are part of global financial institutions and as such have registrants with multiple roles.

Given that the Proposed Rule incorporates much of the information provided for under IDA Guidance Note MR0434 issued November 17, 2006, the Working Group requests that the Notice be withdrawn so that members are only required to consider the Proposed Rule and not the Notice. Having to consider both documents when looking at these issues can lead to confusion for our members, and as such we suggest repealing the Notice.

The IIAC and our Working Group hope that our comments will be considered to help clarify these new requirements and we would be happy to meet with IIROC staff to discuss these matters further.

Yours sincerely,

"Deborah Wise"

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