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

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January 23, 2013

Dear Ms. Solomon

Re: Proposed IIROC Provisions Respecting Third Party Electronic Access to Marketplaces (the "Proposed Rule") – Proposed Amendments to Dealer Member Rules and UMIR

The Investment Industry Association of Canada appreciates the opportunity to comment on the Proposed Rule. We are generally supportive of the objective and the content of the Proposed Rule, however we have a number of questions and concerns regarding the practical implementation of certain provisions.

Order Execution Services

The Proposed Rule permits order execution services to be offered only to Retail Customers, effectively prohibiting Institutional Customers from trading through the order execution category. This restriction does not appear to address an investor protection issue, and

creates a number of practical difficulties for firms, in that it will require firms to segregate clients that meet the definition of Institutional Customer and ensure that they trade as a DEA client rather than an through an order execution account. Given that an "Institutional Customer", as defined under IIROC rules, includes a non-individual with total securities under administration or management exceeding $10 million, the proposed amendments may impact a number of order execution services clients that meet the definition. This may not be in the best interest of such clients since they would not be able to choose the type of brokerage services that best suit their needs.

In general, most Institutional Customers that trade large volumes will be selected out of this category by virtue of the restriction on Order Execution clients from undertaking algorithmic trading. In addition, if IIROC sets trading thresholds in this category as anticipated, this will have a similar effect. By retaining the algorithmic trading restriction, and removing the prohibition on clients defined as Institutional Customers, the Proposed Rule achieves its objective without imposing the undue additional costs related to manually identifying and moving such clients to the DEA trading platform.

Direct Electronic Access and Routing Arrangements

We also seek more clarity as to if and/or the Proposed Rule is intended to affect carrying/introducing broker arrangements. It is unclear whether separate agreements between introducing and carrying brokers, and requirements beyond what is prescribed by existing regulation will be required for trading conducted pursuant to this relationship.

Section 4.2.2 of the IIROC Notice states that "The Proposed Amendments would address only those relationships in which the Participant provided third-party electronic access to marketplaces without the order flow being *intermediated* by an employee of the Participant that is the member, user or subscriber. More clarity as to precisely what is meant by the term "intermediated" would be helpful.

If the Proposed Rule is intended to apply to carrying/introducing relationships, this will have significant implications for dealers, in that these arrangements will require new documentation, and re-examination and perhaps changes to the well established supervisory relationships that have been developed specifically for particular types of carrying and introducing relationships under existing regulation. We question whether this is necessary, given the specific and comprehensive regulations that have resulted in the well established and well functioning nature of these arrangements.

In addition, when a Participant provides electronic access to marketplaces to its affiliates, we strongly recommend that affiliates of the Participant be exempted from the proposed requirements in order to allow Participants flexibility in determining the controls that best address its business risks.

Under the Proposed Rule, the standards to be established by a Participant for its clients under DEA, or investment dealers or foreign dealer equivalents under Routing

Arrangements, must be tailored to each client or dealer and assessed for compliance annually, in addition to an annual review for compliance with the written agreement. This is an onerous expectation and we question the need for it when ongoing supervision is occurring. If this rule remains, the Participant should maintain full discretion on how to achieve this.

Specifically, the standards include a requirement for the client, or investment dealer or foreign dealer equivalent, to take all reasonable steps to ensure that the use of an automated order system does not interfere with fair and orderly markets, and that the client ensures that each automated order system is tested at least annually. We seek confirmation that a statement, attestation or representation from the DEA client or dealer, or the third party service provider as applicable, that the automated order system is appropriately tested, would suffice for this purpose.

Further, the proposed amendments require that when a DEA client trades for the account of any other person as permitted by the Proposed Rule, a Participant's written agreement with client must provide that "the Participant must ensure that the client has established and maintains reasonable risk management and supervisory controls, policies and procedures". We believe that the obligations of ensuring that a client has reasonable risk controls for its own clients should not be placed on the Participant, but should remain with the client via contractual agreement, and as such, the language should read "the client must ensure that they have established and maintain reasonable risk management…"..

In respect of the requirement to implement the unique IIROC assigned client identifier, we seek confirmation that the expectations are consistent with the framework that is currently in place, and that a new structure of client identification is not what is being proposed. Material changes to the existing identifier framework would require an overhaul of all dealers' systems, requiring significant expenditures and long lead times. Also, clarity is needed as to who will be assigning the unique identifier to each DEA client – IIROC or the Participant.

We understand the importance of ensuring DEA clients meet appropriate standards and have adequate knowledge of the marketplace and regulatory requirements in which they operate. It is appropriate however, that the form of the assessment and any necessary prescribed training be prescribed by the Participant using their full discretion.

With respect to the proposed requirement to provide DEA clients with applicable Requirements and updates, we recommend this provision be removed or amended to provide the Participant discretion to update DEA clients from time to time with only material trading rule amendments that are relevant to market access.

In section 9 of the Proposed IIROC Guidance Note, it states that compliance procedures for persons with third-party access should, at a minimum, address the procedures for testing the insider or significant shareholder order markers. This obligation should only be imposed in respect of the dealer's obligation to make inquiries of an Institutional Customer,

such that the dealer would only be required to comply with the requirement if they are aware that insiders or significant shareholders are involved in the trading. Given that non Canadian regulations and systems do not impose or support these requirements, Participants dealing with foreign DEA clients would be unable to comply with this type of order marking.

Transition Period

We support the granting of an additional 180 days from the effective date of the IIROC Proposed Rules in order to amend existing written agreements with DEA clients.

Yours sincerely,

Susan Copland