

IIROC Enforcement Update: trends, approaches, expectations

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Topics

1. The Investigation Process
 1. What are your obligations?
 2. Credit for Cooperation
2. Firm Supervision
 1. Trends and Expectations
3. Sanction trends (Individuals and Firms)
4. Key IIROC Enforcement Policy Initiatives

1. The Investigation Process

A Registrant's Obligation to Cooperate

- **Context & Backdrop of Staff's Expectations**

“[a] failure to cooperate, even if based on a matter of principle, strikes at the very integrity of the Association's duty and ability to police itself”

(Union Securities, 2005)

1. The Investigation Process

A Registrant's Obligation to Cooperate

- Access to Documents at the Investigative Stage
 - Rule 19.5(b) – Production of documents that may be relevant to a matter under examination
 - Broad power to request electronic documents (which extends to hard drives) (*Re. Golden Capital Securities Ltd.*, 2009 BCSECCOM 192)
 - Rule 19.5(a) – Creation of reports/analysis to assist with investigation
 - Does the respondent have any right to access documents produced by others, during the investigation?

1. The Investigation Process

A Registrant's Obligation to Cooperate

- Respondent Access to Complaint Letters
- Conflicts of Interest – Representation of multiple parties by counsel
- Impact of “good relations” with IIROC upon enforcement investigations – What conduct fosters good relations?

1. The Investigation Process

A Registrant's Obligation to Cooperate

- Legal Privilege
 - Consolidated Rules revised to expressly entitle a person to refuse to disclose a document on the basis of “legal privilege”
 - Encompasses solicitor-client privilege, litigation privilege and any other privilege recognized by law. (IIROC Notice, November 2013)

1. The Investigation Process

A Registrant's Obligation to Cooperate

- Recurrent conduct of Staff and registrants that can be counterproductive

1. The Investigation Process

Credit for Cooperation

- Companion Policy to Proposed Sanction Guidelines on credit for cooperation
 - Already a formal policy of OSC; first time IIROC has formalized this policy
 - No credit for complying with existing duty to cooperate during investigation
 - Efforts to frustrate an ongoing investigation may be an aggravating factor

1. The Investigation Process

Credit for Cooperation

- Credit where a registrant can demonstrate a record of disclosure and cooperation that is “**proactive and exceptional**”:
 - Prompt/ detailed self identification of misconduct
 - Early self-identification of contraventions followed by thorough internal reviewed and facts discovered are shared with Staff
 - Obtaining and providing evidence and/or testimony from persons beyond IIROC’s jurisdiction during investigation.

2. Firm Supervision

Trends

- Supervision trends
 - from settlements (e.g. Richardson, Mills)
 - from contested decisions

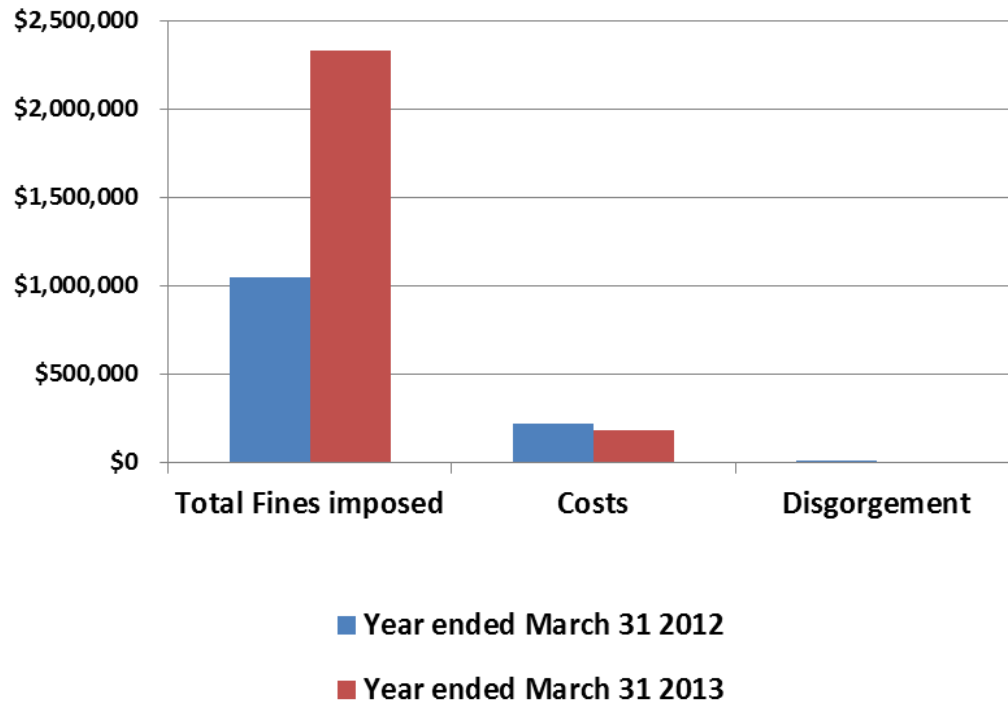
2. Firm Supervision

Expectations

- What are Staff's current the expectations for supervision?
- What supervisory failures will attract enforcement against branch manager, head office compliance, UDP, Board ?

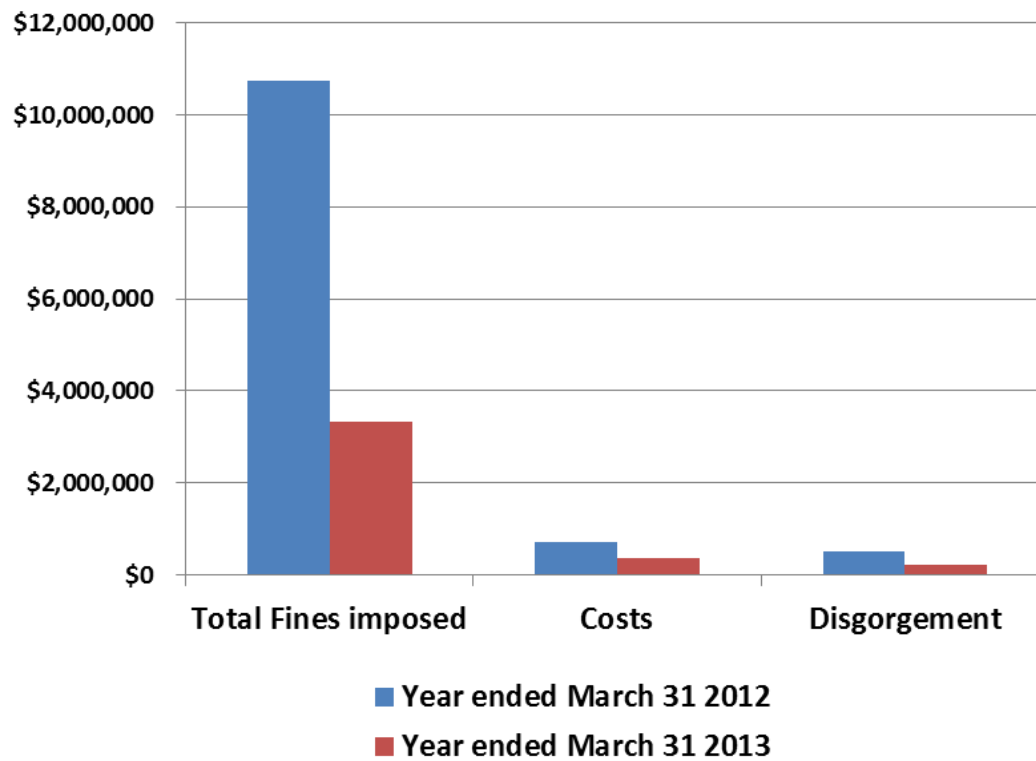
3. Sanction Trends

Sanctions - FIRMS



3. Sanction Trends

Sanction - INDIVIDUALS



3. Sanction Trends

- Sanctions in settlements vs. contested cases: higher, lower, the same?
- Regional variations in sanctions?

3. Sanction Trends

- Since April 2012, success rate IROC contested cases
 - approx. 70+% (included partial success)

3. Sanction Trends

Suspensions

When is a Suspension Justified?

- Key Factors to Consider
- Impact upon business continuity
- At what point does a suspension act as an effective ban from the business?
- Impact upon DM employer

4. Key Enforcement Policy Initiatives

1. IIROC Consolidated Rules
2. Revised Sanction Guidelines

4. Key Enforcement Policy Initiatives

IIROC Consolidated Rules

- Primary purpose: To consolidate and rationalize enforcement-related rules that are currently contained within UMIR and the Dealer Member Rules.
- Opportunity to amend several enforcement-related provisions in order to improve IIROC's overall regulatory policy framework
- Response to Public & CSA Comments – published on November 14, 2013.
- Comments on republication due February 12, 2014

4. Key Enforcement Policy Initiatives

IIROC Consolidated Rules

Proposed Rule Highlights

- New Standards of Conduct for all Regulated Persons
- Enforcement Investigations - updated and new requirements for conducting enforcement investigations
- Enforcement Proceedings - updated and harmonized processes relating to both Dealer Member and market matters
- Express incorporation of Rules of Practice and Procedure into consolidated Rules.
- Ability to impose Temporary Orders

4. Key Enforcement Policy Initiatives

Revised Sanction Guidelines

Objectives:

Consolidate and update the two existing sanction guidelines (Dealer Member and UMIR); and

Opportunity to review and consider key sanctioning principles and general approach to the sanctioning process

In conjunction - Development of Staff Policy Statements

4. Key Enforcement Policy Initiatives

Revised Sanction Guidelines

Some Issues addressed:

- the need to have prescribed fine ranges or minimum fines;
- guidelines for the imposition of suspensions;
- treatment of a respondent's inability to pay;
- treatment of credit for cooperation; and
- treatment of internal discipline

Process:

Request for Public Comment – deadline is February 3, 2014
Subsequent in-person consultation

QUESTIONS?