

Enforcement Trends and Changing Regulatory Approaches

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IIROC 2021-2022 Enforcement Report: Highlights

- Four cases reached **early resolutions** in 2022.
- IIROC achieved the ability to enforce **fine collection** through the courts in every province and territory in Canada in November 2021.
 - Collection rate for monetary sanctions imposed on individuals in past fiscal years continued to increase.
- IIROC continued to advance enforcement activities throughout the pandemic by conducting certain investigation interviews and hearings **virtually**.

IIROC Proceedings: Key Statistics

Over **\$4 million** in fines, disgorgement and costs imposed by hearing panels on IIROC-regulated persons (individuals and firms).

- The amount individuals were ordered to disgorge increased from prior years.

IIROC completed **76** investigations, commenced **25** enforcement proceedings, and concluded **31** proceedings.

INVESTIGATIONS COMPLETED

	FY22	FY21	FY20	FY19	FY18
Number of Investigations completed	76	113	112	127	123
Percentage of files referred to Prosecutions	41%	25%	35%	38%	46%

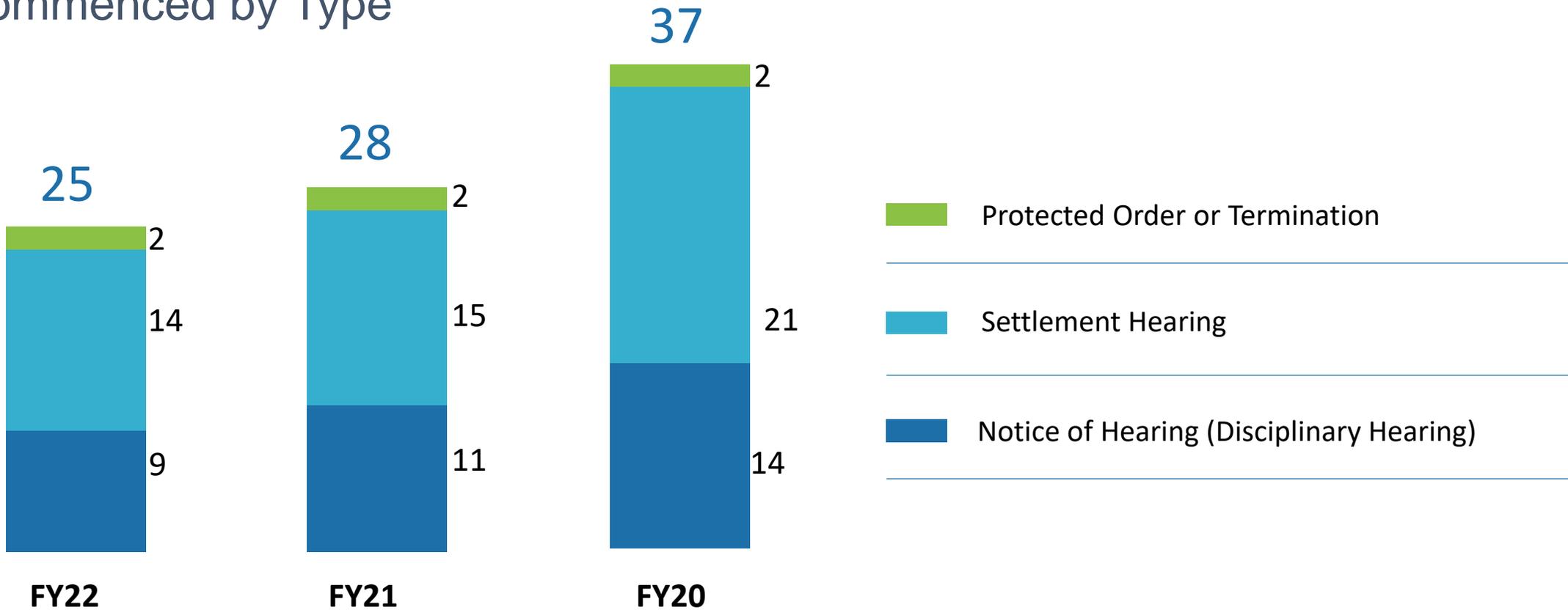
IIROC: Sources of Complaints

SOURCES OF COMPLAINTS RECEIVED BY IIROC ENFORCEMENT

SOURCE	FY22	FY21	FY20	FY19	FY18
Public	114	238	194	164	185
ComSet	885	1,110	1,036	881	906
International (from other IIROC departments)	26	24	22	36	41
Other SROs and Commissions	20	15	19	20	16
Other (media, Dealer Members and Whistleblowers)	8	9	12	8	5
TOTAL	1,053	1,396	1,283	1,109	1,153

IIROC Enforcement Proceedings: Commenced

Commenced by Type



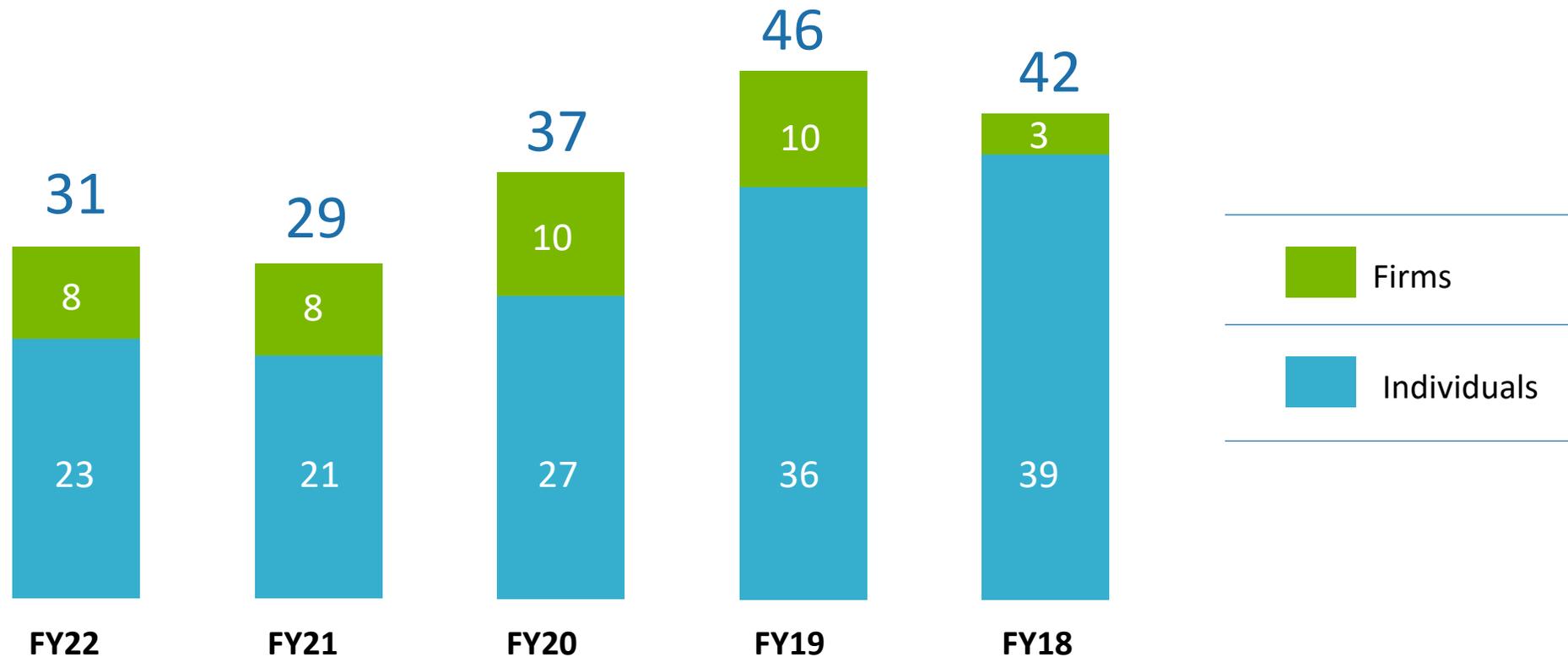
IIROC Enforcement Proceedings: Concluded

Most common regulatory violations for concluded proceedings:

- Suitability/Due diligence/Handling of client accounts
- Fail to cooperate
- Inappropriate personal financial dealings
- Supervision
- Others (e.g. discretionary trading, outside business activities, internal controls, etc.)

IIROC Enforcement Proceedings: Concluded

Concluded Proceedings by Respondent Type



Conflicts of Interest

- Addressed by several rules and principles:
 - OBAs
 - Personal financial dealings & power of attorneys
 - Off-book transactions
 - Excessive trading
- Case selection criteria

Conflicts of Interest

- Focus in reviewing cases involving clients' best interests interpreted

broadly – examples:

➤ Conducting trades for the purpose of earning **commissions** as opposed to investments that are in the best interest of the client

➤ Failing to handle client's orders in a **timely** and **appropriate** manner

➤ Entering into **personal financial dealings** with a client

➤ **Outside activities** which create a conflict between the client and advisor's/firm's interests

Conflicts of Interest: Applicable Rules

- IIROC & MFDA participated in the **development** of the CSA CFRs
- Adopted language in **IIROC Rules** (and, in the case of conflicts of interest, in the existing Dealer Member Rules) that was materially uniform to the corresponding CSA CFRs provisions.
- As of December 31, 2021: IIROC Rules 3100 – *Business Conduct*, 3200 – *Client Accounts* and 3400 – *Suitability* and introduced a new Rule 3300 – *Product Due Diligence and Know Your Product*.
- Amended Dealer Member Rule 42 – *Conflicts of Interest* (now Part B – Rule 3110)

Conflicts of Interest: IIROC Settlements

- Some recent IIROC settlements provide examples of the **broad focus** that IIROC is taking toward conflicts of interest/personal financial dealings:
 - **Re Callaway** – advisor solicited and accepted campaign donations from his clients for campaign to run for leadership of the United Conservative Party in AB
 - **Re Hanson** – adviser was member of an investment club (not disclosed as an OBA); provided occasional recommendations to club members on securities he presented on; two of the club members opened investment accounts with the advisor, giving rise to a conflict of interest

Cryptocurrency and Associated Regulatory Issues

- Existing regulatory framework – **risk-based** approach
- Potential enforcement exposure:
 - lack of internal controls
 - lack of robust supervision system
 - activities that are not permitted (recommendations)
- See recent **Fortrade** temporary order – investor protection

Cryptocurrency and Associated Regulatory Issues

- Lots of regulatory activity by the securities commissions with respect to dealer/platform **registration**
 - At least one IIROC-regulated investment dealer is expanding into crypto
- Currently, most entities appear to be operating on an **OEO structure**
 - Fortrade temporary order suggests that a move into advice on crypto may be a likely future development

Cryptocurrency and Associated Regulatory Issues

- Will raise **issues** such as:
 1. education of advisors and compliance staff on crypto assets
 2. importance of rigorous assessment of suitability and appropriate disclosures (high risk of loss, no CIPF coverage, sophisticated investors)
 3. assets that are themselves fundamentally different from assets the industry has developed to deal with (hot vs cold wallets, custodying crypto assets, etc.)

The Best Interest Standard and its Impact on Related Civil Litigation

- **Boal:**
 - Lower court refused to certify class action of MFDA registrant based on breach of fiduciary duty.
 - On appeal, Divisional Court found that professional standards of MFDA and FP Standards Council gave rise to a reasonable expectation of fiduciary duty, coupled with the fact that advice was being given (rather than advisor being strictly an “order taker”).
 - “It is not plain and obvious that if a regulator of a profession states to the public that its members will act in a certain way, then the public (including the clients who engage the members of that profession) will not have a reasonable expectation that this is indeed the way they will act.”
- Recent cases against **OEO dealers** regarding the receipt of trailing commissions as being contrary to obligations to act fairly, honestly and in good faith with respect to clients
- **Class action** plaintiffs are relying more heavily on the obligation to act in a client’s best interest (whether or not coupled with the allegation of fiduciary duty) and the obligation to avoid conflicts of interest, to inform standard of care and give rise to civil liability.

Supervision Proceedings Relating to the Development of New Business Lines

- Friedberg 2022 IIROC 9
- Fortrade temporary order

IIROC Enforcement Processes

- Enforcement looking for ways to resolve cases sooner (always open to discussing an appropriate resolution)
- Cases:
 - *Scotia Capital*, 2021 IIROC 37
 - *Friedberg*, 2022 IIROC 9
 - *IA Private Wealth*, 2021 IIROC 22
 - Two cases with individuals: *Hanson*, 2021 IIROC 21, *Fairclough* 2022 IIROC 20

Fee Cases

- Uptick in the number of fee cases
- Quite different from fee cases from a number of years ago – these cases are not about double dipping but instead relate to systemic control failings
- Proactive remediation