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Dear Sir/Madam

Re IIROC CRM Project

While many would argue that industry standards need to be raised (*or at the very least amended to allow companies to differentiate their suitability standards and service processes in the market place*), for advice outside the parameters of the transaction to be regulated (*it is not currently regulated)*, for "investment advisors" to act in their clients' best interests *(best interests do not necessarily mean a fiduciary responsibility)* and to be held accountable for the suitability processes they use where such processes involve an element of advisor discretion (*which implies a fiduciary type responsibility for the integrity of those processes)*, the current proposals make no such evolution.

On the contrary, the proposals can be seen as a re-definition of the regulation of the transaction based model that the 2004 Fair Dealing Model concept paper sought to differentiate advice based services from and make transparent to the consumer.

The CRM project is a clear move away from the modernising approach of the 2004 paper and represents a set back for investors and a competitive market place. Not only does it ignore the wider representation of services in the market place, but it constrains innovation by preventing companies and advisors from offering advisory based services with higher standards and fiduciary type responsibility.

A transaction based model limits retail financial services to simple transaction based outcomes and prevents the development of innovative solutions to the often complex needs of the individual investor. Such innovation would also reduce costs and enhance sophistication and hence place pressure on the current framework of product distribution, lowering costs and increasing competition.

Under a transaction based regulatory model it is important that investors are made aware of the nature of the advisory based relationship and the very limited nature of "suitability" and "advisor responsibility". Unfortunately "suitability" is not clearly defined, although you can infer a definition of suitability from minimum industry standards. The current CRM project provides little definition of this obscure term and has to my knowledge neither performed nor commissioned research on the effectiveness, conflicts and limitations of transaction based suitability processes. It has not asked the question: "is this an optimal platform for delivering the full spectrum of wealth management solutions in the Canadian market place?".

Suitability as implied, though not defined explicitly, by pre CRM rules and regulations and standard KYC documentation represented no more than a simple parameter to parameter based process: the investor stated their risk aversion, investment horizon and investment objectives and a couple of general pieces of information on net assets and income, and the advisor provided a product recommendation that met these parameters.

New rules require that the advisor consider "the account's current investment portfolio composition and risk level" but provides no guidance as to the degree with which existing asset allocation and risk profile should be analysed. One would suspect that this is merely a simple process whereby all securities are re-fed through the KYC parameters; the only refinement being that if there is a risk allocation range selected by the client, that components of the account(s) that exceed the allocation range noted are reassessed with the investor. This is a refinement on existing rules, and is presumably designed to counter some of the most egregious practices.

However, irrespective of the amendments to suitability rules, the new set of rules, like the old, do not represent the range of services and processes delivered in the market place, and herein lies the rub: a perfect transaction based market place with rationale fully informed consumers with sophisticated suitability processes does not exist, though regulators, based on on-site investor education communication, presume it does – note the excerpt from the BC Securities Commission shown later in this document.

Given the very wide parameters that seem to be used to defend actions concerning unsuitable investments, it is difficult to visualise how the increased number of trigger points that require a suitability review (and the wider purview) will aid improved advisor monitoring of suitability and promote positive investor outcomes.

> For example: portfolio management whereby a set of securities are combined within a portfolio to provide a balance of risk and return that matches a specific investment style, structured according to a specific portfolio discipline and personalised to individual investor risk preferences and financial needs is dependent on a set of processes over which the advisor has discretion; constructing such a portfolio (and communicating the risk and asset allocation benchmarks) is not covered by regulation of the transaction; yet, the reverse engineering required to ensure suitability of all securities within an account per the noted trigger points, is a portfolio process.
>
> If the client is responsible for the investment decision, then the sum of all these decisions equals the portfolio: this means the client becomes responsible for the portfolio; this means the advisor needs to verify the client's portfolio parameters and not just the transaction parameters.
>
> We enter the relationship via the simple transaction, yet, over time, build up a set of assets whose responsibilities and complexities dwarf the ability of the simple construct to manage. In other words the KYC is not a transaction parameter set, but a portfolio parameter set with only a portion of the data and processes required being recorded.

Regulators are attempting to extend the transaction approach to the portfolio approach while retaining the limited nature of advisor and firm responsibility, which spells inappropriate management of the regulation of the actual service process in situ. This is surely a sleight of hand.

Regulators, at the very least, need to provide guidance to both advisors and consumers as to what type of outcome and process should be covered by such reviews, and again the responsibilities of each party at each such review.

Therefore, despite the new rules, it would seem that all the advisor is responsible for, beyond correctly recording KYC parameters, is slotting the product into the right pigeon hole, for knowing and explaining the product, with the investor being held responsible for the rest of the process.

Please note the following excerpt from the BC Securities Commission Investor Education website ***"investright***".

> *The advisor's suitability obligations require them to understand fully the products they recommend and trade on your behalf. Your advisor should know each product well enough to*

explain it to you and answer all your questions about its risks, key features, and initial and ongoing costs and fees. Remember: No matter how knowledgeable the advisor is about a product, it is only suitable for you if it supports your investment goals and fits your risk profile.

(Client) Your responsibility as a client is to play an active role in understanding your investments and managing your relationship with your advisor. You should also make sure that each of your investments contributes to your investment goals and that your portfolio remains within your risk tolerance. Be prepared to:

> *•Communicate clearly with your advisor about your financial situation, investment goals, and risk tolerance*
>
> *•Read all research materials your advisor provides and do additional research on your own*
>
> *•Ask questions (and keep asking questions) until you fully understand each investment you make and how it fits into your investment goals*
>
> *•Thoroughly consider every purchase or sale decision that your advisor recommends to satisfy yourself that the timing and costs are in line with the proposed opportunity*
>
> *•Pay attention to the information you receive from your advisor, especially your statements. Make sure you read them and check that the only transactions that appear are ones that you approved*
>
> *•Act quickly if you notice an error on your statement, as some firms have a limited period of time in which to make corrections*
>
> *If you're not sure about any investment, consider asking for a second opinion from another qualified professional, such as a tax accountant, lawyer, or financial planner holding a professional designation.*

The path of regulators and regulation seems to be directed towards assuming greater responsibility and sophistication for investors while defining and supporting limited advisor responsibility. In fact, it is unclear (and disconcerting) as to why securities' commission educational content regarding investor responsibilities has moved in a way which supports the CRM project's retention of limited advisor responsibility in the wealth management process. Surely the individual securities commissions are responsible for protecting investor rights and interests? Who developed this communication and who approved them? An independent consumer panel would have challenged these developments.

A clear understanding of the often complex nature of aligning asset allocation and risk management with financial needs and personal investor risk profiles and preferences is missing from the regulatory tool kit. We are left with the implication (incorrectly) that suitability is a very simple issue that can be adequately managed by the current regulatory framework and simple information and relationship covered by the KYC.

- It is critical that the disclosure over the client/advisor relationship clearly states the limits of the suitability process and the responsibilities of both advisor and client within the regulatory context - it is clear that full disclosure will confuse and frustrate the transaction process, which is why it will probably not happen.

- Likewise, disclosure of the advisor/firm process used to define suitability is also critical in allowing investors to assess recommendations and services provided: the lack of a mandated disclosure of such places the investor at a significant informational disadvantage, robbing the investor of valuable information needed to facilitate an informed investment decision, not just about the product but about the type of advisor and relationship that best suits their needs. While this is clearly an imperfect (it assumes the investor can understand the communication) counterbalance, it is better than nothing. Required disclosure noted in the CRM proposals is insufficient and does not require disclosure of the actual process itself.

With the introduction of the CRM in its current form Canada has missed a golden opportunity to modernise and broaden the structure of retail financial advisory based services: investors need access to advisory based services with higher suitability standards and fiduciary type responsibility, and in the interests of competition, in the market place, there needs to be incentives to provide such differentiation.

Where are we going? Since 2004 when an attempt was made to modernise the retail financial services market place, all that has been achieved is an absurd strengthening of its defences.

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For a more detailed assessment of the CRM project and the Canadian regulated suitability process, please refer to the following documents.

Point of Sale Disclosure and Regulatory Failure in Canada – September 2010

Comments on IIROC CRM Proposals – September 2009

Theatre of The Absurd/A Retail Financial "Ground Hog Day" – May 2009

Financial/Economic Crisis Related Issues – The Role of Advisors

There is nothing in the current rules that detail the degree of transparency and honesty with respect to disclosure over the client/advisor relationship and the suitability processes that underpin this relationship. All we can hope is that the disclosure provided is sufficient to force consumers to question the level of service they are receiving and the credibility of the responsibilities attached.