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Proposed Amendments respecting Reporting, Internal Investigation and Client Complaint Requirements
https://www.iiroc.ca/news-and-publications/notices-and-guidance/proposed-amendments-respecting-reporting-internal-investigation-and-client-complaint-requirements

Kenmar appreciate the opportunity to comment on this Consultation. Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at www.canadianfundwatch.com . Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

Our emphasis is on the retail client complaint handling system.

The timing of this consultation was not expected as we believed that there were joint CSA/IIROC/MFDA ongoing activities to harmonize important rules like this.

Quite frankly, we would have much preferred a prominent and distinct consultation on *client complaint handling* [retail], a replacement for out-of-date Rule 2500B (now subsumed in part E of rule 3700 sections 3750 through 3759) that would be the applicable rule for **New SRO.**

We believe the proposed amendments contain directionally positive components for retail investors and are well intentioned. That being said, there are some very important matters that require CSA SRO Integrated Working Committee, IIROC Board and senior management attention.

General Comments

Since the CSA have decided to subsume IIROC into New SRO, we strongly recommend that its SRO relative and partner, the MFDA, be integral into the process and the consultation right now. Collaboration is essential.
Investors do not want to see disharmony and confusion at the outset of New SRO.

The last thing Kenmar (and we suspect Dealers as well) want is yet another complaint handling consultation upon the formation of New SRO. We are confident that the combined thinking of both organizations will result in a better, modernized retail investor complaint handling system, one that is congruent with New SRO focus on investor protection, good governance and the Public interest. Time is of the essence as the CSA has announced that New SRO should be operational by year end.

Good complaint handling should be **led from the top**, **focused on outcomes, fair and proportionate, and sensitive to complainants' needs**. Complaints present a picture of consumer compliance, customer service and the impact of policies and procedures that might not be visible otherwise. As a risk management tool, a solid consumer complaint process can help Dealer's proactively identify risks of consumer harm, compliance management program deficiencies and customer service issues.

Principles-based Definition: IIROC propose to introduce a "serious misconduct" definition that is principles-based and is intended to consistently focus their ComSet Reporting Requirements on serious matters: If a principles- based approach is adopted, it should be backed up by robust IIROC guidance and oversight as well as increased retail investor engagement. The criteria and reporting should be periodically reviewed to ensure that Dealer practices that cause significant investor harm, but may not be considered serious misconduct, are captured e.g. poor employee training, flawed products, weak disclosure, unfit risk profiling process, Approved Person compensation scheme that skews recommendations, and unfair complaint loss calculation methodology.

Complaint resolution reporting: The proposal to clarify that Dealers will in future need to report the resolution of any client complaint alleging serious misconduct is positive. This will assist IIROC in understanding the efficacy of Dealer complaint handling. This is a useful as Dealer complaint handling is a window on a Firm's culture. It should be noted however, that many retail investors do not always allege serious misconduct directly- they usually describe losses or actions that they feel were unexpected given their KYC. They are generally not aware of IIROC misconduct rules.

"serious misconduct" only one source of investor harm

Serious misconduct is not the only source of significant retail investor harm. Lack of advisor proficiency, advisor negligence, an out-of-date KYC and poor KYP can cause investor harm. Weak supervision, inadequate analytical tools, a Dealer's deficient risk profiling process and poor employee training can also contribute to investor harm. Experience shows that the majority of non-compliance issues are management controllable.

We urge IIROC to explicitly enumerate **advice- related** misconduct or serious negligence as serious misconduct. For example:

- Deficient internal controls

- Unfit for purpose risk profiling process
- Use of pre-signed blank / incomplete forms
- Post-signature adulteration of key client documents
- Falsification of KYC information
- Unauthorized trading
- Failure to consider cost in suitability determinations
- Unfair and abusive complaint handling ; low-ball settlements
- Refusal or low-balling of an OBSI recommendation
- Introduction of improper liability limiting clauses in contract documents
- Failure to advice client(s) of OBSI availability
- Failure to disclose fees, liquidity constraints, conflicts-of-interest
- Use of misleading titles or designations
- Exploitation of seniors/ vulnerable clients
- Account churning
- Selling the more expensive series of a mutual fund when a less expensive series is available
- Double billing of fees; overcharging of fees
- Long account transfer times resulting in investor harm
- Flawed tax advice leading to a CRA interest charges and fines
- Creation of an incentive comp and/or reward scheme designed to subvert CFR and other IIROC investor protection rules
- Failure to contact a Trusted Contact Person in a timely manner
- Denial of service linked to poor IT system design and back-up systems
- Material misleading or inaccurate advertising/marketing of services or products

Explicit enumeration of advice-related and negligence failings will draw attention to the fact that the today's wealth management industry includes the provision of personalized financial advice where misconduct, errors or negligence can materially harm investor savings and their well-being.

Related questions:

(1) Does client vulnerability count in determining *serious misconduct*?
(2) Are Dealers obligated to report serious misconduct to law enforcement? Privacy Commissions?
(3) Does an Approved Person have to report suspension or other sanction by a professional organization such as FP Canada or a Government approved Credentialing Body?
(4) Will IIROC sanction guidelines change as a result of these amendments?

1.7 Reporting of compensation to clients: *We propose a new requirement for Dealers to report to us any substantial compensation paid to a client. We expect Dealers will use their professional judgment in determining what substantial compensation means, considering the client's circumstances and their Dealer's business practices.* This gathering of compensation information will materially add to IIROC's understanding of the "system". Compensation should be defined to include all forms of financial redress including direct compensation for losses,

refunds for overcharges, free trades and the like. **Instead of "professional judgement", we recommend that a minimum level for reporting be set, at say, $250.** This would lead to more consistency and reliability of reporting between Dealers.

IIROC may also wish to know the total compensation paid out in a period as well as the median value and the total number of cases involving compensation.

1.14 Client complaint handling standards *"A registered firm must document and, in a manner that a reasonable investor would consider fair and effective, respond to each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm?"*

This is not a professional complaint standard. We suggest wording that the substantive response letter should be written in plain language and contain sufficient detail so the complainant can make an informed assessment of the response. Retail investors typically have little knowledge of applicable laws, Dealer complaint systems, Dealer rules or applicable terminology that would empower them to be "reasonable". It is demonstrably unreasonable to assume otherwise. This section seems to be in contradiction with 1.19 which is more appropriate language.

1.17 Client's interest when handling complaints*: We propose to remove the requirement for Dealers to handle complaints in a balanced manner considering the interests of the client, Dealer, Approved Person and employee. We determined this was inconsistent with the Dealer's and Approved Person's obligation to put the client's interests first when managing conflicts of interest12 , as this provision does not require Dealers to put the client's interests ahead of their interests or their Approved Persons' and employees' interests.*

This is a positive change that should, if staff are properly trained and supervised, reduce the adversarial approach to complaint resolution and improve client outcomes. However, simply removing the *balancing of interests* is insufficient. **There should be a specific delineated requirement to put the client's interests above the interests of the Dealer in the handling of complaints.** IIROC should release Guidance on what putting the client's interests ahead of their interests or their Approved Persons' and employees' interests means as related to the unique aspects of the client complaint handling process.

1.18 Addressing systemic issues: *We propose this change to codify best practices and to ensure Dealers consider all clients impacted by a serious problem they have identified when deciding how to resolve it.* This requirement is an improvement over existing practices by requiring a systemic issue to be pro-actively investigated for its impact on all clients, not just those who have complained. A *serious problem* should be clearly defined. **We recommend** an **alternative** "A systemic issue is one which has been raised in a complaint or several complaints, or is identified by information obtained by or provided to IIROC, which is reasonably likely to affect a class of investors beyond any person who filed

a complaint or raised a concern." IIROC Guidance should be provided as to how to implement this obligation.

By implication, this provision obligates Firms to utilize Root Cause Analysis. The provision appears to require Firms to consider whether to act with regard to the position of clients who may have suffered detriment from, or been potentially disadvantaged by such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those clients are given appropriate redress **For greater clarity, we recommend that the words "consider all clients" be strengthened to state that all clients impacted shall be part of any plan to provide redress, even if those clients have not formally complained.**

1.19 Accessible acknowledgement and substantive response letters: *Consistent with client complaint handling best practices, we propose to require Dealers draft their acknowledgement and substantive response letters in plain language and provide them to the complainant in a format readily accessible and understandable by that complainant. For instance, if a complainant can only read Mandarin, and are serviced by their Dealer in Mandarin, the Dealer would have to respond to them in Mandarin.* This provision is a positive for retail investors with varying degrees of investment knowledge and limited proficiency in Canada's two official languages. For greater clarity, we recommend the word "format" be replaced with *content*. The letter must provide sufficient detail so as to allow the complainant to conclude this her/his complaint(s) have been fairly addressed. It is not just a matter of choice of spoken language that counts.

1.21 Communication of dispute resolution services: *We propose to allow a Dealer's internal dispute resolution service* [IRDS] *a maximum of 90 days to respond to client complaints, consistent with the amount of time Dealers have to respond. Currently, there is no limit on how long a Dealer's internal dispute resolution service can take to respond to a client complaint. We propose to limit this to a maximum of 90 days to ensure complaints are resolved more expeditiously, consistent with our proposed complaint handling standards.*

If a client is diverted to an IDRS (an internal appeals mechanism?), IIROC will allow up to three months (90 days) of time to allow the Dealer's IDRS to re-investigate the complaint. The good news is that the IDRS (even if it is an affiliate company or organization) must meet some defined standard for cycle time and substantive response letter content as well as disclose the fact that the statutory limitation periods continue to run while the *internal dispute resolution service* reviews a *complaint*, which may impact the complainant's ability to commence a civil action. The bad news is that the complainant has been contained in a Dealer controlled complaint system for an extended period of time (up to half a year), a system that we are not even sure has the authority to make a firm offer on behalf of the registered Dealer.

According to the Consultation, the term "internal dispute resolution service", refers to internal dispute resolution services provided by a Dealer or a Dealer's affiliate as

an adjunct to the core complaint process. Is the "Internal dispute resolution service" a separate unit or entity from the IIROC regulated Dealer? Is IDRS a service (an internal appeals mechanism often referred to as complaint escalation) intended to be an alternative to OBSI? If so, why is it needed? Will this service fall under IIROC's regulatory control if it involves an affiliated entity? Will the affiliate be required to employ IIROC complaint handling rules? Will it have a mandate to provide a binding offer? If not regulated by IIROC, to whom is it accountable? What actions could IIROC take if an internal dispute resolution service fails to meet the criteria IIROC has established for such a service or to treat complainants fairly? Is an IDRS required to operate in the Public interest as OBSI does?

An IDRS shall make its complaint records available to the applicable regulator upon request. Confidentiality agreements shall not include any clause that would limit the complainants right to share complaint information with the applicable regulator(s).

We see IDRS as nothing more than an attempt to divert complaints away from OBSI and prolong a complaint within Dealer control. Kenmar do not support such diversion. This will not motivate Dealers to handle the complaint right the first time and make access to OBSI faster –it will add to retail investor confusion and aggravation. This *service* adds more stress to complainants, is not seamless generally requiring the signing of another document with additional restrictions, eats up valuable limitation clock time and in some cases may not even end up in a binding decision and cause "complainant fatigue". This diversion is to the benefit of Dealers as they control the complaint process and reduce the chance of a complaint reaching OBSI. **We recommend that such a *service* be prohibited by IIROC.**

For greater clarity, the rule should state that the *days* are calendar days, not business days.

Definition of "Internal dispute resolution service "(IDRS)

By "internal dispute resolution service", IIROC refers to internal dispute resolution services provided by a Dealer or a Dealer's affiliate beyond its core complaint handling system (we assume this "service" is free to complainants). **This definition will be confusing to retail investors**. Most regulators and standards Bodies refer to "internal resolution service" as the Dealer's core complaint system. Unregulated related-party auxiliary services such as internal "ombudsman" are not labelled as part of the IIROC regulated Dealer's core internal complaint handling process. The World Bank defines IDR (Internal Dispute Resolution) as follows: *"An IDR mechanism is defined as a complaints handling function, unit, or dedicated team within an FSP. The IDR mechanism should be implemented with proper structure, policies, procedures, systems, and governance."*

The IIROC defined *internal dispute resolution service* may have a different chain of command and be influenced by factors, such as reputational risk, that go beyond the fair processing of an individual complaint by a regulated Dealer. Their staff may be remunerated by a system including profit- sharing and/or stock options tied to profitability which could skew their complaint decision making. Their transparency is

poor. In some cases involving Canadian banks, they have no authority to make a binding offer on behalf of the registered Dealer. **We recommend such entities be banned from participating in a Dealer's complaint handling process.**

If IIROC is unable or unwilling to ban this entity, clear operational criteria should be delineated regarding its operation. The" internal dispute resolution service" should be accountable to IIROC and fall under IIROC cognizance. In other words, we expect the" internal dispute resolution service" to be bound by laws, regulations and rules in the securities sector and to fall under CSA or SRO oversight. If not, the "internal dispute resolution service" should not be permitted to be part of a Dealer's or CSA complaint handling process.

"Material harm": On page 5 of the Consultation, reference is made to "material harm". This term is vague. What is material to a person of modest income may not be material to a HNW individual. We recommend that IIROC provide what it believes are examples of "material harm". We assume the term is not limited to financial loss but could include a degradation of credit rating, spousal disharmony, CRA reassessments or fines, mental anguish, physical illness and the like.

3721. Records of an internal investigation: The retention period for these records should be delineated. A period of 7 years is not uncommon.

1.23 Communication of dispute resolution services : *In addition, we propose prohibiting the use of any misleading terms, including the term "ombudsman" or similar qualifiers, in referring to a Dealer's or a Dealer's affiliate's internal dispute resolution service.*

We agree with the prohibition on misleading nomenclature but that is not adequate. It is our firm conviction that the internal dispute resolution step in the Dealer complaint process is inherently prone to misuse and abuse, in particular because it gives investment dealers an incentive to reject complaints at the first step on the basis that only a relatively small number of complainants will persevere and the Dealer then has a second chance to rectify any shortcomings or, more likely, again provide an unsatisfactory offer. The internal "ombudsman" (IDRS or whatever name is chosen for this entity) is neither independent of the Dealer nor is it transparent. It adds a barrier to accessing CSA regulated OBSI while the statute of limitation clock continues to run.

Unlike OBSI, these entities do not disclose their loss calculation methodology or how they are governed. In effect, they subvert the CSA regulatory intent to have Dealer's resolve complaints within 90 calendar days or if the client is unhappy with the decision dissatisfied to have direct , unimpeded access to OBSI if they so desire. Dealers should resolve a complaint fairly and thoroughly initially and give clients' access to OBSI if they are dissatisfied with the final response letter. Removing "second chances" will incent Dealers to assess the complaint fairly the first time around.

3.1 Removing Information Sharing Prohibition: We definitely support elimination of any rule(s) that creates friction in exchanging information with OBSI, the exclusive national financial dispute resolution service for the securities sector. Less constrained OBSI-IIROC information sharing will lead to improved compliance, stronger and more timely enforcement and better policies and regulations.

The Proposed Rule 9500 Amendments if passed will allow IIROC to obtain Dealer-specific and client-specific information, on a case-by case basis. IIROC would know for which client complaints Dealers chose to low-ball clients. (offer less that what OBSI recommended). **The key point here for us is for IIROC to describe what it will do with that information.** If, for instance, low-ball settlements are investigated by IIROC, there is real value of the information sharing.

3.4 Employees: *Employees would also be required to obtain their Dealer's written consent before entering into a settlement agreement.* There is a potential for abuse of authority here .It is conceivable that the Firm might deny consent for fear that the settlement might implicate the Firm or cause reputational damage. The net effect could be obstruction of a fair and reasonable settlement agreement. Dealers shall not unreasonably deny consent.

1201 Definitions *(2) The following terms have the meanings set out when used in the IIROC requirements: . . . "approved ombudsman service" An ombudsman service approved by the Board in accordance with subsection 9503(1):* Despite its name, OBSI is a dispute resolution service, not an ombudsman service. The 2016 Independent Review report made this very clear. The FCAC refer to OBSI as an ECB, not an ombudsman. The Ontario Task force on securities modernization said "*Provide the OSC with the authority to designate a dispute resolution services (DRS) organization that would have the power to issue binding decisions"*. It would therefore be misleading to utilize the *ombudsman* characterization in IIROC rules.

There are some other points worth mentioning. The CSA requires IIROC Dealers to utilize OBSI- approval by the IIROC Board is NOT required. Further, as written, the oblique wording creates the impression that there is pre-planning for the eventual replacement of OBSI at a future date. Investor advocates will never forget the end-run several Firms utilized in an attempt a decade ago to extinguish OBSI. See *OBSI dodges RBC, TD, Manulife bullet for now* https://financialpost.com/news/fp-street/obsi-dodges-rbc-td-manulife-bullet-for-now Removing the term *approved ombudsman service* would alleviate our fears. Just say **Ombudsman for Banking Services and Investments** with a show of respect.

3711. Reporting by a Dealer Member to IIROC: *A Dealer Member must report to IIROC, using the method approved by IIROC, as soon as possible or at the latest within 20 business days from the date on which an internal investigation is completed, a detailed description of the internal investigation conducted under section 3720 and its results.* Twenty days seems like a long time to us in the information age.

3712. Failure to report : *Failure to report within the timelines set out in sections 3710 and 3711, may result in IIROC imposing an administrative fee, or other penalties that are permitted under IIROC requirements, against the Dealer Member or, where applicable, the Approved Person*. We expect that where there is a pattern of deficient reporting that IIROC will need more tools than an administrative fee or penalty e.g. enforcement action to address the non-compliance.

3770. Client complaints (1): *A Dealer Member must maintain a copy of each client complaints file in a central and readily accessible place for a period of two years from the date of receipt of a client complaint*. We do not believe two years is adequate. It can take well over two years for some complex complaints to progress through Canada's convoluted complaint system. If the case proceeds to civil litigation, these files could be relied upon as evidence. In any event, the retention period should be measured from the time the Dealer closed the complaint file not from the date the complaint was received.

9504. *Dealer Members must provide information to ombudsman service*: **We recommend adding that the requested information must be provided to OBSI completely, expeditiously and without undue delay.** One of the major reasons for OBSI's extended cycle time is the failure by Dealers to promptly and completely respond to OBSI information requests.

In its comment letter to the Ontario Task force on securities modernization, OBSI made it clear. It said: *"Inadequate powers to secure redress for investors can also lead to inefficient and unnecessarily protracted facilitated settlement processes. We have observed that for some firms, the perceived lack of serious consequence leads to disengagement or minimal engagement in our investigative and settlement processes."* The lack of a binding decision for OBSI obviously impacts Dealer behaviour and cooperation. This is one reason why we are driving for a more demanding IIROC complaint handling rule.

Whistleblowing program: As a result of these proposed amendments, IIROC may wish to consider amendments to its whistleblowing program and increased promotion of the OSC program which includes financial incentives. This could result in more "serious misconduct" cases being exposed earlier and being easier to prosecute.

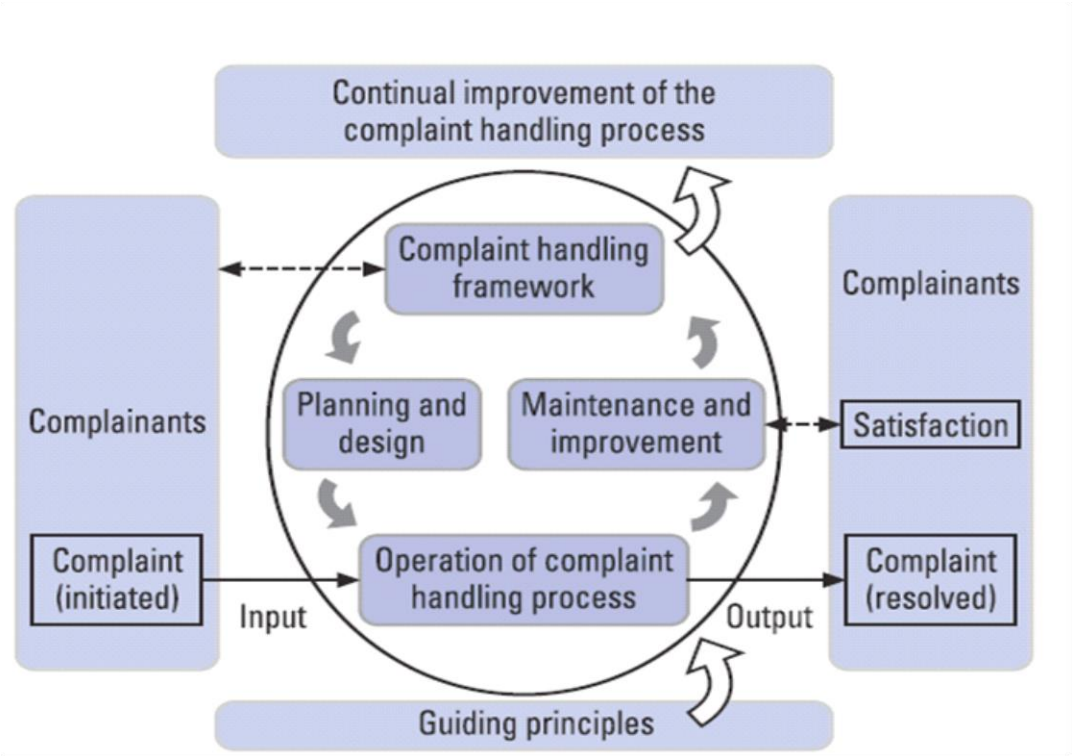
Specific comments on Retail Client Complaint handling Part E

One indicator of an industry's integrity and the consequent trust that it engenders is how it handles complaints. One of the characteristics that distinguishes excellent Firms is how they handle, and even encourage, customer complaints to improve core processes while resolving individual complaints. Effective complaint handling is fundamental to the provision of a quality service. The financial and non-financial consequences of unfair complaint handling on retail investors, especially seniors and the most vulnerable, can be life-altering. Investor trust is of paramount concern in the financial services industry, where broad public participation is

necessary for the proper functioning of the market. Kenmar are of the conviction that complaint handling is more than a regulatory issue- it is a socio-economic issue.

The prevailing complaint process is complex, intimidating, frustrating, burdensome and stressful. In too many cases, it is adversarial with lawyers dominating the process. To understand the challenges clients face take a read of The Complaints Process for Retail Investments in Canada: A Handbook for Investors https://learninghub.prospercanada.org/knowledge/the-complaints-process-for-retail-investments-in-canada-a-handbook-for-investors/ This has to change and this consultation provides an opportunity for major reform.

An effective complaint system



Since COVID-19, financial consumers in Canada are ever more fragile, and losses are felt ever more deeply. Confidence in structures like financial institutions and government are fading and worn. OBSI has more cases than it ever has - including during the 2008-2009 crisis. Deficient complaint handling is unduly harming retirement savings and children education funds. Now is the time for IIROC to do the socially-responsible thing and provide a world class retail client complaint handling rule.

We are surprised that this consultation is put forward without the provision of background material on the current state of Dealer complaint handling. If the information is available it should be provided to commenters. The absence of this

transparency makes it difficult to assess the robustness of the proposals in resolving identified complaint handling issues. See Thematic review: Complaint handling: https://www.fca.org.uk/publication/thematic-reviews/tr14-18.pdf or the FCAC Report on bank complaint handling as examples. We were not surprised to observe that the FCAC findings match our experiences applicable to bank-owned Dealers. An organization's culture finds its way through the processes it utilizes to interact with consumers.

Guiding Principles: The consultation paper does not reveal the guiding principles IIROC used in formulating the rule. **We recommend that the proposed complaint handling rule include a declaration of core principles that were used in its development. International best practices should be utilized.** See ISO 10002 *Guidelines for complaints handling in Organizations* for an example of such an articulation and Complaints Resolution: Policy Framework and Best Practices | Financial Services Regulatory Authority of Ontario.https://www.fsrao.ca/complaints-resolution-policy-framework-and-best-practices.

Fairness must be a guiding principle. Fairness encompasses a lot more than procedural fairness. Fairness encompasses all the policies, procedures, practices and direct contact processes that level the playing field between the individual complainant and a Bank. For example, access fairness should recognize different cultures, people with disabilities, the elderly/ vulnerable clients and the socially-disadvantaged. A complaint process that is not consumer-friendly across the spectrum risks shutting out vulnerable/low income clients and minority groups. See *Ethical fairness in financial services complaint handling* https://dl101.zlibcdn.com/dtoken/79022a604a65da967d02281dd5843ad2 and Fairness and The Assumptions of Economics https://www.researchgate.net/publication/24102966_Fairness_and_The_Assumptions_of_Economics

In its publication, **Seniors Strategy**, the OSC proposed a strategy that is inclusive, social and responsive (three guiding principles**). We strongly recommend including inclusivity as a guiding principle to ensure that the interests of all investors are equally represented.**

Providing guiding principles and a framework will assist Dealers in their development of effective client complaint handling policies, procedures and practices and help IIROC compliance in assessing the quality of Dealer complaint handling rules.

3702. Definitions: *"complaint"* *Any oral or written expression of dissatisfaction with a current or former Dealer Member*, *Approved Person* or *employee.* We do not disagree with this broad definition .In actual fact, it is client dissatisfaction with the actions, service(s) or products provided by the Dealer and/or Approved person, not dissatisfaction with the Dealer or Approved Person per se. Generally, this means that a client alleges that they have suffered (or may suffer) financial loss, distress or inconvenience as a result of a Dealer's actions or inactions. That would include

Off-book transactions as well unless the client was aware the transactions were off-book. The broad definition would also include complaints about Dealer service, transfer times, fee structures, reporting, behaviour, disclosure shortcomings, marketing, advertising, poor complaint handling and the like. We agree that all complaints, even "minor" ones should be responded to. Kenmar appreciate that certain enumerated complaints that have additional complaints handling requirements like the performance a reasonable supervisor's investigation would receive more focussed attention.

NOTE: International standard ISO 10002–2006 defines a **complaint**: *An expression of dissatisfaction made to an organization, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.*

Congruence with OBSI's definition of *complaint* is desirable.

3750. Retail client complaints (1) A *Dealer Member must document and, in a manner that a* ***reasonable retail client*** *would consider effective, fair and expeditious, respond to each retail client complaint made to the Dealer Member about any product or service offered by the Dealer Member or the Dealer Member's Approved Person or employee.* **This description of the required Dealer complaint system is totally unacceptable and inconsistent with modern thinking about socially responsible retail investor complaint handling.** There is no academic or empirical research or precedent supporting such an abusive complaint resolution approach. Retail investors typically have little knowledge of applicable securities laws, Dealer complaint systems, CSA/IIROC complaint handling rules or industry jargon that would empower them to be "reasonable". In many cases, complainants suffer from vulnerabilities that impair their ability to judge the fairness of a Dealer response letter. The information asymmetry is huge relative to the Dealer. Retail investors should not have to be familiar with securities laws so they can be "reasonable" complainants.

Even if retail complainants had this detailed knowledge, the onus should be on the Dealer to establish and implement a fair client complaint resolution system.

IIROC should delete this text in its entirety and replace it with socially responsible text. A benchmark here might be ASIC's Guide *RG 271 Internal dispute resolution* https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-271-internal-dispute-resolution/

Dealers must implement a complaint resolution system that consists of internal dispute resolution procedures that meets (a) the standards of applicable securities laws/regulations/rules, (b) this proposed Rule and (c) the criteria for continued membership in IIROC. It's as simple as that.

(2) *A Dealer Member must establish and maintain policies and procedures to deal effectively, fairly and expeditiously with retail client complaints.* **The policies and procedures must be congruent with the Dealer's Ethics Policy. As noted herein,**

there should be a specific delineated requirement to put the client's interests above the interests of the Dealer in the handling of complaints.

We have also noted that certain qualifications regarding how complaints are to be handled by Dealers have been incorporated into the proposed IIROC rule in a curious way that reflects indirect regulation. That is, certain provisions similar to those in the U.K. Financial Conduct Authority (FCA) complaint handling rules have been incorporated into a requirement that Member firms should develop policies and procedures having certain features. Hence , while the FCA complaint handling rule directly mandates certain conduct e.g. that firms must investigate complaints "competently ,diligently and impartially ",the IIROC rule specifies only that Member firms must have in place policies and procedures to deal effectively, fairly and expeditiously with client complaints . **For greater certainty and clarity, Kenmar recommend that the requirements require definitive action, not just the presence of policies and procedures.**

3752. Handling client complaints (1) *Complaints must be handled by supervisory or compliance staff and a copy of the complaint must be filed with the compliance department or function (or the equivalent) of the Dealer Member.* We question whether supervisory staff are sufficiently unbiased to review complaints against the staff they are paid to supervise especially if their compensation is dependent on the sales "production" of the staff .This relationship creates a material conflict-of-interests. Also, they must have the time available to thoroughly review each complaint within the 90 day timeline. In addition, they would need to be formally trained in complaint handling and be qualified by nature in strong inter-personal relationship skills. **We recommend that IIROC review international best practices for complaint handlers.**

(3) The *Dealer Member must appoint an individual to act as the designated complaints officer* [DCO]*. The individual must have the requisite experience and authority to oversee the complaint-handling process and to act as a liaison with IIROC*. **We recommend adding that the DCO must be an employee of the Dealer, not be compensated in a manner that could skew her/ his complaint decision making, be independent and have the mandate to make settlement offers that are binding on behalf of the registered Dealer.** We feel it is vital that IIROC be more prescriptive regarding the nature, scope and accountability of this critical person's authority.

3753. Complaint policies and procedures 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:*

- *review its internal procedures and practices,*
- *ascertain the scope and severity of client detriment that might have arisen,*

- *consider whether it is fair and reasonable for the Dealer Member to undertake proactively a redress or remediation exercise, and*
- *ensure recommendations to remedy the problem are submitted to the appropriate management level.*

This latter provision does not bring closure to a systemic issue. It leaves the recommendation sitting in someone's in-basket. An open loop. **There must be an explicit requirement placed on management to act on the recommendations if the recommendations are found to be fair and reasonable.**

A Dealer must put in place appropriate management controls and take appropriate actions to ensure that in handling complaints it identifies and remedies any recurring or systemic problems, for example, by:
(1) analyzing the causes of individual complaint so as to identify root causes common to types of complaint;
(2) assessing whether such root causes may also affect other processes or products, including those not directly complained of; and
(3) correcting, as required, such root causes.

The types of systemic issues we commonly see include, but are not limited to:

- Numerous complaints about the same issue
- Unsuitable DSC sales (will finally be resolved with June ban on DSC)
- A flawed, unclear or missing regulation, policy or rule
- Outdated or inaccurate KYC information
- A deficient KYC process/ form , tick the box approach
- Adulteration of documents after client signature, signature forgery
- Disclosure document that is not clear or is misleading
- Inaccurate formula for calculating fees
- Poorly trained or supervised staff
- Flawed risk tolerance questionnaires
- Misleading sales materials / social media content
- A procedure or form that does not comply with applicable rules/legal requirements
- Poorly worded, biased final complaint response letters
- Unfair complaint settlement offers
- Misdirecting retail clients to internal " ombudsman"

In the past we reported these issues but they were not always met with robust and prompt regulatory action. A prime example was the collection by discount brokers of mutual fund trailing commissions for personalized advice that the Dealer was unable to, and did not, provide. Investor harm amounted to billions of dollars over the past decade. It took well over a decade for regulators to ban this harmful practice. This has to change under any new complaint management system.

It is essential for the Dealer to have sufficiently granular management information on the complaint caseload and to be able to conduct root cause analysis to identify whether there are systemic issues that need to be addressed. From such regular

reviews, it becomes possible to consider whether there are mitigations that a Dealer should put in place.

3754. Disclosure of complaint handling procedures *(2) A* Dealer Member *must make available on its website a written summary of the* Dealer Member's complaint-*handling procedures*. Add that the Dealer Complaint handling process information should be easily accessible on the Dealer's website. We also recommend that a condition for IIROC membership should be that the Dealer Member have a functioning website, a reasonable obligation in the year 2022.

3755. Complaint acknowledgement letter (1) The *Dealer Member* must send an acknowledgement letter to the complainant within five *business days* of receipt of a *complaint*. **We recommend this wording:** A Dealer Member must send a written acknowledgement of a complaint to the complainant within five business days of its receipt, giving the name/ job title and contact information of the individual handling the complaint (together with details of the Dealer' Member's complaint handling procedures).

As most retail investors have difficulty framing a complaint in the proper way, we expect complaint handlers to consider the true nature of the complaint beyond the complainant's wording.

Each acknowledgement letter should assign a unique tracking number for reference by the complainant when interacting with the Dealer.

3756. Response to client complaints: (3) *The substantive response letter must be written in plain language and be in a format readily accessible and understandable by the complainant.* **We recommend the following alternative wording: *The substantive response letter must be written in plain language and in sufficient detail to permit the complainant sufficient information to make an informed assessment of the letter.***

In our experience, most "substantive response letters" do not provide the complainant sufficient information to make an informed decision on the Dealer's response. Explanations should be adequate and reasonable, seek to expose the background, context and reasons, cover why procedures were used in the way they were and include a rationale for the decision.

As a minimum, the response letter should provide a clear statement of facts, the rationale, the rules/principles and standards applied to the decision, the documents, files and records used in the analysis, and the basis behind the method of calculation if restitution is offered. Any and all time-line constraints should be defined and the entire communication should be in plain language, free of acronyms, industry jargon and legalese. **There should be requirement to put (a) the client's interests above the interests of the Dealer in the handling of complaints as required and (b) that Dealer's resolve material conflicts-of-interest inherent in the complaints process in the client's best interest.**

Dealers should consider, for each complaint, whether the investors' ' outcome and experience demonstrates that the Dealer has really put the interests of consumers first. Inadequate application of good judgement – and the principle of treating customers fairly – can lead to poor outcomes.

Additionally, the Dealer should give the complainant a reasonable time to respond, say 30 days. IIROC should issue Guidance to elaborate on its empirical client research findings re quality of complaint letters.

See our complaint handling Checklist for factors we consider important for Dealer complaint responses. *Was your complaint handled fairly?* http://www.canadianfundwatch.com/2015/02/checklist-was-your-complaint-handled.html

(5) A Dealer Member *must send a substantive response letter to each complainant as soon as possible and not later than 90 days from the date they received the* complaint *subject to the following.* Three months appears to us to be very generous for the vast majority of complaints if Dealers are properly staffed and have modern functioning systems in place. **We recommend that IIROC benchmark the 90 calendar day Dealer requirement against international standards and reduce the standard accordingly.** We note that the FCAC has recently reduced bank complaint cycle time to 56 calendar days from 90 and that the AMF's complaint handling proposal reduces the cycle time for a Dealer response to 60 calendar days from 90.

(5)(c) *the Dealer Member must inform IIROC if the Dealer Member is unable to meet the 90-day time line and must provide reasons for the delay.* The client should also be informed that she/he can proceed to OBSI at this point and not have to wait further for a response from the Dealer. We recommend clarifying that *days* are calendar days.

3759. Communication of internal dispute resolution service options (3) (a) *a client has 180 days after receiving the* Dealer Member*'s substantive response letter to submit their* complaint *to the* approved ombudsman service It is important for retail clients to be informed that if they voluntarily choose to use a Dealer's "internal dispute resolution service " she/he will have less than 180 calendar days to complain to OBSI as the 180 day time limit begins to apply immediately after receipt of the Dealer's substantive response letter.

We repeat again that (1) we find the IDRS nomenclature very confusing; (2) the IDRS service is redundant and acts as a diversion from OBSI and (3) the IDRS service and its regulation needs to be much better defined and held accountable. If it is not regulated by IIROC and its decisions are not binding on Dealers, the service should NOT be offered to retail clients.

(4) *A Dealer Member's disclosure of the approved ombudsman service must: (i) be* ***equally prominent*** *as the Dealer Member's disclosure of the internal dispute*

resolution service We disagree with even mentioning the Dealers IDRS in the final response letter and materially disagree that this entity be given equal prominence with the CSA's independent, approved and monitored OBSI. **We regard this clause as undermining the stature of OBSI while unduly elevating the IDRS stature - Kenmar therefore recommend that subject text be deleted and be replaced with CSA text. Viz**

This **Joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin 0736-M - Complying with requirements regarding the Ombudsman for Banking Services and Investments**
https://www.osc.ca/en/securities-law/instruments-rules-policies/3/31-351/joint-csa-staff-notice-31-351-iiroc-notice-17-0229-mfda-bulletin-0736-m-complying-requirements " is very clear:
"A registered firm **should not make** an alternative independent dispute resolution or mediation service available to a client **at the same time as it makes OBSI available**. Such a parallel offering would not be consistent with the requirement to take reasonable steps to ensure that OBSI will be the independent service that is made available to the client. Except in Québec, we expect that alternative service providers will only be used for purposes of section 13.16 in exceptional circumstances. **"Kenmar recommend that IIROC follow CSA direction in NOT mentioning IDRS in a final response letter.**

An approved IDRS must have an obligation to cooperate with applicable regulator(s) in complaint investigations.

Communication to Officers of the Dealer: **We recommend that the complaint handling process policies and procedures provide, at least annually, reports covering the following elements to be made to the Dealer's officers:**
(1) the quantity of client complaints received and processed and the root causes of the complaints;
(2) the outcomes of the complaints;
(3) the amount of compensation paid to complainants
(4) any issues related to the implementation of the complaint handling process

We regard senior executive and management engagement critical to the success of a complaints handling system.

Access: Access to the Dealer's complaint system and IDRS should include toll-free telephone, Fax, email and regular mail.

Use of electronic communication: The proposed retail client complaint handling Rule should be amended to specifically permit electronic transmission of the response and other key information concerning the complaint upon complainant request/permission.

Single Point of contact: Investors' complaint experiences are generally improved when they have one point of contact throughout their complaint. Multiple hand-offs

within a Dealer can be a source of investor frustration and duplication of effort for the Dealer. We recommend that Guidance make it clear that a single point of contact is preferred throughout the complainant's engagement with the Dealer's complaint handling process.

Complaint handler training
Dealers should take steps to ensure that all complaint handlers are formally trained and qualified .Complaint handlers need technical skills such as product /service knowledge, understanding of applicable regulations, analytical capability, loss calculation methodology expertise, root cause analysis and the like. They also require soft skills such as the ability to listen, compassion, communication, empathy etc. See *Top 10 skills for handling customer complaints effectively.* https://www.i-sight.com/resources/top-10-skills-for-handling-customer-complaints-effectively/

Cooperation with OBSI: We recommend the proposed complaint handling Rule be amended by adding a specific clause requiring Dealers to cooperate with OBSI complaint investigations in an open, expeditious and constructive manner.

Responding to rejections of OBSI recommendations: When a Dealer rejects or refuses an OBSI recommendation, this leaves the complainant frustrated and angry with the regulatory system. In effect, the complaint goes into a regulatory swamp. This is not sound investor protection. **We recommend that IIROC include a requirement that in the event a Dealer rejects an OBSI recommendation, the Dealer should be required to automatically provide a documented explanation to IIROC of the reasons it decided to reject the OBSI recommendation. An alternative would be for IIROC to review the case and take appropriate regulatory action including working with the Dealer to compensate the client if it finds the Dealer's complaint investigation to be flawed and OBSI's to be fair.**

Assistance to complainants: We recommend that the amendments include a provision requiring Dealers to assist complainants in framing their complaint and in understanding the complaint handling system. The assistance should include helping people with language difficulties, interpretation of applicable rules and terminology, explaining consumer rights, define expected timelines, explain statute of limitation constraints, framing of the complaint and revealing resolution alternatives but should not venture an opinion on the merits. Upfront assistance can help keep consumers steer clear of system bear traps and allow them to make more informed decisions.

Confidentiality Restrictions: Dealers should not be permitted to impose confidentiality restrictions on clients or a requirement to withdraw a complaint with respect to IIROC or a securities commission, regulatory authority, law-enforcement agency, Privacy commission or other applicable agency as part of a settlement of a complaint.

Harmonize investment loss calculation model: OBSI use an opportunity-loss calculation methodology while most of industry use the book-loss method. Harmonization will cut down on the number of disputes sent to OBSI, be more fair and improve the Dealer –OBSI relationship. **We recommend that IIROC prescribe the opportunity- loss methodology as the standard for its Dealer Members.**

Disclosure of loss calculation methodology: IROC dealers should be required to publicly post their loss calculation methodology on their website. This transparency is consistent with the fundamental provisions of dealing fairly, honestly and in good faith with clients and is fully congruent with CFR.

Handling of Off-book complaints: We recommend that IIROC clarify that complaints involving off book transactions should be handled by the Dealer as the default position. Unless the Dealer can show that a retail client should have reasonably understood that the transaction was Off-book, or was informed it was off –book, the complaint should be treated as a valid complaint. This position is entirely consistent with basic principles of fair dealing and CFR.

Communication with law enforcement: We recommend that the Dealer be required to report all cases of suspected criminal or quasi-criminal acts to law enforcement. This would include fraud, forgery and theft.

Root cause Analysis (RCA): **We recommend that the Dealer complaint process formally require the use of Root Cause Analysis and associated staff training.** See Guidance for Performing Root Cause Analysis (RCA) with Performance Improvement Projects (PIPs) https://www.cms.gov/medicare/provider-enrollment-and-certification/qapi/downloads/guidanceforrca.pdf See also FCA DISP App 3.4 Root cause analysis https://www.handbook.fca.org.uk/handbook/DISP/App/3/4.html **Mandating Root Cause Analysis would lead to earlier identification of systemic issues**.

Non-financial redress: The criteria for non-financial loss awards should be made clear. **Kenmar believe IIROC should include non-financial redress as an action resulting from a retail client complaint**. Recommendations for non-financial loss awards do not always mean a financial compensation. Clients experience stress, pain, suffering, indirect losses or fines or inconvenience caused by the Dealer's complex or unfair complaint handling process and practices. When applicable, Dealers should be obligated to award clients in non-monetary ways, such as a letter of apology, restoring an account, correcting a credit rating bureau record, or other steps to address the Dealer's errors or negligence. Non-financial loss awards are especially important for seniors and vulnerable clients.

Enforcement In order for this proposed rule to have an impact, IIROC must commit resources sufficient to monitor compliance and enforce the rule. IIROC do not have a track record of enforcing rule 2500B - we are of the view that it is this

lack of enforcement that has allowed Dealers and their internal "ombudsman" to abuse complainants. We note that the FCAC found major deficiencies in bank client complaint handling. It came as no surprise to us since we find very similar issues among bank -owned IIROC Dealers. FCAC is currently strengthening their complaint handling rules for banks it regulates as a result of its findings.

Public disclosure of Dealer handling statistics: We recommend that IIROC consider requiring Dealers to prepare an Annual report on key complaint statistics. We believe public disclosure (via website posting) of the statistics will incent Dealers to continuously improve their complaint handling process. We consider such disclosure as socially responsible reporting. The reporting will also add to Dealer accountability for their complaint handling process.

Utilization of OBSI decisions: In Guidance, Dealers should be encouraged to use OBSI decisions and best practices in developing their compliant policies, procedures and practices and in employee training.

IIROC arbitration: One of the options offered to complainants is IIROC arbitration if the client is not satisfied with the *Dealer Member's* response. This program is rarely used and does not meet the prevailing needs of retail investor complainants. If it is offered as an alternative dispute resolution entity, it should be improved to the point where complainants would find it a viable alternative to OBSI. **Kenmar recommend that IIROC improve the arbitration system as part of its initiative to improve complainant experience and outcomes.**

Benefit of Effective Complaint handling: It is no longer sufficient for IIROC to act as a shield to assuage individual mistreatments. One must also, and more importantly, work to attenuate the malefits of what can only be called the systemic governance failures caused by multiple forces through dealing explicitly with their systemic sources. This does not reduce the importance of protecting Main Street investors, and of ensuring that individual harms are taken care of, but it underlines that the intent of modern regulation goes beyond these duties. What is required is the capacity to detect governance flaws at the origin of these failures, and to help launch the process that will ensure that the governance apparatus is appropriately repaired.

The trigger may still be personal harm and complaints, but the answer can no longer be only personal redress; it must also entail eliciting what might be a plausible and reasonable appreciation of the nature of the dysfunction, and some promising organizational redesign and architectural repairs to the "system". Complaints are a gem to be mined for business improvements. **Eliminating root causes of investor harm and preventing harm should be an explicitly defined goal of the IIROC Dealer complaint handling rule.** This will lead to improved client satisfaction and lower Dealer operating costs.

Retail investor complainant interface: Investor complaints can be a rich source of valuable information on how the regulatory system is working for Main Street

and a check on the veracity of Dealer reporting. IIROC's report *Qualitative research among complainants* https://www.iiroc.ca/media/14356/download?inline found that some complainants expressed doubts about the value of filing a complaint with IIROC. The experience was described as deflating, painful and 'a waste of time'. The undesirable outcome led a number of complainants to question IIROC's objectivity and the extent to which a self-regulated organization can be unbiased. We urge IIROC to work with investor groups, the MFDA and the CSA to develop a re-imagined SRO approach to retail investor complainant engagement. This would demonstrate that New SRO has been designed with a focus on retail investors and in the Public interest.

Impact of CFR on complaint handling: Because of CFR, the existing *balancing of interests criterion* will be eliminated by IIROC. We certainly agree with that. Under CFR, in a complaint handling context, conflicts -of-interest need identification and solutions developed and tested to resolve the conflicts in the best interests of clients. Dealers must put measures in place where the power dynamics do not frustrate the delivery of ethical fairness in complaint handling. The key underpinnings of ethical complaint handling include the capacity of the complaint handler to abandon normative solutions, respond to ethical challenges considering likely comparisons, adopt an interpretivistic and reflexive stance, and to act ethically, free from the constraints of organizational policy, process and power.

CFR is intended to enhance Dealer conduct standards and improve investor outcomes. Costs are a factor in CFR suitability determination. The risk profile now includes risk capacity. CFR has higher disclosure, conflicts-of-interests, KYC and KYP standards which will impact a Dealer's approach to complaint resolution. Under CFR, reversing the burden of proof in favour of the complainant is the new norm. Client complaints must be handled according to basic fairness principles and be resolved in the best interests of complainants despite the opposing interests. **The proposed rule should therefore explicitly require Dealers to put the client's interests ahead of their interests or their Approved Persons' and employees' interests when recommending a resolution**.

Under subsection 11.1(2) of the CFR Rules Dealers are required to train their registered individuals on compliance with securities legislation, including, among other things, the conflict-of-interest requirements for Dealers and registered individuals. Kenmar recommend that this training also include Dealer complaint handlers.

We expect IIROC will be providing appropriate Guidance on this topic.

Impact of OBSI Independent review: The report of the Independent review of OBSI, expected in March, should be reviewed for any potential impact on the complaint handling proposals contained in this Consultation.

Harmonization with AMF: **We urge IIROC to coordinate these proposals with the AMF since their proposed complaint handling rule will apply to IIROC Member clients domiciled in Quebec**. Harmonization of the rules is fair

to complainants and in the Public interest. Reference https://lautorite.qc.ca/fileadmin/lautorite/consultations/Fin-2021-11/2021sept09-regl-traitement-plaintes-differends-cons-en.pdf

Conclusion

A financial services industry that serves society must provide effective tools for investors to enforce their rights when faced with misconduct, lack of proficiency, negligence, deficient tools and systems or misguided beliefs- especially as individuals increasingly rely on market solutions and advice for their retirement incomes. Timely and effective recourse processes can have important positive impacts on consumer well-being, Dealer–client trust, product uptake and loyalty, and overall development of a more responsible and ethical financial system.

The proposed amendments are well intentioned which suggests IIROC is listening to investor voices. Still, these amendments need some considerable work before they are written into the Rule book. Some can be resolved via increased clarity. Others, like auxiliary dispute resolution services, need policy changes. Kenmar is prepared to work with IIROC and others to make adjustments that will improve investor protection.

The IDRS seems to be some sort of internal Dealer appeals process. If that is in fact what it is, it should employ that nomenclature. e.g. Complaints Appeals Office so there is clarity as to its role. Such an Office must be able to make a binding settlement offer and be accountable to IIROC.

While we've commented on these individual proposed amendments, what we strongly recommend is a consideration of our 2019 Commentary on Rule 2500B (previously supplied to senior IIROC management).

Shortening the 90 calendar day cycle time for a final Dealer response letter should be a priority. The proposed cycle time is well behind international standards. The U.K. FCA establishes that the Dealer must send the complainant a final by the end of the eighth week (56 calendar days) after its receipt of the complaint. Australia's ASIC requires that Dealer procedures include clear response times for dealing with a complaint; in general, a final response letter must be provided within 45 calendar days after receipt of complaint.

Given its critical socio-economic significance, Kenmar recommend that IIROC break out the retail investor complaint handling rule as a separate, self-contained and integrated rule as was the case with Rule 2500B. The added visibility will enhance its stature within IIROC's rule hierarchy and simplify compliance.

Kenmar want to highlight the point that we expect this new rule which would, in effect, be a New SRO rule, be one in which both parties have participated and collaborated as well as the public.

We also urge the IIROC Board in collaboration with the MFDA Board to establish the Expert Investor Issues Panel (EIIP) it announced in March 2020 so that proposed policies impacting retail investors are vetted before they are wired into public consultations. Such a Panel is required under New SRO rules, This approach will benefit all stakeholders through increased time efficiency and improved effectiveness.

Kenmar agree to public posting of this letter.

We sincerely hope this feedback proves useful to Policy and decision makers.

Do not hesitate to contact us if there any questions or clarifications needed.

Ken Kivenko, President
Kenmar Associates

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