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BY EMAIL

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RE: CFIQ comments on the *Regulation respecting complaint processing and dispute resolution in the financial sector*

Dear Mr. Lebel:

The Conseil des fonds d'investissement du Québec (CFIQ) hereby submits its comments on the *Regulation respecting complaint processing and dispute resolution in the financial sector* (Regulation) published on September 9, 2021.

CFIQ is the Quebec 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 CFIQ and IFIC committees and to the CFIQ board of governors. This process gives rise to a submission that reflects the contributions and perspectives of a wide range of industry members.

Scope and structure of our comments

We would like to thank the Autorité des marchés financiers (AMF) for the opportunity to comment on the Regulation. Our comments are intended to offer recommendations or request clarification on certain aspects of the Regulation in order to ensure a fair and effective framework for investors and the industry.

We agree with the Regulation's general principle of ensuring the fair processing of consumer complaints in the financial sector. While we note that the aim of the Regulation is to harmonize the processing of complaints between various financial sectors in Quebec, the Regulation is inconsistent with national rules and the rules of self-regulatory organizations applicable to the same financial intermediaries in other Canadian jurisdictions.

We are also of the opinion that the Regulation introduces a much broader definition of "complaint" than the one that exists today. In particular, it includes client dissatisfactions that can be resolved in the normal course of a firm's business, and processing it in the same manner, risks creating potential negative impact to the client by introducing a more onerous and lengthy process than is necessary. In addition, there would be increased regulatory burden for the industry as well as costs associated with the development of complaint processing systems that are not justified by this type of dissatisfaction. We therefore recommend that the definition of "complaint" be clarified to exclude service complaints that can be resolved within a reasonable amount of time in the normal course of business.

We elaborate on our comments in the sections that follow. To make them easier for the AMF to review, we have organized our comments in the same order as the sections of the Regulation.

Our comments on the Regulation

Section 3: definition of "complaint"

As mentioned above, we recommend that the Regulation clarify the definition of "complaint" and specifically differentiate between regulatory complaints and service complaints or dissatisfactions, in terms of complaint processing and resolution. We believe that the definition of complaint as proposed in the Regulation will significantly increase the number of complaints to be processed.

Certain cases of dissatisfaction can be resolved quickly without the need for a cumbersome complaint processing system that is difficult to implement. Examples of dissatisfaction with a service that should be easily resolved within a reasonable time include: dissatisfaction regarding a delay in having a telephone call returned or a long hold time during a telephone call; dissatisfaction with the fact that the client file is no longer available 7 years after the account is closed; dissatisfaction about the longer time required to complete an account opening, etc.... It is necessary to differentiate between a regulatory complaint and a service complaint (dissatisfaction) to apply the concept of proportionality in the complaint process. A regulatory complaint would be subject to the processing set out in the Regulation, whereby an acknowledgement of receipt is sent and a final response is provided in writing.

However, some instances of dissatisfaction with a service, which can be resolved within a reasonable amount of time and in the normal course of business, should be excluded from the definition of "complaint" or at the least be given the ability to be resolved verbally over the phone or via email in the normal course of business. We believe that even the simplified process set out in section 22 of the Regulation is still burdensome for clients and imposes a regulatory burden (recording in registry, written response, etc.) that is not justified for these types of dissatisfaction with a service that can be resolved with more streamlined processes. The Regulation should provide registrants with the flexibility to implement processes tailored to the severity of the complaint, while maintaining fair service standards with reasonable timeframes.

One way to distinguish service dissatisfaction would be to replace the word "immediately" in the definition of "complaint," which imposes an overly rigid requirement, with the concept of "within a reasonable time" or with a specific time limit (less than 10 days), or to exclude these dissatisfactions in the second paragraph of the definition of "complaint".

Also, a client may wish to express their dissatisfaction and discuss it informally without necessarily wanting to file a complaint. We understand that this could be inferred from the words in the definition "for which a final response is expected." However, we believe that just wanting a response does not mean that the client intends to file a complaint.

Moreover, in our opinion, the complainant should be a client (or his/her legal representative) of the financial institution or financial intermediary, just like for credit assessment agents, which must hold a record pertaining to the person concerned, and client should be so defined. We note that *National Instrument 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* uses the term "client". To ensure that the nomenclature for processing complaints is harmonized, it is our opinion that the term "clientele" should be changed to "client" throughout the Regulation.

We also recommend the following exclusions from the definition of complaint:

- Any complaint for which a client refuses to identify themselves and/or provide their personal contact information.
- Any request for information or documents made by a client. Indeed, there is no need to distinguish between a first, second or third request for information when it is a request for information and not a complaint.
- Any matter that is subject to civil action, arbitration or litigation.

Subsection 4(2)

We understand that the criterion "without cost to the complainant" generally refers to a client's right to file a complaint without incurring any cost for the firm to open and follow up on their complaint file. We agree with this concept. However, the firm should be able to charge a reasonable fee where a client requests a large number of documents from the firm regarding his or her complaint. This would offset the reproduction costs for the firm. We note that the *Act respecting the protection of personal information in the private sector*[1] allows a firm to require a reasonable charge from a person requesting the transcription, reproduction or transmission of personal information.

Section 5

Subsection (1)

Subsection 5(1) refers to "the persons assigned to implement, apply and review it." To avoid any confusion, we recommend using the same terms as those used in subsection 5(2). We recommend the following changes: "to ensure that its complaint process is known and understood by the complaints officer and the staff responsible for processing complaints, the financial intermediary will provide such persons with training…"

This subsection prescribes the requirement to "provide such persons with training at least once a year." We find that imposing training once a year is not necessary if there are no changes to the policy or procedures every year. In our view, providing training upon the assignment of staff responsible for processing complaints and when a change is made to the complaint process or to the requirements is appropriate and sufficient.

It would be preferable for the Regulation to be based on principles and that each firm should ensure that these individuals have sufficient knowledge of the complaint processing and dispute resolution

[1] http://legisquebec.gouv.qc.ca/en/showdoc/cs/p-39.1 Section 33

policy. Consequently, each firm should establish a requirement for appropriate training based on its business model.

Subsection (2)

We recommend replacing the requirement to "act with independence and avoid any situation in which they would be in a conflict of interest" with the requirement to "ensure that all complaints are processed in an equitable, fair and objective manner." An employee of a firm may process a complaint in an equitable, fair and objective manner, but may not be by definition independent of the firm given the employment relationship between the employee and the employer. Furthermore, a conflict of interest in processing a complaint remains a vague and ill-defined concept that we recommend be replaced as mentioned above.

Section 6

The first paragraph of section 6 states as follows: "the designation and functions of the person acting as complaints officer within **its organization**." In large firms, with many affiliates, a single person may act as the complaints officer for several subsidiaries or financial intermediaries. The Regulation should provide this flexibility by not limiting the definition of "its organization" to a single subsidiary or financial intermediary. In addition, the Regulation should allow the complaints officer to act also as a member of the staff responsible for processing complaints.

In subsection (1), please provide clarity on what constitutes "professional qualifications" for a person handling complaints. Furthermore, "the absence of a judicial or disciplinary record" is too broad; please clarify.

Subsection (2), paragraph (d), includes the requirement of: "acting as official respondent with the financial intermediary's clientele." We propose that this duty entrusted to the complaints officer may be delegated for regular communication between the financial intermediary and the client filing the complaint. The complaints officer could remain the point of contact with the AMF.

Section 7

We would appreciate some clarification about how far the complaints officer can delegate this task. Who can be members of the "staff responsible for processing complaints"? Do they have to be part of the complaints officer's team, or can this extend to different business units depending on the severity of the complaint?

Section 11

We believe that providing a complaint drafting assistance service to any client expressing a need for it would place a firm in a conflict of interest. We recommend removing this requirement and any reference to this service from the rest of the Regulation.

First, the Regulation does not stipulate that a complaint must be in written form, therefore, there is no reason to justify the need for a complaint drafting service. It is important to distinguish between a complaint written by a firm on behalf of a complainant and an assistance service provided in order for a complaint to be documented. We note that section 5 of policy 3[2] of the Mutual Fund Dealers

[2] https://mfda.ca/policy/policy03/

Association of Canada (MFDA) provides for an assistance process to document a verbal complaint and not a service for drafting the complaint itself. If the Regulation has the same objective as the MFDA policy, we recommend using the same language. However, if the AMF considers that a complaint drafting assistance service is essential for the good of clients, we recommend that this service be provided by an independent party, such as the AMF itself

Firms document and include a summary of the verbal complaint on file and we consider this adequate for the purposes of the complaints process. There is, in our view, a clear conflict of interest and risks of bias in noting the complainant's claim and in offering a complaint writing assistance service given that a firm cannot write a complaint against itself.

Subsection 12(4)

The subsection prescribes a period of 60 days following receipt of the complaint within which to provide the client with a final response. We believe that up to 90 days would be more appropriate for the following reasons.

First, the complaint process can be lengthy, especially in cases where the firm has to call on an external service provider or consultant, or involve its errors & omissions insurer. It is important to give the firm a reasonable amount of time to conduct a thorough investigation and to prepare a complete and well-reasoned response. It is in the client's best interest to maintain the 90-day maximum response time to prevent the client from receiving a hasty or incomplete response from the firm in some instances. In our experience, some complaints can be readily resolved within less time than 90 days whereas others have complexity that require even more time. We therefore ask for the possibility and flexibility to ask for an extension beyond the 90 days in these cases, with the agreement of the client.

Second, the Canadian Securities Administrators (CSA) are in the process of establishing a new self-regulatory organization (new SRO) that will amalgamate the functions of the Investment Industry Regulatory Organization of Canada (IIROC) and the MFDA. These two organizations currently have a 90-day requirement for a firm to respond to a complaint. The AMF adopting a 60-day requirement, when the final rules of the new SRO - which will be recognized in Quebec - will not be adopted for some time, may result in investor and industry confusion and inefficiencies. We recommend maintaining the status quo and keeping the maximum 90-day response period to give the CSA an opportunity for thorough consideration and allow for broader consultation on this issue in Canada. National Instrument 31-103 also allows up to 90 days for the submission of a written response, and we believe it is important to keep the rules harmonized in Canada for firms operating in different jurisdictions.

We stress that it is essential for harmonized standards to be adopted across Canada. Having a different complaint processing system for Quebec would impose an unreasonable regulatory burden on firms operating in multiple jurisdictions in Canada, thereby increasing regulatory burden at a time when the CSA is reducing regulatory burden in accordance with its stated goals. The CSA was created precisely with the aim of harmonizing regulatory requirements. A shorter response period for Quebec also risks creating unfairness in the handling of complaints by firms operating in several jurisdictions, as they would always have to give priority to complaints originating in Quebec over those in other provinces and territories.

In addition, we recommend that the 90-day maximum period begin upon receipt of the complaint by the complaints department. It is possible that dissatisfaction may be expressed to someone who is unable to analyze whether it is a complaint and ensure its processing (for example, at a branch location). Therefore, we recommend replacing "not later than the 60th day following receipt of the complaint" with

"not later than the 90th day following receipt of the complaint by the complaints officer or the staff responsible for processing complaints." To this end, Article 18 provides for a time limit for registering the complaint, which protects the client for processing within a reasonable time.

Section 13

We recommend removing the second paragraph under section 13: "The amount of time given must be sufficient to allow the complainant the opportunity to seek advice for the purpose of making an enlightened decision." In our view, the word "assess" at the end of the first paragraph includes all the elements that contribute to a complainant's decision, including "seeking advice for the purpose of making an enlightened decision." The second paragraph has no added value and may even lead to confusion regarding the minimum 20-day period prescribed by the first paragraph. If the AMF wishes to retain this clarification, we propose that the word "must" be removed to state that "The amount of time given is intended to be sufficient to allow the complainant…".

Section 14

We understand that the firm "must, in due time, continue to manage any further exchanges with the complainant" in the situations described in subsections (1), (2) and (3). In our view, subsection (3) notably contradicts subsection (3) of section 3721 of IIROC Rule 3721:[3] "Any matter which is the subject of a civil action or arbitration is not considered to be a complaint for the purpose of section 3721." We propose that once a legal process has begun, the firm must be able to decide to end exchanges with the client for legal reasons. Discussions or exchanges may continue within the legal process, depending on the nature of the litigation**.**

Section 15

In the first sentence, we recommend replacing "If a complaint concerns" with "If a complaint refers to" or "If a complaint identifies." A complaint may concern other firms, but this fact may not be mentioned in the complaint. It is important for the Regulation to be clear and precise as to the fact that the firm(s) in question are those that have been identified or referred to in the complaint.

We also recommend changing "within 10 days following receipt of the complaint" to "within 10 days following receipt of the complaint by the persons responsible for processing complaints." As mentioned earlier, the complaint may be filed with a department not responsible for processing complaints and is not able to determine that it is a complaint (for example, at a branch location). In addition, a complaint may be unclear, and communication between the firm and the complainant may be required. When a complaint is received by the persons responsible for processing complaints, and that it is considered as such, then there is assurance that it will be handled by the right department.

We consider it unreasonable to require the firm receiving the complaint to be responsible for providing the contact information of any other firms referred to in the complaint, except with respect to financial institutions or financial intermediaries of the same organization or the same group. It is the complainant's responsibility to send the complaint to the firms. In addition, it is possible that this complaint has already been forwarded to the other firms affected by the complaint without mentioning it in the complaint. Finally, it is also possible that the complainant does not contact the right firms but that this information is not known to the firm that receives the complaint. So, several situations justify the fact that it cannot be up to the firm that receives the complaint to give the contact details of other firms,

[3] https://www.iiroc.ca/rules-and-enforcement/iiroc-rules/3000/3721-application

except in the limited circumstance indicated above. However, we see no harm in notifying the complainant that he or she must also file the complaint with the other parties referred to in the complaint, if necessary. Large organizations with multiple subsidiaries or legal entities could eventually provide contact information for the correct affiliate of the same group, if the complaint concerns the latter. We therefore suggest removing the wording “and providing the complainant with their contact information” from the section or specifying that the complaint refers to multiple financial institutions or intermediaries of the same organization or the same group.

Section 16

Subsection (1): We reiterate our disagreement with the complaint drafting assistance service. We recommend replacing the wording of the subsection with “the written complaint or a summary of the verbal complaint” to avoid any confusion. Moreover, we note that subsection (3) covers any document or information, which could include a summary of a telephone conversation or a meeting with the complainant. There is therefore no need to distinguish between an initial or a second communication, etc.

Subsection (3): We understand that “any exchanges” may include telephone calls or discussions during a face-to-face meeting with the complainant. Of course, it may be technically impossible to file a telephone recording for a complaint, if such a recording exists. We would like a clarification that the term "exchange" includes the summary of a verbal discussion, either over the phone or in person.

Last paragraph: Please clarify what is meant by “in a precise form that is comprehensible.”

Section 18

In the first paragraph, we recommend replacing “without delay” with “as soon as practicable.” 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 there is a complaint within the meaning of the Regulation and, if it is, register it in the complaints registry.

Subsection (4): We recommend adding “if applicable” at the end of the sentence, as there may be no cause for the complaint.

Subsection (9): The term “federation” is used in this subsection and in several other places in the Regulation. Please clarify the meaning of this term and include it in the definitions section. Are you referring to the term “federation” used in the enabling legislation?

Section 20

Subsection (2): We recommend amending the relevant part of the subsection and replacing it with the wording “the date on which the complaint was received by the complaints officer for or the staff responsible for processing complaints at the financial institution, financial intermediary or credit assessment agent” because complaints are not necessarily filed with the complaints department.

Subsection (5): We recommend replacing “and the date by which the final response must be sent to the complainant” with “and the time period within which the final response must be sent to the complainant.” We note that the obligation is to respond within a specific time frame.

Subsection (6): After “the signature of the complaints officer referred to in section 6,” we recommend adding “or a member of the staff responsible for processing complaints referred to in section 7” because

it is difficult, if not impossible, for a single person to sign all acknowledgements of receipt, especially in large institutions.

Section 21

Subsection (5): At the end of the paragraph, we recommend adding "or a member of the staff responsible for processing complaints referred to in section 7."

Section 22

In the first paragraph, the statement "[f]or any complaint resolved within 10 days following the complaint registration date" conflicts with the minimum 20-day period for the client's response stipulated in section 13. We are of the opinion that the complainant should be given the same amount of time to assess the offer, as applicable.

In addition, a complaint can be resolved within 10 days without there necessarily being an offer. We therefore recommend replacing "paragraphs 1, 2, 3 and 5 of section 21" with "and section 21" in the first paragraph.

Section 23

Subsection (3): Many firms use generic contact information to allow clients to easily file a complaint and to enable the firm to review the complaint and transfer the file to the appropriate person. It would be difficult for a single person to receive all of the complaints filed with a firm. We therefore recommend replacing this paragraph with: "the contact information of the department responsible for processing complaints;".

Section 24

We recommend that the following wording be removed from the end of the first paragraph: "and using terms that are not confusing or misleading." When the summary of the complaint processing and dispute resolution policy is "clear and simple," it should not contain terms that are confusing or misleading.

Section 25

We propose that the terms be specified in the Regulation and not on the AMF website so that firms have a single source of reference.

A complainant may also request that the complaint record be examined before all the documents listed in section 16 are completed or made available. We therefore recommend removing "as established pursuant to section 16" and replacing "must send the complaint record to the Authority" with "must send the complaint record to the Authority, as established at the time of the transfer request."

Section 30

The amendments proposed in the Regulation are significant and would notably entail updates to internal policies and procedures, staff training and system updates. We therefore recommend a minimum transition period of 24 months after the Regulation comes into force.

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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,

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