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Me Lebel:

Subject: Draft Regulation on Complaint Handling and Dispute Resolution in the Financial Sector

Thank you for the opportunity to comment on the *Proposed Financial Sector Complaint Handling and Dispute Resolution Regulation* (the "Draft Regulation") published on September 9, 2021.

Summary:

We appreciate the Draft Regulation's objective of harmonizing complaint handling for financial sectors in Quebec.

Self-Regulatory Organizations provide a strict, efficient complaint handling framework for our members across Canada. The Draft Regulation may unintentionally give rise to investor harm. It also gives rise to increased and unnecessary regulatory burden for firms operating in Quebec and outside Quebec by creating a lack of harmony across provinces.

Recommendation:

We strongly recommend that the AMF exempt firms regulated by Self-Regulatory Organizations from its Draft Regulation.

The IIAC is the national association representing firms that offer a multitude of financial services to Canadian investors. Our members distribute a variety of products such as investment funds and other managed equity and fixed income funds and offer a diverse range of portfolio management, advisory and execution services. Many of our members also have dealers regulated by the Mutual Fund Dealers Association (“MFDA”).

Complaint Handling is Highly and Effectively Regulated in the Securities Industry

Although this comment letter deals specifically with the Investment Industry Regulatory Organization of Canada’s (“IIROC”) Rules to be in effect December 31, 2021, the AMF should also consider MFDA Rules as well as sections 13.15 and 13.16 of National Instrument 31-103. At a minimum, the Draft Regulation should reflect and align with these.

IIROC’s framework has several similarities with the AMF’s Draft Regulation, which indicates IIROC’s effectiveness in addressing complaints. These similarities also show that the Draft Regulation results in unnecessary duplication. The similarities are as follows:

- Chapter 2, Paragraph 4 of the Draft Regulation regarding requirements for a complaints process states:

A financial intermediary must establish a complaint process in its complaint processing and dispute resolution policy that:

- 1. objectively takes into account the interests of the complainant;*
- 2. is simple to follow and without cost to the complainant; and*
- 3. is documented in detail, including by procedures for analyzing complaints.*

These concepts are similar to IIROC Rules 3723(1) and 3723(2), which may be more detailed and state:

- 1. A Dealer Member’s policies and procedures must specifically address dealing effectively, fairly and expeditiously with complaints.*
- 2. A Dealer Member’s policies and procedures must specifically address:*
 - i. procedures for a fair and thorough investigation of complaints,*
 - ii. a process for assessing the merits of complaints,*
 - iii. the process to be followed in determining what offer should be made to the client, where the complaint is assessed to have merit,*
 - iv. a description of remedial actions which may be appropriate to be taken within the firm,*

- v. *a procedure that will ensure that complaints are not dismissed without proper consideration of the facts of each case,*
 - vi. *a balanced approach to dealing with complaints that objectively considers the interests of the complainant, the Dealer Member, including the employees, Approved Persons or other relevant parties,*
 - vii. *a process that ensures that the relevant employees, Approved Persons and their Supervisors are made aware of all complaints filed by their clients,*
 - viii. *procedures to inform an appropriate Executive of any serious misconduct, and*
 - ix. *procedures to monitor the general nature of the complaints.*
- Chapter 2, Paragraph 5 of the Draft Regulation regarding staffing states:

The complaint processing and dispute resolution policy must provide that the financial intermediary will identify needs for the implementation, application and periodic review of the complaint process and assign the required persons thereto.

For this purpose, the policy must include the following rules:

1. *to ensure that its complaint process is known and understood by the persons assigned to implement, apply and review it, the financial intermediary will provide such persons with training at least once a year and at the following times:*
 - a) *upon their assignment; and*
 - b) *when, following a review, a change is made to the complaint process;*
2. *the financial intermediary will ensure that the complaints officer referred to in section 6 and the staff responsible for processing complaints referred to in section 7 are able, in carrying out their respective functions, to act with independence and avoid any situation in which they would be in a conflict of interest.*

These concepts, except for the annual training, are similar to IIROC Notice 09-0363: Rule and Guidance Note on the Handling of Client Complaints and Amendments to Dealer Member Rules 19, 37 and 2500.

- Chapter 2, Paragraph 5 (2) refers to staff responsible for processing complaints acting with independence.

This is similar to IIROC Rule 3112(1) and 3112(2) which state:

1. *A Dealer Member must address all material conflicts of interest between the Dealer Member and the client, including each Approved Person acting on its behalf, in the best interest of the client.*
2. *A Dealer Member must avoid any material conflict of interest between the client and the Dealer Member, including each Approved Person acting on its behalf, if the conflict is not, or cannot be otherwise addressed in the best interest of the client.*

We suggest the concept of "acting impartially" as referred to in section 3723(2) of the IIROC Rules as opposed to "acting independently" as stated in the Draft Regulation because employees are not independent but should act impartially.

- Chapter 2, Paragraph 6 of the Draft Regulation regarding Head of Complaints states:

The financial intermediary must include in its complaint processing and dispute resolution policy elements pertaining to the designation and functions of the person acting as complaints officer within its organization, including:

1. *the integrity, competence and solvency requirements for such designation, in this case professional qualifications, knowledge of the laws and regulations governing the intermediary's activities, required work experience and the absence of a judicial or disciplinary record, as applicable;*
2. *the functions of the complaints officer, including:*
 - a) *ensuring that the complaint process is applied and reviewed and that the complaint processing and dispute resolution policy is applied;*
 - b) *documenting and reporting the issues referred to in paragraph 3 of section 8, the common causes and issues referred to in section 9, and the reasons referred to in section 10;*
 - c) *ensuring that complaints are assigned to the staff responsible for processing complaints;*
 - d) *acting as official respondent with the financial intermediary's clientele and with the Autorité des marchés financiers for complaint records sent to it for examination.*

These concepts are similar to the principles of Rule 3700 and IIROC Notice 09-0363: *Rule and Guidance Note on the Handling of Client Complaints and Amendments to Dealer Member Rules 19, 37 and 2500.*

- Chapter 2, Paragraph 7 of the Draft Regulation regarding Complaint Handling Policies states:

The financial intermediary must include in its complaint processing and dispute resolution policy elements pertaining to staff responsible for processing complaints and to the assignment of complaints to them, including:

- 1. the integrity, competence and experience requirements for staff responsible for processing complaints, in this case detailed knowledge of the products and services offered by the financial intermediary;*
- 2. access at all times to information essential to the performance of the functions of this staff.*

These concepts are similar to the principles of Rule 3700 and IIROC Notice 09-0363: *Rule and Guidance Note on the Handling of Client Complaints and Amendments to Dealer Member Rules 19, 37 and 2500.*

- Chapter 2, Paragraph 8 of the Draft Regulation regarding the role of directors states:

The complaint processing and dispute resolution policy must provide that periodic reports covering the following elements must be made to the financial intermediary's officers:

- 1. the number of complaints received and process and the reasons for and underlying causes of the complaints;*
- 2. the outcome of the complaints;*
- 3. issues related to the implementation, application and review of complaint process.*

These concepts are similar to IIROC Rule 3723(2) which states:

A Dealer Member's policies and procedures must specifically address:

(...)

- viii. procedures to inform an appropriate Executive of any serious misconduct, and*
- ix. procedures to monitor the general nature of the complaints.*

- Chapter 2, Paragraph 9 and Paragraph 10 of the Draft Regulation regarding common causes and issues state:

The complaint processing and dispute resolution policy must provide that the underlying causes of complaints that are processed will be analyzed periodically to identify causes common to the complaints and address the issues that they raise.

The complaint processing and dispute resolution policy must provide that the reasons supporting a complaint will be analyzed to determine whether they may have repercussions for other persons who are members of the financial intermediary's clientele and to take measures to remedy them, if necessary.

These concepts are similar to IIROC Rule 3723(3) which states:

If a Dealer Member determines that the number or severity of complaints is significant, or when a Dealer Member detects frequent and repetitive complaints made with respect to the same or similar matters which may on a cumulative basis indicate a serious problem, the Dealer Member must:

- i. review its internal procedures and practices, and*
- ii. ensure recommendations to remedy the problem are submitted to the appropriate management level.*

- Chapter 3, Division I, Provision 11 of the Draft Regulation regarding assistance to investors states:

A financial institution or financial intermediary must provide a complaint drafting assistance service to any person expressing a need for it who is a member of the clientele of the financial institution or financial intermediary.

These concepts are similar to the principles of IIROC Notice 09-0363: *Rule and Guidance Note on the Handling of Client Complaints and Amendments to Dealer Member Rules 19, 37 and 2500.*

- Chapter 3, Division II, Paragraph 16 and Paragraph 17 respectively of the Draft Regulation regarding the filing and registering of complaints state:

The complaint record that the financial institution, financial intermediary or credit assessment agent must open for any complaint received by it must contain the following documents and information:

- 1. the complaint and, if the complainant requested the complaint drafting assistance service, the complainant's initial communication;*
- 2. a copy of the acknowledgement of receipt referred to in section 19 sent to the complainant;*
- 3. any document or information used in analyzing the complaint, including any exchanges with the complainant; and*
- 4. a copy of the final response provided to the complainant.*

The complaint record must be established such that the documents and information it contains are in a precise form that is comprehensible to any person who is allowed to access it.

The financial institution, financial intermediary or credit assessment agent must keep the complaint record for a period of at least 7 years from the date the complaint is received.

These concepts are similar to IIROC Rules 3728(1), 3786(1) and 3786(2) which state:

Rule 3728 (1):

A Dealer Member must retain the following information in accordance with section 3786 for each client complaint:

- i. the complainant's name,*
- ii. the date of the complaint,*
- iii. the nature of the complaint,*
- iv. the name of the individual who is subject of the complaint,*
- v. the securities or services which are the subject of the complaint,*
- vi. the materials reviewed in the investigation,*
- vii. the name, title and date individuals were interviewed for the investigation, and*
- viii. the date and conclusion of the decision rendered in connection with the complaint.*

Rule 3786(1) (2):

- 1) A Dealer Member must keep an up-to-date record of all client complaints and associated documentation relating to the conduct, business and affairs of the Dealer Member, or an employee or agent of the Dealer Member, in a central and readily accessible place for a period of two years from the date of receipt of a client complaint.*
 - 2) For each client complaint file, a Dealer Member must maintain a copy for seven years in a location that is retrievable within a reasonable period of time.*
- Chapter 3, Division III, Paragraph 20 of the Draft Regulation regarding acknowledgement of receipt states:

The acknowledgement of receipt must be sent in written form to the complainant and, in addition to stating the complainant's right to request to have the complaint record examined by the Authority or, where applicable, a federation, include the following information:

1. *the complaint record identification code;*
2. *the date on which the complaint was received by the financial institution, financial intermediary or credit assessment agent;*
3. *the name and contact information of the member of the staff responsible for processing the complaint, referred to in section 7 or the Sound Commercial Practices Guideline or a guideline applicable to credit assessment agents in this matter (indicate here the title of the guideline) established by the Authority;*
4. *a statement to the effect that the complainant may contact the person referred to in paragraph (3) of this section to find out the status of the complaint;*
5. *the next steps in the complaint process and the date by which the final response must be sent to the complainant; and*
6. *the signature of the complaints officer referred to in section 6 or the Sound Commercial Practices Guideline or a guideline applicable to credit assessment agents in this matter (indicate the title of the guideline) established by the Authority.*

These concepts, with the exception of the signing of the acknowledgement of receipt by the complaints officer, are similar to IIROC Rule 3725 which states:

1. *The Dealer Member must send an acknowledgement letter to the complainant within five business days of receipt of a complaint.*
2. *The acknowledgement letter in subsection 3725(1) must include the following:*
 - i. *the name, job title and full contact information of the individual at the Dealer Member handling the complaint,*
 - ii. *a statement indicating that the client should contact the individual at the Dealer Member handling the complaint if he/she would like to inquire about the status of the complaint or provide the Dealer Member with any additional information,*
 - iii. *an explanation of the Dealer Member's internal complaint handling process, including but not limited to the role of the designated complaints officer,*
 - iv. *a reference to an attached copy of IIROC approved complaint handling process brochure and a reference to the statutes of limitations contained in the document,*
 - v. *the 90 days timeline to provide a substantive response to complainants, and*
 - vi. *a statement informing the client that the Dealer Member may request additional information, from time to time, to investigate the complaint.*

- Chapter 3, Division III, Paragraph 21 of the Draft Regulation regarding the final response states:

The financial institution, financial intermediary or credit assessment agent must be detailed in the final response referred to in subparagraph 4 of the second paragraph of section 12, which must include such information as the following:

- 1. a summary of the complaint received;*
- 2. the conclusion of the analysis, including the reasons for the conclusion, and the outcome of the complaint;*
- 3. a statement of the complainant's right to request to have the complaint record examined by the Authority or, where applicable, by a federation;*
- 4. if an offer to resolve the complaint is presented to the complainant, the time period within which the complainant may accept the offer;*
- 5. the signature of the complaints officer.*

These concepts, except for the signing of the final response letter by the complaints officer, are similar to IIROC Rule 3726 which states:

- 1. The Dealer Member must send a substantive response letter to each complainant.*
- 2. The substantive response letter must be accompanied by a copy of the complaint handling process brochure approved by IIROC.*
- 3. The substantive response letter must be presented in a manner that is fair, clear and not misleading to the client, and must include the following information:*
 - i. a summary of the complaint,*
 - ii. the result of the Dealer Member's investigation,*
 - iii. the Dealer Member's final decision on the complaint, including an explanation, and*
 - iv. a statement describing to the client the options available if the client is not satisfied with the Dealer Member's response, including the availability of:*
 - a) arbitration,*
 - b) litigation/civil action,*
 - c) submitting a complaint to IIROC,*
 - d) the ombudsman service, if a request is made within the period required by the ombudsman,*
 - e) an internal ombudsman service offered by an affiliate of the Dealer Member, if any, with an explanation that:*
 - I. the use of the internal ombudsman process is voluntary, and*
 - II. the estimated length of time the process is expected to take based on historical data, and*

- f) any other applicable options.
4. A Dealer Member must respond to each client complaint as soon as possible and not later than 90 days from the date of receipt of the complaint subject to the following:
- i. the 90 days timeline must include all internal processes of the Dealer Member that are made available to the client, other than the internal ombudsman process offered by an affiliate of the Dealer Member,
 - ii. the Dealer Member must inform the client if the Dealer Member is unable to provide the client with a final response within the 90 days timeline and must include the reasons for the delay and the new estimated time of completion, and
 - iii. the Dealer Member must inform IIROC if the Dealer Member is unable to meet the 90 days timeline and must provide reasons for the delay.
- Chapter 6, Paragraph 26 of the Draft Regulation regarding prohibitions states:

A financial institution, financial intermediary or credit assessment agent may not:

1. *when it presents the complainant with an offer to resolve the complaint, attach a condition to the offer that:*
 - a) *prevents the complainant from exercising the right to request to have the complaint record examined by the Authority or, where applicable, its federation;*
 - b) *requires the complainant to withdraw any other complaint that the complainant has filed;*
 - c) *prevents a complainant from communicating with the Authority, a self-regulatory organization recognized under section 59 of the Act respecting the regulation of the financial sector (chapter E-6.1) or with the Chambre de la sécurité financière or the Chambre de l'assurance de dommages, established under section 284 of the Act respecting the distribution of financial products and services.*
2. *in any representation or communication intended for the public, use in referring to its complaint process or the persons assigned to implement, apply or review its complaint process the term "ombudsman" or any other qualifier of the same nature that suggests that such persons are not acting on behalf of the financial institution, financial intermediary or credit assessment agent.*

These concepts, except for the use of the term "Ombudsman", are similar to IIROC Rule 3711(1) which states:

A release entered into between a Dealer Member and a client may not impose confidentiality or similar restrictions aimed at preventing a client from initiating a complaint to the securities regulatory authorities, SROs or other enforcement authorities, or continuing with any pending complaint in progress, or participating in any further proceedings by such authorities.

All these similarities between the Draft Regulation and IIROC's Rules demonstrate that the current framework applicable to the handling of complaints by our members is rigid, rigorous, and adequate for the protection of the investing public.

Concerns

There are some differences between the Draft Regulation and IIROC's Rules which raise concern as detailed below.

- The definition of complaint proposed by the AMF is too broad in scope. IIROC's definition is properly limited to complaints alleging misconduct as follows:
 1. *Part E of Rule 3700 applies to complaints submitted by a retail client or a person authorized to act on behalf of a retail client in the following form:*
 - i. *a recorded expression of dissatisfaction with a Dealer Member or employee or agent alleging misconduct, or*
 - ii. *a verbal expression of dissatisfaction with the Dealer Member or employee or agent alleging misconduct where a preliminary investigation indicates that the allegation may have merit.*
 2. *For the purpose of subsections 3720(1) and 3721(1), alleged misconduct includes, but is not limited to:*
 - i. *allegations of breach of confidentiality, theft, fraud, misappropriation or misuse of funds or securities, forgery, unsuitable investments, misrepresentation, or unauthorized trading relating to the client's account,*
 - ii. *other inappropriate financial dealings with clients, or*
 - iii. *engaging in Dealer Member related activities outside of the Dealer Member.*
 3. *Any matter which is the subject of a civil action or arbitration is not considered to be a complaint for the purpose of section 3721.*

It is in the public interest that resources be directed to and focused on complaints alleging misconduct.

- IIROC's Rules impose greater transparency. They provide that a complaint of misconduct, irrespective of (lack of) gravity or settlement must be dealt with according to the established complaint process. Unlike the Draft Regulation, the definition of complaint in IIROC's Rules does not exclude allegations of misconduct that could be resolved "immediately". Also, unlike the Draft Regulation that requires a declaration of complaints by firms be made to the AMF's SRP system only twice a year, the required reporting to IIROC, through the ComSet system, is within 20 days of receiving a complaint. In summary, all misconduct is reported to IIROC on a timely basis via ComSet irrespective of seriousness or settlement so that no complaint is unnoticed.
- IIROC members currently have 90 days to process a complaint. A shorter processing period (60 days) could compromise the completeness of the analysis to the potential detriment of investors. The investigation of a complaint may require the interview of many individuals and analysis of several accounts. A 90-day period is more appropriate for a thorough and diligent analysis that avoids investor harm.
- Section 14(3) of the Draft Regulation provides that the dealer must continue to manage exchanges with the client even if the client has filed an application with a court. This is contrary to section 3721(3) of the IIROC Rules, which states: "Any matter that is the subject of a civil suit or arbitration shall not be considered a claim for the purposes of this section." The judicial process should remain separate from the complaint process to maintain the integrity of both processes.
- The requirement for training held "at least once a year" for the complaint handling team proposed by the Draft Regulation does not seem necessary. The requirement for training for staff members in charge of handling complaints at the time of their assignment and when modifying the complaints process is sufficient.
- The Draft Regulation proposes the signature of the person in charge of handling Complaints on the final response and acknowledgement of receipt. This may unnecessarily delay responses to investors.

Conclusion

The process for complaint handling should not change due to the location of the dealer (Quebec versus outside Quebec). The Draft Regulation would create a two-tier complaints regime in Canada, without distinct, enhanced investor benefit but with increased regulatory burden on firms working in Quebec and the rest of Canada.

We therefore recommend that the AMF exempt firms regulated by Self-Regulatory Organizations from its Draft Regulation.

Best regards,

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