

Business

Investment dealer regulator notes increased fine collection rates despite millions outstanding

By **Ian Burns**

(May 14, 2018, 12:46 PM EDT) -- Canada's national regulator for investment dealers is saying legislative changes introduced in a number of provinces to increase their ability to collect fines have borne some fruit, and legal experts are saying they expect this trend to continue upward despite an acknowledgment of millions of dollars that remain outstanding.

In a report released May 4, the Investment Industry Regulatory Organization of Canada (IIROC) noted the collection of sanctions it has imposed on individuals who violated investment rules increased to \$3.4 million, up from \$3.1 million in 2016. IIROC senior vice-president Elsa Renzella said this increase was reflective of changes implemented over the past year in a number of provinces giving the regulator the ability to enforce their sanctions in court.

"These legislative changes make a positive and crucial contribution to IIROC's ability to protect Canadian investors," Renzella said. "In jurisdictions where our authority is greater, we see an overall change in behaviour among sanctioned advisors taking their responsibilities more seriously. This sends an important message — our regulatory system has integrity and, although the vast majority of advisors are ethical and fair, IIROC will hold wrongdoers accountable."



Fraser McDonald, Allen McDonald Swartz LLP

Fraser McDonald of Allen McDonald Swartz LLP said it was too early to tell what affect the legislative changes have had on IIROC's enforcement abilities, but noted the fine collections of \$3.4 million was a "pretty significant increase."

"They've taken action and got these legislative measures to allow them to collect the fines in the courts, so hopefully that improves their performance," he said. "I would expect the rate of increase in uncollected fines to decrease significantly."

Nadia Champion of Polley Faith LLP said the perceived low collection rates of various regulatory agencies in the past was no fault of their own because they may not have had the necessary tools to collect fines.

"I think [IIROC's collection rates] were entirely reflective of the fact that they didn't have the ability to enforce their orders through the court," she said. "And now that they have that I expect we're going to see a better collection rate. And fundamentally that's a very important thing, because if people think that you can't enforce the fines and make them pay then they're not deterred from misbehaving or acting inconsistently with what's in the interests of the capital markets and their own clients."

However, IIROC also acknowledged that much work remains, having collected only 16 per cent of fines against individuals with more than \$32 million in outstanding fines imposed over the past decade across the country.



Nadia Champion, Polley Faith LLP

Campion said increasing enforcement rates will continue to be a challenge for IIROC and other regulators. She noted collection of fines from individuals can be very difficult, particularly in circumstances where those individuals don't have any financial resources to pay the fines.

"That's probably something that I don't think the changes that have been implemented can really address, and frankly it's a similar challenge to what people face in the civil courts when they pursue defendants," she said. "Even though you were successful in obtaining a judgment, enforcing it can pose some significant challenges."

McDonald agreed, noting IIROC's recognition of their ability to enforce and collect the fines they levy and the fact they've been "lacking in that respect."

"It was a pretty low percentage they were collecting, but in their defence I think they're between a rock and a hard place — when they levy fines against registered firms they can collect them because obviously the firms want to continue to be registered [by IIROC], but an individual can just walk away from their registration," he said. "They're going to move on to something else, so why would they pay the fine?"

IIROC also noted that incidents involving seniors represented almost 40 per cent of all cases reviewed and approximately 30 per cent of prosecutions. Champion said this is part of a trend by many securities regulators to increasingly enforce securities laws as they relate to vulnerable communities.

"What that demonstrates to me is a real concerted effort by these regulators to try and address imbalances that exist in communities and protect the ones that are more vulnerable to others preying on them," she said.

In 2017, IIROC received 1,163 complaints and completed 127 investigations, referring nearly half of these to prosecutions. McDonald said he would expect the various provincial securities commissions would have similar rates.

"They've obviously got limited resources and they've got to deploy them in the most efficient way," he said. "They can't, and nor should they, pursue every complaint, so I don't see anything untoward about those numbers. They seem to pass the smell test if you will just from an outside onlooker's point of view."

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