CFA Societies Canada

Canadian Advocacy Council

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1

+1 (416) 366 3658 tel
www.cfacanada.org

December 8, 2021

VIA EMAIL

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2460, boulevard Laurier, 3ième étage
Québec (Québec) G1V 5C1
Email: consultation-en-cours@lautorite.qc.ca

Re: Draft Regulation respecting Complaint Processing and Dispute Resolution in the Financial Sector (the "Draft Regulation")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "CAC") appreciates the opportunity to provide the following general comments on the Draft Regulation. We are supportive of the AMF's intent to harmonize the fair processing of complaints in the financial sector in Québec, and generally believe that a fair and impartial dispute resolution mechanism that is easily understood and consistent across the boundaries of different areas of financial regulation is critical to fostering consumer trust in financial services. We believe that the Draft Regulation could potentially benefit from a more plain statement on the intended outcome and goal that effective complaint processing and dispute resolution has as as its implicit objective the fostering of consumer trust in the financial sector. We understand the Draft Regulation will set out the requirements for a dispute resolution policy, the appointment of a designated complaints officer as well as rules regarding timeliness and communication with complainants. While we are supportive of a number of specific provisions included in the Draft Regulation, as well as the fact it would cover a number of different businesses in the financial services sector in the Province, we remain concerned that the Draft Regulation in part may further complicate the array of existing complaint processing and dispute regulation mechanisms and provisions. As a result, it may place an unnecessary regulatory burden on organizations required to navigate more than one set of complaint resolution rules, even if the differences are subtle. At the same time, the fragmented authorities and mechanisms may not result in a system that is more easily understood and navigated by consumers, which should be a primary targeted outcome.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 178,000 CFA Charterholders worldwide in over 160 markets. CFA Institute has nine offices worldwide and there are 160 local member societies. For more information, visit www.cfainstitute.org.

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1
+1 (416) 366 3658 tel
www.cfacanada.org

While the Draft Regulation will have wide application, our ensuing comments generally focus on the application of the Draft Regulation to securities registrants such as registered dealers and advisers.

With respect to the definition of a "complaint" itself, we note that the concept is intentionally drafted broadly to capture definitional challenges across a variety of covered financial services. While there are exclusions from the definition, we believe there should be additional specificity and examples of what could constitute a complaint, in order to ensure efficient use of time and resources. For example, with respect to securities registrants, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Requirements* defines a complaint as one that "(a) relates to a trading or advising activity of a registered firm or a representative of the firm, and (b) is received by the firm within 6 years of the day when the client first knew or reasonably ought to have known of an act or omission that is a cause of or contributed to the complaint". We suggest the definition of complaints be clarified and ensure all valid complaints are dealt with by the Authority so that the onus is not placed on consumers to determine how and where to lodge a complaint.

We note the definition of a complaint also references "a person who is a member of the clientele of the financial institution or financial intermediary". This portion of the definition may in certain cases exclude persons with legitimate complaints against a covered financial services organization, where part of an otherwise valid basis for complaint involves a refusal to provide financial services, such that they never technically become "clientele".

The financial intermediary is asked to ensure that the complaints officer, and other staff responsible for processing complaints, act with independence and avoid situations in which they would be in a conflict of interest. This requirement is important, and to the extent no such person reasonably exists (which is possible in a very small financial intermediary), there should be a requirement for the firm to engage a third party (e.g., an arbitrator) who is not so conflicted. Such a requirement could also create an economic disincentive to create conditions where complaints are rampant.

While the proposed qualifications and expertise for a complaints officer and staff is laudable and should be achievable in larger organizations, it will be difficult for smaller firms, particularly smaller registered advisers and dealers, to find and afford the requisite experienced individuals to carry out all of the proposed functions of the complaint officer. Many such registrants are small businesses. Financial services businesses should be able to scale the specific duties of a complaints officer to the size and business model of their specific organizations, while ensuring that the principles of the Draft Regulation are still met. While the need doesn't change for independence and conflicts avoidance, we believe that certain regulatory allowances for shared critical functions such as a chief compliance officer should be examined for emulation in this case to best scale these important attributes and functions down to become accessible and affordable to smaller covered financial services businesses.

It is vital that consumers have access to the proposed complaint drafting assistance service. It is similarly important that financial institutions, financial intermediaries and

credit assessment agents ensure that clients are made aware of this service on a proactive basis, and that requirement should also be included in the Draft Regulation.

With respect to the complaint processing rules, we are highly supportive of setting out specific, achievable timelines for the entire process, starting from when the complaint is first received by an employee through to its final resolution. Certain entities, including financial intermediaries, must provide a complainant with a final response as soon as possible, but no later than the 60th day following receipt of the complaint. While we agree that resolution should take place as soon as possible, there may be circumstances, such as when the consumer is victim of financial exploitation or is a vulnerable client, where it would be helpful to have an additional 30 days to examine the complaint and reach out to parties, such as trusted contact persons, as needed.

While there is a reference to the complainant filing an application or motion with respect to the complaint with the court or an adjudicative body, it is in the context of a firm being required to continue to manage exchanges with the complainant. The summary of the procedures provided to complainants, as well as the policies and procedures themselves, should set out exactly when in the process, and how, a complainant can escalate their issues to a third party such as a court, as part of an easily understood overview of the relevant timelines, processes, and points of escalation.

To properly analyze complaints and determine if there are any systemic issues requiring rectification, it would be useful for the complaints register to clearly describe the resolution of the complaint, even if it was finally resolved by the Authority or a court. While a complainant may ask that the Authority review a firm's complaint record, it could be helpful for consumers to explicitly set out in a firm's policies and procedures when the Authority would usually request a copy of the record outside of a live complainant request, in order to incentivize additional accountability and internal resolution of complaints. The onus should not have to be on the consumer to know and understand that they have the right to make such a request themselves. It might be beneficial to consider whether the complaints registers for all firms should be centralized and maintained (either as original records or copies) by the Authority for quality control, as a resource for policy questions and considerations, and for the efficient monitoring for, examination, and potentially proactive avoidance of systemic complaints-related issues across covered financial service providers.

We are supportive of the proposed provisions included in proposed section 26 of the Draft Resolution, which will prohibit a financial institution, financial intermediary or credit assessment agent from attaching the specified conditions to the offer, including one that would prevent the complainant from communicating with the Authority. We agree with the prohibition on representing, in reference to its complaint process, the term "ombudsman" or similar word which could suggest to consumers that those persons are independent or not acting on behalf of the financial organization. The term should be reserved solely for an independent third party dispute resolution service.

It is expected that the summary of the firm's complaint processing and dispute resolution policy be written in a clear and simple manner and be "readily accessible" to the specified persons. We note that "readily accessible" could be interpreted by firms to mean located somewhere in the legal section of that firm's website, and instead we

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1
+1 (416) 366 3658 tel
www.cfacanada.org

believe the requirement should be to explicitly bring the summary to the attention of clients at the account opening (or equivalent) stage and whenever a complaint is lodged.

The proposed monetary administrative penalties are clearly enunciated and easy to understand. It is helpful for financial organizations, their staff and consumers of their services to understand the penalties that will be imposed if the specified provisions of the Draft Regulation are breached. However, we do not think that the monetary amounts that have been set are sufficiently high to act as a deterrent for larger organizations or bad actors who may simply view the fees as a cost of doing business. At a minimum, the penalties should allow for the cost recovery of expenses undertaken to investigate the breaches.

Concluding Remarks

We support efforts to strengthen and harmonize the complaint handling process across various financial sectors in the Province, and believe a number of proposed provisions in the Draft Regulation are an improvement to the existing rules relating to registered dealers and advisers. However, we are cognizant of the challenges that even small differences create for industry when operating in more than one jurisdiction, and for consumers where costly expert advice is often needed to help navigate those differences. Given the Authority's position as a regulator of a number of different areas of financial services, there is an opportunity to further harmonize requirements and work to foster more robust internal standards for complaint handling and dispute resolution.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of*
CFA Societies Canada

The Canadian Advocacy Council of
CFA Societies Canada