OBSI OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS
OSBI OMBUDSMAN DES SERVICES BANCAIRES ET D'INVESTISSEMENT

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Delivered by email to: memberpolicymailbox@iiroc.ca and marketregulation@osc.gov.on.ca

Member Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, ON M5H 3T9

Re: Comments on Proposed Amendments respecting Reporting, Internal Investigations and Client Complaint Requirements

The Ombudsman for Banking Services and Investments (OBSI) is pleased to provide our comments to the Investment Industry Regulatory Organization of Canada on its proposed amendments respecting reporting, internal investigations and client complaint requirements.

OBSI is a national, independent, and not-for-profit organization that helps resolve and reduce disputes between consumers and over 1500 banks, credit unions and financial services firms from across Canada in both official languages. We have been providing this service for over 25 years. As such, we are uniquely positioned to share our views and insights for this important consultation.

As long-time advocates for a fair, effective and trusted financial services sector, we support the central premise of this consultation to improve the investment dealer complaint handling system in Canada through greater clarity, consistency and codification of best practices. Such clarity will be beneficial to firms and is an important investor protection measure that will enhance fairness, effectiveness, and confidence in Canadian securities markets.

Effective complaint handling an essential component of financial consumer protection

We also commend IIROC for recognizing and enhancing the utility of complaints data in its regulatory work and strengthening this important information channel for assessment of risk, identification of harmful conduct and improving the efficiency of IIROC's compliance, enforcement and member regulation mandates.

Effective complaint handling is recognized as an essential component of financial consumer protection and regulatory interest worldwide. The Organization for Economic Cooperation and Development (OECD) has focused significant attention and analysis on the importance of effective complaints handling to financial systems in recent years through the work of its Committee on Financial Markets and its Task Force on Financial Consumer Protection. This global effort has resulted in the development of the OECD

High Level Principles on Financial Consumer Protection in 2011[1] as well as a substantial body of technical and analytical reports in the years that have followed. The OECD/G20 High Level Principles, which have been endorsed by all G20 finance ministers and central bank governors, recognize ten key principles, one of which is complaints handling and redress. The key elements of this principle include that financial services consumers should have access to complaint handling and redress mechanisms that are "accessible, affordable, independent, fair, accountable, timely and efficient."

The World Bank has released a technical note intended to provide methodological guidance for regulators and financial services providers when developing and implementing internal dispute resolution frameworks to ensure they are consistent with international good practices.[2] This technical note calls to readers' attention the systemic importance of effective internal dispute resolution, observing that:

> *Core to an effective financial consumer protection framework is an accessible and efficient recourse mechanism that allows consumers both to know and to assert their rights to have their complaints addressed and resolved in a transparent and just way within a reasonable timeframe. Complaints handling mechanisms are especially important for low-income and vulnerable financial consumers, to whom timely and effective recourse processes can have a decisive influence over their trust in their financial service provider (FSP) and in the financial sector in general. Increased trust contributes to consumers' uptake and sustained usage of financial services and, consequently, their economic livelihoods.*

The Board of the International Organization of Securities Commissions (IOSCO) recently published a report on complaint handling and redress for retail investors[3] in which they observed that "When an investor or financial consumer is harmed by misconduct or illegal practices, the existence of effective mechanisms for addressing the issue is important not only for the aggrieved individual, but also for producing positive externalities such as improving market discipline and promoting investor confidence in financial markets."

Overview of comments

Our comments below respond to IIROC's recent publication 22-0009, *Proposed Amendments respecting Reporting, Internal Investigation and Client Complaint Requirements* (the "Consultation Document"). The key areas we focus on in this response are:

- There are a number of notable enhancements of Rule 3700 in the proposal which we support and, in some cases, recommend expanding.

[1] https://www.oecd.org/daf/fin/financial-markets/48892010.pdf
[2] Complaints Handling within Financial Services Providers – Principles, Practices, and Regulatory Approaches (June 2019)
[3] Complaint Handling and Redress System for Retail Investors – Final Report (January 2021)

- The application of complaint handling rules in Part E should not be limited to complaints about "serious misconduct".
- IIROC should require tracking and aggregate reporting for all non-ComSet complaints.
- IIROC should adopt a clearer definition of "complaint".
- The time limits for dealers' dispute resolution should be inclusive of all internal dispute resolution services.

Notable improvements in the proposed rule amendments

IIROC HAS PUT FORWARD A NUMBER OF IMPORTANT IMPROVEMENTS IN THE PROPOSED RULE AMENDMENTS

OBSI strongly supports a number of important amendments that IIROC has proposed to effectively enhance Rule 3700. We note these areas of support below, in some cases with suggestions for further enhancement.

- We support the reporting and the requirement to report the payment of client compensation at section 3711(1)(ii). However, we note that "substantial compensation" is a subjective standard that may lead to inconsistent reporting among dealers and not capture some forms of client compensation that may be of regulatory interest. We recommend that rather than using the trigger of "substantial compensation", this reporting requirement should include any redress of:
    - $500 or more in financial compensation;
    - any non-financial redress (such as correcting of records or reversal of transactions) with an economic value of $500 or more; or
    - any resolution affecting five or more accounts that are similarly affected (e.g. fee refunds).
- We also support the new requirement at section 3711(3) for the reporting of resolutions of serious misconduct investigations.
- We support the elimination of the requirement to address complaints in a "balanced" manner in section 3753(1), as well as the new general standard for complaint handling at section 3750(1) that requires all dealers to respond to retail client complaints in a manner a reasonable investor would consider fair and effective. However, we recommend that this requirement be supplemented with further guidance about how dealers are expected to place client interests first in complaint handling, for example by stipulating that:
    - the individual handling the complaint should not be the subject of the compliant (as required by proposed section 3752(4))
    - dealers should assist clients in articulating their complaints where possible
    - dealers should assist clients in understanding the rules applicable to the subject matter of their complaint

- if the dealer identifies other issues in the investigation of the client complaint, such issues should be investigated and remediated for the client
- if the dealer identifies an error or wrongdoing, they should take action or offer compensation that places the consumer in the position they would have been had error not taken place
- all complaint-related communications should be in plain language (building on the standards of proposed sections 3755 and 3756)

- We agree with prescribed content of the complaint acknowledgement letter and substantive response letter as required in 3755 and 3756, and we are particularly supportive of the new complaint handling standards at section 3755(2) and 3756(3) that require these letters to be written in plain language and in a format readily accessible and understandable by the complainant. Such clear communications are essential to client accessibility and can serve to enhance consumer trust and reduce misunderstandings and tensions.

- We support the express direction to dealers to consider redress and remediation when frequent or repetitive complaints arise that may indicate a serious problem at section 3753(2). We believe this is currently a recognized best practice for all dealers but clarification of this expectation will help to ensure that this is a universal practice.

- We support the elimination of the term "ombudsman" in reference to employees of affiliated internal dispute resolution services and note that this change is consistent with Bank Act changes coming into force in June 2022.

- We support the elimination of information sharing restrictions with OBSI at section 9504. This change will enhance the ability of OBSI to comply with the systemic reporting requirements as set out in our memorandum of understanding with securities regulators and is reflective of international best practices for financial ombudservices.

Complaint handling rules should apply to all retail investor complaints

THE RETAIL COMPLAINT HANDLING RULES IN PART E SHOULD NOT BE LIMITED TO COMPLAINTS ABOUT "SERIOUS CLIENT-RELATED MISCONDUCT"

Proposed Section 3751 stipulates that the retail complaint handling rules set out at sections 3751 to 3759 apply only to complaints submitted by or on behalf of a retail client alleging "serious client-related misconduct". However, the provisions that follow are general in nature and should apply to all retail client complaints as broadly defined in section 3702. The distinction in sections 3750 and the following sections between "retail client complaints" generally and those alleging "serious client-related misconduct" should be eliminated.

Retail investor complaints falling outside of the "serious misconduct" definition can be important

We note that some areas of consumer complaint that do not meet the definition of "serious misconduct", including complaints about technical and non-technical service problems, delays and responsiveness to client complaints, among other issues, have important systemic value and can offer meaningful product and service improvement insights.

Additionally, a complaint that is not related to "serious misconduct" from a regulatory perspective may nevertheless be considered quite serious by the person making it and be of equal importance from the perspective of fairness and ensuring continued support of investor confidence.

The subject matter of sections 3751-3759 is equally applicable and valuable for all retail investor complaints

Section 3752 deals with the identity of the individuals who handle complaints within the dealer, their designation and training. It is unclear why such qualified personnel would not be tasked with handling all retail complaints.

Section 3753 sets out the requirement for dealers to have complaints policies and procedures and imposes obligations where there is a high volume or severity of complaints. The policies and procedures for complaint handling required by this section are not specific to any particular complaint, and the obligations in the section relating to dealing with frequent or repetitive complaints would be of equal importance with respect to complaints of all "seriousness" levels – and perhaps would be of even greater utility in small-value, high-volume issues, when considered in aggregate.

Similarly, section 3754 deals with disclosure of complaint handling rules at account opening and on an ongoing basis. As the performance of these obligations must precede the occurrence of a complaint, it's unclear how this section could apply only to complaints alleging serious misconduct.

Sections 3755 and 3756 require dealers to send complaint acknowledgement and substantive response letters and prescribe content for each type of letter. These sections also should apply to all retail complaints. If a retail investor complaint relates to a subject matter that the dealer deems to be less serious, the nature and extent of the letters can be tailored to this assessment and explain to the investor why the dealer has made this determination. All complainants, whether alleging serious misconduct or not, should be furnished with the same information regarding escalation options, including to OBSI. OBSI's mandate includes all such complaints, limited only by the relatively broad definition of complaint found in our Terms of Reference.

Section 3757 relating to providing assistance in the resolution of complaints at other dealers is unlikely to arise outside the context of serious misconduct, so there is no benefit in limiting its application.

Section 3758 sets out the requirement to record and retain information relating to complaints. As outlined below, this should apply to all complaints for the purpose of filing aggregate reports. The records for less serious or complex matters can comply with this section while remaining summary in nature. Policy considerations relating to the responsiveness to client complaints or the internal value of complaint tracking and aggregate reporting apply equally to all retail complaints.

Section 3759 deals with the communication of internal dispute resolution options can likewise apply equally to all complaints.

The system of reliance on dealers to identify complaints alleging "serious misconduct" is vulnerable to under-identification

The definition of "serious misconduct" is based on a firm's assessment of whether an alleged activity "creates a reasonable risk of material harm to a client or the capital markets". The system of relying on dealers to determine whether a given complaint meets this definition is vulnerable to inconsistencies among dealers and individuals which may lead to under-reporting.

In its consultation document, IIROC has identified that the problem with the current, prescriptive rules is that they result in inconsistent reporting from dealers. However, we are concerned that the updated rules are likely to generate similarly inconsistent reporting, because they similarly depend on individual dealer interpretation of complex and often ambiguous consumer complaints.

In our experience, investors rarely frame their complaints in a manner that refers specifically to regulatory requirements or issues. Lacking this base of knowledge, most investors frame their complaints in terms of the impact of the problem they have identified on them or others. Complaints often lack specificity. Some complainants, having conducted some independent research, will try to frame their complaints in oddly specific ways, relying on definitions or other information they have found, however the effect of this is often confusingly opaque. Consumer complaints are often also incomplete, omitting important facts and details while focussing on less relevant ones.

Some matters in the definition of "serious misconduct" will almost never be the subject of retail investor complaints even where the investor is affected. Examples would include how the dealer has addressed conflicts of interest or whether there has been a violation of the best execution requirements.

This leaves the identification of the true subject matter of an investor complaint, and whether it meets the definition of "serious misconduct", to the dealer's interpretation of unclear or ambiguous information. It is natural that any such interpretation will be viewed through the lens of the dealer or the individual receiving the complaint, and how it is interpreted will be based at least in part on their own subjective views.

In our work, we have observed that firms and investors frequently have differing interpretations of the nature of the investor's complaint and its seriousness.

The reliance on firms to make this assessment is therefore somewhat problematic, though we acknowledge that it is a longstanding feature of the IIROC Rules and that it is reasonable to limit formal investigations and ComSet reporting to a subset of retail investor complaints most likely to be of regulatory interest. However, to the extent possible, other rules, particularly those relating to direct client interactions, should not rely on this dealer-identified subset of complaints.

Aggregate reporting of all retail complaints

IIROC SHOULD IMPLEMENT A REQUIREMENT FOR DEALERS TO FILE AGGREGATE REPORTS OF COMPLAINTS NOT REPORTED THROUGH COMSET

As noted above, it is reasonable that IIROC would seek to limit its ComSet reporting and regulatory supervision to "serious misconduct" as defined in the proposed rules, because this allows for focus of limited regulatory resources on those matters most likely to be of regulatory interest. However, as noted above, some areas of consumer complaint that do not meet the definition of "serious misconduct" have important systemic value and can offer important insights of regulatory interest, particularly when considered in aggregate.

At OBSI, the most frequent issues in consumer complaints about IIROC dealer firms in 2021 were technical and non-technical service problems and transaction errors. At the level of individual complaints, these matters may not have met the definition of "serious misconduct", but in aggregate they demonstrated important trends in the industry of interest to regulators.

Requiring all dealers to report aggregate complaints data would enhance IIROC's ability to identify trends in retail investor experience within individual dealers and across the sector as a whole.

Empirical analysis of this data among firms and in relation to firm size and over time would also enhance IIROC's ability to identify potential under- or over- reporting of serious misconduct and of complaints in general because there is a strong correlation between firm size and complaint volume. This would serve to at least partially address the risk of under-reporting described above.

For these reasons, we recommend that IIROC implement a requirement in Part A of Rule 3700 for aggregate reporting of all retail investor complaints. Such reporting requirements are common internationally and have recently been adopted for Canadian Banks pursuant to the Bank Act.[4]

IIROC should also publicly report this aggregate data to increase transparency and provide valuable information to the public and interested observers. Such reporting is consistent with the G20 High Level Principles on Financial Consumer Protection[5], which note the importance of aggregate reporting of complaints data, observing that "at a minimum, aggregate information with respect to complaints and their resolutions should be made public."

A complaint record retention and classification system will be required

Implementation of such a requirement would involve ensuring that the provisions of section 3758 relating to complaint information recording and retention apply to all complaints, as recommended above, and the record retention requirements of Part G should also be amended to reflect this.

[4] Section 627.46 (coming into force June 30, 2022)
[5] https://www.oecd.org/daf/fin/financial-markets/48892010.pdf

Additionally, to facilitate sector-wide data aggregation and trend analysis, IIROC would need to establish a classification and coding framework of products and issues. A number of financial regulators around the world have recently endeavoured to establish such classification frameworks, including the Financial Consumer Agency of Canada in support of the complaints data reporting requirements for Canadian Banks pursuant to the Bank Act Consumer Protection Framework coming into force in June 2022.

Definition of complaint

THE DEFINITION OF COMPLAINT IN SECTION 3702 SHOULD BE CLARIFIED

Section 3702 defines complaint as "any oral or written expression of dissatisfaction with a current or former Dealer Member, Approved Person or employee". This definition is very broad and may capture trivial or personal remarks or social media posts that are outside of the intended scope and purpose of the Rule. While we are generally in favour of a broad approach to complaint definition to avoid undue exclusion of valid complaints, the risk of an overbroad definition is that attention is diluted and meaningful compliance becomes impossible. This risk is particularly meaningful where obligations relating to complaint acknowledgement, handling and reporting are applied to all complaints, as we recommend above.

Globally, there are a range of possible approaches to this definition of complaint that IIROC should consider, for example:

- Under Canada's Bank Act, complaints are defined as "dissatisfaction, whether justified or not, expressed to an institution with respect to: a) a product or service in Canada that is offered, sold or provided by the institution; or b) the manner in which a product or service in Canada is offered, sold or provided by the institution."
- The G20/OECD definition of complaints partially addresses the boundaries of the definition by explicitly excluding certain requests. It defines a complaint as "a statement of consumers' dissatisfaction with the action, service, or product of a financial services provider or an authorized agent. A request for information or clarification or a request for an opinion, which does not also contain an expression of dissatisfaction or deficiency in service, is not considered to be a complaint."
- The Australian Securities and Investments Commission defines complaints through the lens of the outcome sought by the complainant: "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."

Timeframe for internal dispute resolution should be 90 days, including internal dispute resolution service

THE TIME PERMITTED FOR THE RESOLUTION OF CLIENT COMPLAINTS SHOULD INCLUDE ANY IDR SERVICES OFFERED

The proposed rules include a time limit for provision of a substantive response letter to complainants at section 3756(5) of 90 days, including all internal processes made available to the client, *other than* any internal dispute resolution service offered by the dealer or an affiliate of the dealer. Pursuant to section 3756(6), any internal dispute resolution service offered by the dealer is then limited to a further 90 days to deliver a substantive response letter to the client. Other sections make it clear that OBSI must be offered to the client at the same time and with at least equal prominence as the internal dispute resolution service is offered.

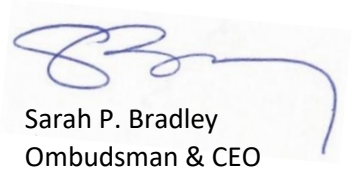
This system provides dealers and their affiliates with an aggregate timeframe of 180 days to resolve a client dispute, which we feel is excessive and can be confusing to investors. We suggest instead that section 3656(5)(i) be amended to stipulate that the 90-day timeframe is inclusive of all internal processes, including the internal dispute resolution service.

Such a timeframe would be consistent with changes in Canada's Bank Act coming into force in June 2022 which will require banks to resolve client complaints in 56 days, inclusive of all internal complaint handling processes. These changes are intended to eliminate internal escalation steps for aggrieved consumers, improving the consumer experience and outcomes for both consumers and banks.

Such a change would require dealers that wish to offer internal dispute resolution services to their clients to do so in a timely manner and possibly incline them to work collaboratively with such affiliated services to enhance their dispute resolution process and outcomes, which is consistent with dealers' obligation to place client interests first. In our view, such systems will lead to more efficient and effective dispute resolution practices, less consumer attrition and increased levels of investor satisfaction and confidence.

Thank you for providing us with the opportunity to participate in this important consultation. We would be pleased to provide further feedback to IIROC at any time.

Sincerely,



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