ERIC HALLÉ
Chair of the Board of Governors

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BY EMAIL

Philippe Lebel
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Subject: CFIQ's comments on the draft *Regulation Respecting Complaint Processing and Dispute Resolution in the Financial Sector*

Dear Mr. Lebel:

The Conseil des fonds d'investissement du Québec (CFIQ) is hereby submitting its comments on the draft *Regulation Respecting Complaint Processing and Dispute Resolution in the Financial Sector* (Regulation) published on December 8, 2022. We would like to thank the Autorité des marchés financiers (AMF) for the opportunity to comment on the Regulation.

CFIQ is the Québec voice of the Investment Funds Institute of Canada (IFIC), which is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations, to foster a strong, stable investment sector where investors can realize their financial goals.

CFIQ operates within a governance framework that gathers member contributions through working committees. The recommendations of the working committees are submitted to the committees of CFIQ and IFIC and to the CFIQ board of governors. This process results in a submission that reflects the input and perspectives of a wide range of industry members.

Summary

CFIQ strongly recommends that the securities industry, specifically mutual fund dealers, investment dealers and dual-registered dealers (collectively, Dealers), be exempt from the Regulation. Instead, we think Dealers should be subject to the rules of the New Self-Regulatory Organization of Canada (New SRO) for complaint handling and dispute resolution, which would ensure regulatory harmonization for Dealers operating in Quebec and other jurisdictions in Canada. This harmonization would prevent redundancy and reduce the regulatory burden on Dealers practising in several jurisdictions who would

otherwise have to implement and comply with a different complaint handling process in Quebec and elsewhere in Canada.

We strongly recommend that the AMF maintain the regulatory status quo for handling complaints until the New SRO rules are established and implemented within a harmonized regulatory framework. This would achieve the regulatory objective intended by the creation of the New SRO of having rules that are harmonized, consistent, effective and efficient, and that reduce unnecessary complexity and redundancies. This harmonization would result in simplification, which in turn would result in more efficient markets and increased client trust in the securities industry and its regulation, while at the same time achieving regulatory objectives Any benefits of an intended harmonized regulation for the Quebec financial sector, is offset by the attendant negative repercussions set out below.

Background and Rationale

On November 24, 2022, the Canadian Securities Administrators (CSA) issued the Notice of Approval[1] for the New SRO effective January 1, 2023. This approval follows CSA Position Paper 25-404[2] (the Position Paper) published on August 3, 2021, in which the CSA stated that:

> *"Guiding Principles were developed to inform the Working Group's research and analysis, and to ensure that the solutions to address the issues identified in the Consultation Paper were consistent with the CSA targeted outcomes from the Consultation Paper.* ***Each Guiding Principle was adopted with the objective to support the development of a regulatory framework that has a clear public interest mandate and fosters capital markets that are fair and efficient.****"*

The Position Paper goes on to state in part:

> *"Accordingly, the Working Group focused on identifying solutions that:*
>
> *… 2. promote the development, interpretation and application of consistent regulatory requirements;*
>
> *… 5.* ***ensure regulatory alignment with the CSA through appropriate oversight mechanisms;***
>
> *6.* ***Increase regulatory efficiencies****, accommodate innovation and deliver* ***effective and efficient regulation by minimizing redundancies and complexity,*** *and ensuring flexibility and responsiveness to the future needs of the evolving capital markets;*
>
> *… 8. develop, interpret and apply securities regulation* ***in cooperation with the CSA****;*
>
> *… 10.* ***are easily understood by public and industry stakeholders, and responsive to their concerns****;*
>
> *...14. are able to provide an effective market surveillance function."*

[1] https://www.securities-administrators.ca/news/canadian-securities-regulators-publish-approval-notices-for-new-sro-and-cipf/
[2] https://www.securities-administrators.ca/wp-content/uploads/2021/10/CSA-Position-Paper-on-SRO-Framework-Final-with-Appendices.pdf

In addition, the 2022-2025 CSA Business Plan[3] outlines six strategic goals, including:

> *"**1. Strengthen the capital markets regulatory system by implementing a single self-regulatory organization,** pursuing collaboration with federal agencies, modernizing the CSA IT National Systems, incorporating Indigenous issues and perspectives in CSA policy work and refining our data strategy to support more efficient and effective regulation.*
>
> *… **5. Deliver smart and responsive regulation protecting investors while reducing regulatory burden;***
>
> *… 6. Promote the integrity and financial stability through **effective market oversight**."*

On January 3, 2023, the CSA publication[4] on the official launch of the New SRO states that:

> "*The new SRO believes that a single self-regulatory organization will:*
>
> - *… **Reduce duplicative regulatory burden,** particularly for those running separate IIROC and MFDA platforms, **as well as those in Québec**."

As the New SRO begins its work to develop a new harmonized rulebook, the introduction of the Regulation for Quebec Dealers is not consistent with the strategic goal put in place by the CSA shown above, of which the AMF is a co-signatory, and which served as the basis for the Dealers' vote to create the New SRO. We believe that the disharmonization of complaint handling that the Regulation may create with the rest of Canada and within certain Dealers will cause confusion for clients, especially if the complaint handling time differs in Quebec from elsewhere in Canada. In addition to creating redundancy and regulatory complexity for Dealers working in Quebec and elsewhere in Canada, which would require a two-tier complaint handling system (one for Quebec and one for elsewhere), this would create redundant policies and procedures and an unreasonable and unnecessary regulatory burden, elements that go against the firm commitments the AMF made to Quebec stakeholders.

CFIQ also submits that it would be unreasonable to ask Dealers to comply with the Regulation first and then transition over to the New SRO rules for complaint handling and dispute resolution. This would also be contrary to clients' interests, as it would lead to inefficient file handling. In addition, with the multitude of legislative and regulatory amendments currently under way to which Dealers are subject with respect to securities, taxation, privacy, etc., the only reasonable regulatory transition for Dealers should be to the New SRO rules.

It should also be noted that the CSA recently implemented the client-focused reforms, which are among the most stringent and demanding regulatory enhancements in the world for managing conflicts of interest and improving the customer experience. Therefore, Dealers are already subject to very high standards of conduct. In the same vein, if there are evolving aspects of complaint handling and dispute resolution that are currently part of the Regulation, the AMF could bring them up as part of the development of the final rules of the New SRO so that they can be consulted on by all Dealers working in Canada. This would facilitate regulatory change while maintaining harmonization in the securities sector and support the competitiveness and growth of this major industry in Quebec.

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[3] https://www.securities-administrators.ca/wp-content/uploads/2022/10/2022_2025CSA_BusinessPlan.pdf
[4] https://www.securities-administrators.ca/news/new-self-regulatory-organization-of-canada-and-canadian-investor-protection-fund-officially-launch/

A recent concrete example is the elimination of deferred sales charges that applied to mutual funds and will be implemented for segregated funds. The same standard was implemented in each sector's regulations. This demonstrates that the objectives of the AMF's Regulation are entirely achievable through the New SRO rules.

The industry fully supports addressing material gaps that are identified and justified by the AMF, other CSA members or the New SRO. We also believe that the most efficient way to achieve those resolutions would be as part of the New SRO rules. Any benefits of a unilateral closing of potential gaps is offset by the attendant negative repercussions. There is no compelling reason why the objective of harmonizing complaint handling regulations for Quebec's financial sector should take precedence over the major disruptions that would be created to the intended harmonized securities regulations in this area by the New SRO.

In fact, the desire for high standards in complaint handling and dispute resolution is already part of the basis for the recognition of the New SRO by the AMF and the rest of the CSA, as outlined in Appendix A – *Application for Recognition of the New* SRO[5] in the CSA Staff Notice and Request for Comment 25-304, *Application for Recognition of New Self-Regulatory Organization*[6]:

> "*Corporate Governance*
>
> *The New SRO will be a non-share capital corporation under the Canada Not-for profit Corporations Act ("CNCA"). Its mandate is to act in the public interest by, without limitation:*
>
> *"...(l) administering robust, compliance, enforcement and complaint handling and resolution processes*."

Conclusion

All of the above facts show that there is no valid justification for disharmonizing the Dealer regulations and that the New SRO is well positioned to implement robust harmonized standards for complaint handling and dispute resolution.

We therefore submit, from the perspective of investor protection and market efficiency, and in the spirit of harmonization and the reduction of the unnecessary regulatory burden that the AMF has promised registrants in Quebec by recognizing the New SRO, to maintain the regulatory status quo for Dealers with respect to complaint handling and dispute resolution until the New SRO rules are finalized and implemented. It would be unjustified to implement a different complaint process in Quebec based on harmonization, public interest and investor protection objectives, since these goals form the basis for the creation of the New SRO.

We believe that our position regarding market harmonization and efficiency outlined above is the only and best solution for investors and Dealers. However, in the interest of the consultation process, we are submitting our general comments and questions on the Regulations in the attached Appendix. To make them easier for the AMF to review, we have organized our comments in the same order as the sections of the Regulation.

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[5] https://www.securities-administrators.ca/wp-content/uploads/2022/05/02.-Appendix-A-Application-for-recognition-of-the-New-SRO.pdf
[6] https://www.securities-administrators.ca/wp-content/uploads/2022/05/01.CSA-Notice-re-New-SRO-Publication-for-Comment.pdf

Should you require any additional information, please do not hesitate to contact Kia Rassekh, Regional Director, CFIQ, by email at krassekh@ific.ca or by telephone at 514-985-7025.

Yours truly,

Eric Hallé

Eric Hallé
Chair of the Board of Governors
CFIQ

APPENDIX: Comments on the Regulation

Note: when we say "we reiterate" it is because the comment was already raised in our submission filed on December 8, 2021[7] as part of the first consultation on the Regulation.

Section 3: Definition of "complaint"

In our previous submission filed on December 8, 2021, we recommended narrowing the definition of complaint to make a distinction between regulatory complaints and service complaints or dissatisfactions with respect to complaint handling and resolution. We note that the Regulation has expanded the definition of complaint while introducing a simplified process for complaints that can be resolved within 10 days of receipt. While we believe that service complaints should not be included in the complaint definition, we thank the AMF for taking industry concerns into account by introducing the simplified process.

However, it should be noted that an onerous aspect of the complaint handling process is the reporting of complaints to the AMF. We understand that the purpose of the Regulation is not for the AMF to receive a register of all complaints documented by the Dealers, but rather for the latter to have an overview in order to identify the causes shared by the complaints and resolve the issues they raise. Given that the Regulation does not mention the reporting procedure by the Dealers to the AMF, we recommend that the administrative measures that will stipulate this procedure exclude the reporting of non-regulatory complaints, therefore, dissatisfaction and complaints about service (e.g., overly long wait times on the phone, no response, billing error). This would ensure a truly simplified process. These exclusions should not necessarily be based on a short response time (e.g., 10 days) as there may be regulatory complaints that are resolved within 10 days and should always be reported.

Section 4, paragraph 2

Please clarify what you mean by complaint handling that is "kept simple." This reference seems to echo the streamlined process that differs from the standard – therefore non-streamlined – process. Should the intent rather be to establish a complaint handling policy in plain language?

Section 5

We recommend that section 5 be reworded as follows for greater clarity:

> "**5.** The complaint processing and dispute resolution policy must include:
>
> 1) The measures put in place by the financial intermediary to ensure the implementation and dissemination of the policy, as well as compliance therewith, across the organization;
>
> 2) Appointing a person to be in charge of complaints handling who has the necessary authority and competence to perform his or her duties."

Section 9

We understand the purpose of this section, which is to have *"… a comprehensive view of the complaints received, particularly in order to ascertain the common causes of those complaints and address the issues that they raise."* However, we believe that this objective should be an obligation of principle and governance for the financial intermediary. We do not consider this to be something that

[7] https://www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=26846&lang=en_CA

should be part of a complaint handling policy. We therefore recommend that section 9 be rewritten as follows:

> "The financial intermediary must set up measures to develop a comprehensive view of the complaints received, particularly in order to ascertain the common causes of those complaints and address the issues that they raise."

Section 12

Paragraph 4

We reiterate our position that a 60-day response period is not suitable for several reasons. The current standard in securities is a 90-day[8] response period. Having a shorter response time for Quebec would encourage Dealers working in Quebec and the rest of Canada to prioritize Quebec complaint files, thus introducing possible unequal prioritization of rules. In addition, this would create operational complexity for Dealers to have to deal with different complaint handling processes with two response periods (one for Quebec and one for the rest of Canada), whereas as we demonstrated above, the intention of the AMF and the CSA is to reduce the regulatory burden. We therefore recommend a 90-day response period that is in line with securities standards and that could be supplemented by the additional 30 days in cases involving complex situations that warrant an extension, such as complaints related to estate transfers or taxes.

Paragraph 5

We believe that the expression "circumstances that are exceptional" is too broad, improperly defined and may be confusing for an investor/client. We recommend replacing that expression with "where warranted by reasonable circumstances or circumstances beyond its control."

Section 13

We recommend adding at the end of the third paragraph "…or as otherwise agreed with the complainant." There are several circumstances where a period to respond to the offer may be longer than 30 days. For example, a settlement offer is conditional to receiving information from other sources such as a notice of assessment or accountant invoices. Also, an offer may be other than monetary. Once the complainant agrees to a time period longer than 30 days, we see no need for the Regulation to prescribe a maximum period.

Section 14

We recommend adding the following at the end of the article: "...unless the matter involves civil action or arbitration." As soon as the process takes a legal route, the obligation to provide a response and to continue communicating with the client should no longer apply.

Section 15

We recommend finishing the section with "file a complaint about it" and deleting "and must provide the complainant with any information held by it that would allow the complainant to file such a complaint." The financial intermediary should be responsible for identifying the elements of the complaint that

[8] https://lautorite.qc.ca/fileadmin/lautorite/regulation/valeurs-mobilieres/31-103/2023-01-01/2023janv01-31-103-ig-vconsolidee-fr.pdf Section 13.15 of the Policy Statement to Regulation 31-103 Respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations (p. 115) "Timeline for responding to complaints"; https://www.obsi.ca/en/about-us/resources/Documents/OBSI-Terms-of-Reference---June-2022-amendments_EN.pdfdefinition of "IDR Time Limit"; and https://www.iiroc.ca/media/13971/download?inline IIROC Rule 2500B "Complaint substantive response letter"

directly affect them. It is legally sensitive for one financial intermediary to pass judgment on another. The obligation introduced at the end of the section puts financial intermediaries in the delicate position of passing judgment on the actions of other registrants.

Section 16

Paragraph 3

We reiterate our comment that "any exchanges" may include phone calls or discussions during a face-to-face meeting with the client. It may not be technically feasible to file a telephone record for a complaint file, if such a record exists. We would like clarification that the term "exchanges" includes a summary of a verbal discussion, either over the phone or in person.

Section 17

We submit that a complaint retention period should not be subject to an operational time period. In securities, files must be kept for seven years, whereas other registration categories may have different requirements. We recommend using more flexible wording:

> "The financial institution, financial intermediary or credit assessment agent must keep the complaint record for the time period applicable to the registration category or industry."

Section 18

We reiterate our recommendation in the first paragraph, namely to replace "without delay" with "as soon as possible" or "without undue delay." The term "without delay" implies entering the complaint immediately, which cannot be assured depending on where or when the complaint is received. The firm must first determine whether it is a complaint based on the definition in the Regulation and then enter it as such in the complaint registry.

Section 20

The term "federation" is used in the first paragraph of this section and multiple other times in the Regulation. We reiterate our recommendation to clarify the meaning of this term and include it in the definitions section.

Paragraph 4

We recommend removing *"expected timeframe"* as this time may be difficult or even impossible to predict at the acknowledgement of receipt stage. Setting this timeframe could also create false expectations for the complainant. In addition, during the process, new facts may come to light or certain problems may be encountered, which may result in the stated anticipated timeframe not being met. In our opinion, setting an anticipated timeframe is not useful and can lead to unnecessary confusion and problems. Therefore, we recommend using only *"the date by which the final response must be sent to the complainant,"* or "the maximum time period."

Section 21

Paragraph 4

The person referred to in section 29 is *"the person officially designated to respond to the Authority."* We question the relevance and usefulness of including this person's contact information at this stage, while

the contact information for the person responsible for the file is provided in the acknowledgement of receipt. This may cause confusion for the complainant and unnecessarily complicate the complaint handling process, as the complainant will no longer know whom to contact and who is actually responsible for the complaint. Therefore, we recommend that paragraph 4 be removed.

Section 34

We reiterate that the changes proposed in the Regulation are significant to Dealers and clients and would namely include updating internal policies and procedures, training personnel and representatives, as well as a significant system update that often has to be planned at least a year in advance. Dealers typically rely on multiple external service providers for their back office, middle office and administrative functions and processes. These external vendor partners perform annual platform upgrades on a consistent cycle and rarely perform ad-hoc work due to the broad nature of their clientele and the implementation issues required to deliver on-time and in scope.

Since the AMF plans to publish the final regulations in June 2023 (based on the information provided at the AMF information session on January 12, 2023), the effective date of January 1, 2024, which is only a six-month transition period, is simply not realistic. We recommend an 18-month transition period following the publication of the final regulations, which should generally dovetail with annual system change cycle, i.e. January 1, 2025.