

Susan Copland, LLB, BComm
Managing Director
scopland@iiac.ca

July 29, 2020

Irene Winel
Senior Vice President, Member Regulation and Strategy
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, Ontario, M5H 3T9

Email: iwinel@iiroc.ca

Dear Ms. Winel:

Re: Proposed Regulatory Changes Resulting from the COVID-19 Experience

The COVID-19 pandemic has challenged the industry and the regulators to quickly adapt to unprecedented circumstances resulting in significant changes in the operation and regulation of the investment industry. The speed at which our members and the regulators have made the necessary changes to operations and regulation, while maintaining a high level of service and protection to investors, reflects well on our industry.

The IIAC appreciates the actions taken by IIROC to remove regulatory impediments which permit firms to conduct operations on a remote basis to the extent possible. We also welcome the issuance of IIROC Notice 20-0162 on July 23, 2020 – Proposed early adoption of certain IIROC Rules into the Dealer Member Rules.

While many of the regulatory exemptions granted over the past months in response to the pandemic were intended to be short-term, or temporary in nature, it has become apparent that some of the changes triggered by the pandemic will likely become longer term requirements, or permanent means of operating. This mirrors the experience in many other industries.

Much of the current regulation has been developed in a context that has not taken into account technological capabilities that facilitate decentralized operations for the vast majority of business functions carried out by investment firms. While there are areas where centralized functions are important, such as the securities cage, it has become apparent that most of firms' functions can take place remotely, either entirely or on a permanent part-time basis, requiring employees to be in the office only periodically.

Recognizing that the issues related to the pandemic are unlikely to be resolved until well into 2021, many of the operational changes will need to be extended until the associated health concerns have been resolved. However, as noted, many of the changes occasioned by the necessity of the pandemic will persist, to the benefit of all stakeholders, beyond that period, and likely indefinitely.

Firm management, employees, registrants and their clients have, in the course of the pandemic, discovered that there are many advantages to remote operations, and with appropriate regulation, the risks to investors can be mitigated.

Recognizing this, we have identified several areas where temporary exemptions should be extended until the health concerns of the pandemic have been resolved, as well as the exemptions that we believe should become permanent changes to regulation that will reflect the evolution of the structure of operations to accommodate the experience and lessons learned during this unprecedented operating environment.

Exemptions to be extended until health concerns have been resolved

- Form 1 Audit Procedures - We anticipate that auditors will not want to conduct audits in person until health concerns are resolved. We ask that this exemption procedure be re-evaluated and streamlined, as members that have attempted to use this exemption have advised that the process for application was burdensome and difficult, which resulted in undue delays in receiving the exemption. For instance, in respect of the exemption of counting physical securities, it would be helpful if IIROC could provide thresholds or information required for this exemption; such as when the last full count was done, the amount of physical securities/bank safe deposit boxes that are reviewed for the count.
- Review of Pro-Account statements - We note that these statements are still sent/received via mail. We recommend that the exemption allowing for additional time to review PRO statements be maintained until the end of the pandemic, or until the standard practice is to receive such statements digitally. In order to facilitate this, it may be useful to include these documents in the SEDAR+ filing capabilities.
- Proficiency requirements - The proficiency requirement exemptions that relate to the completion of testing that was unavailable should be extended until such testing facilities are operating at full capacity, and the backlog has been cleared.

Exemptions to become permanent to accommodate a more permanent remote workforce

- Requirements requiring “wet” signatures - While we are currently unaware of IIROC-based provisions that do not permit electronic signatures, we have, and will be seeking out and advocating for changes to other legislation, such as provincial estate regulation, that compels IIROC dealers to obtain such signatures in the course of their advisory obligations.
- Supervision requirements – With respect to branch office reviews, the process which has involved supervisors remotely engaging has been successful, and we recommend that it be made permanent, and that on-site visits be required only in high-risk situations.

- Separate staffing requirements - The requirements prohibiting the use of the same staff to respond to both order execution only and advisory account inquiries within the same dealer or affiliated dealers should be removed permanently. Having the same staff respond to all clients is not detrimental to clients' interest, provided clients are informed of the entity they are dealing with, and the staff member does not undertake any activity outside of their registration category and outside the dealer's registration.

Business Locations - Registration and Compliance approach to Work-From-Home arrangements

In respect of the designation of home offices as Business Locations, we support the flexible approach articulated in IIROC Guidance Note 17-0036 *Business Locations – Registration and Compliance approach to work-from-home arrangements*, with a few modifications and clarifications. Recognizing that these Work-From-Home ("WFH") arrangements are expected to become much more commonplace, it is important that the expectations about when such arrangements constitute the establishment of a Business Location, and the implications of such, be as clear as possible, while maintaining appropriate flexibility to accommodate a variety of situations. We agree that it is important to ensure IIROC is properly informed of such arrangements, and maintains the authority to take regulatory action in relation to locations where registerable activity takes place, without imposing an undue regulatory burden on registrants and firms.

We agree that it would be appropriate for Dealer Members to maintain an up-to-date list of all Approved Persons who have a regular and on-going WFH arrangement, whether or not the Dealer Member has notified IIROC of the location as a Business Location. We also agree it would be appropriate for IIROC's Business Conduct Compliance team to review the list maintained by Dealer Members to determine which, if any, WFH arrangements it may wish to examine in order to test whether the Dealer Member has notified IIROC of all appropriate Business Locations.

In determining whether a residence needs to be reported as a Business Location, Dealer Members should look to whether:

1. There is a regular and ongoing WFH arrangement involving Approved Persons that interact in person with retail clients; and
2. Any of the following factors are present:
 - a. Any Approved Person other than those that reside at the residence, conducts registerable activities that involves interaction with retail clients on behalf of the Dealer Member at the residence;
 - b. the residence is held out to the public (through signage, business cards stating the business address as the residential address, etc.) by the individual or Dealer Member;

- c. the individual meets with clients primarily at the residence; or
- d. the individual maintains* books and records at the residence that are not duplicated at the Dealer Member's principal office.

*The concept of maintaining books and records at the residence in 2(d) above, and provision in the definition of Business Location as articulated in the Plain Language Rulebook, which states that "records relating to an activity that requires registration or approval are **kept** at the residence" should be made consistent and clarified. In the ordinary course of business, the technology used by Approved Persons in WFH arrangements is directly connected to the Dealer Member's servers, such that the data is stored at the Dealer Member's principal office, but retrievable on the Approved Person's home computer.

In such circumstances, it should be clear that where such connection and storage exists, records should not be deemed to be maintained or kept at the Approved Person's residence.

In addition, in order to accommodate situations where in dealing with clients, a physical document (such as a document with a wet signature, or relevant handwritten notes) has been created, guidance requiring such documents to be scanned into the Dealer Member's server, or delivered to the principal office within 24-48 hours should be developed in order to ensure that a complete set of books and records are maintained on the Dealer Member's systems.

We agree with the stated compliance approach to WFH arrangements, in that it would in part be based on the Dealer Member's compliance record (whether or not specific to Registration matters) if it suggests that the Dealer Member may not adequately oversee WFH arrangements.

Operationally, as a general rule, home offices should not be subject to IIROC review (audit) as long as certain conditions are met.

- a) in-person client meetings are not conducted at the home office (allowing for occasional exceptions where required);
- b) appropriate controls are in place to ensure confidentiality and security of client information (e.g. no storage of client information on home computer system or in-home paper files);
- c) the home address is not used for dealer business communications; and
- d) there is no receipt or storage of client cash/cheques/securities certificates or other physical client property at a home office.

Conclusion

The required operational changes occasioned by the COVID-19 pandemic have revealed areas where a combination of technology and robust compliance processes allow for beneficial changes to firm operations, leading to increased flexibility and efficiency for firms and their clients.

The pandemic has merely accelerated the evolution of the industry to embrace digitization, allowing firms and clients to more easily provide and access services in a more flexible and convenient manner, without sacrificing investor protection.

We thank you for your consideration of our suggestions, and would be pleased to discuss our recommendations with you, and address any concerns or questions you may have.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland