



INVESTMENT INDUSTRY ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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President & Chief Executive Officer

March 16, 2009

Mr. Jamie Bulnes  
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Investment Industry Regulatory Organization of Canada  
121 King Street West, Suite 1600  
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- And -

Ms. Susan Greenglass  
Manager, Market Regulation  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

**RE: IIROC Amendments to Complaint Handling Requirements – Client Complaint Handling Rule and Guidance Note and Amendments to IIROC Dealer Member Rules 19, 37 and 2500**

We are writing on behalf of our membership to express concerns regarding amendments to IIROC Client Complaint Handling Requirements (Proposed Rule) as published in the Ontario Securities Commission Bulletin on February 13, 2009.

The Investment Industry Association of Canada (IIAC) supports measures that provide for fair and prompt handling of client complaints. We agree it is important to ensure clients are aware of the process they should follow in the event that they have a complaint. However, it appears that the amendments are based on comments made by a few investors at an Investor Town Hall Meeting. While it is stated in the request for comment that the amendments were developed in consultation with IIROC advisory committees and with the public it is not clear that IIROC canvassed opinions from market participants widely to demonstrate a need for the amendments. As such, we recommend

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that a more comprehensive consultation process be undertaken to confirm that the proposed amendments are necessary and will indeed assist with the complaint process.

Although the IIAC is pleased that the Proposed Rule will be harmonized with other rules including that of the MFDA and National Instrument 31-103 *Registration Requirements*, we are extremely disappointed that comments we submitted on December 7, 2007 have not been incorporated into the Proposed Rule. The IIAC has reviewed the Response to Comments and notes that very few changes have been made and we do not believe that our members' concerns have been addressed. Below, we have reiterated our members' concerns and request that our comments be re-considered.

### **Definition of Complaint**

As currently drafted, the definition of a complaint is very broad. The Proposed Rule states that a complaint may include a verbal expression of dissatisfaction. A verbal expression of dissatisfaction is a very imprecise term and is likely to be subject to differing interpretations on the seriousness of the complaint. The determination of whether the verbal comment is a *bona fide* complaint may be a matter of interpretation. We recommend that all client complaints be expressed in writing to confirm to all parties affected that a complaint is being expressed and which provides sufficient detail. Furthermore, the Response to Comments dated January 28, 2009 states that most complaints received by members are already in writing and as such we recommend that all complaints be expressed in writing.

The Proposed Rule states that it is targeted to the handling of retail client complaints alleging misconduct in the handling of their account(s) and that "alleged misconduct would include but is not limited to". While a number of items are listed that would be included, this phrase creates significant room for interpretation and could potentially extend the scope of a complaint to include alleged misconduct not related to the client's account(s) or the client's dealing with the member. As such, the IIAC requests some guidance on how to narrow and define what would not be included.

In addition, one of the biggest areas of concern with permitting complaints to be expressed orally is the potential inability of the member to determine when the ninety day time frame begins. Verbal complaints are subject to various elements that are not conducive to working within a specific time frame. Rendering a complaint in writing serves two purposes - it will permit members to more effectively deal with the complaint and it will serve to ensure that clients know that their concerns are now on the record and must be dealt with by the member.

The Proposed Rule is also unclear as to who may submit a complaint. In particular, we question the intended scope of the phrase "a person authorized to act on behalf of a client". The IIAC requests clarification on who this person can be as the Guidance Note states that complaints made by individuals who are not clients of the member are not subject to the Rule. Such inconsistent language must be reconciled.

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## **Complaint Acknowledgement Letter - Timing of Response**

The IIAC reiterates our concern about the requirement in the Proposed Rule that members send an acknowledgement letter in writing to the complainant within five business days of receipt of the complaint. This time frame may not always be appropriate and as stated in the Response to Comments “special circumstances may occasionally result in an extension of time to acknowledge a complaint”. The IIAC recommends that the Proposed Rule clarify that special circumstances may exist as well as some detail around what circumstances would qualify. Alternatively, extending this time frame to at least ten business days in such circumstances would accommodate firm processes without prejudice to the complainants.

## **Complaint Substantive Response Letter**

Members are required to include in the substantive response letter the options available if the client is not satisfied with the member’s response in addition to including a copy of an IIROC approved complaint handling brochure. We do not understand the need to reiterate the options available which are already listed in the IIROC approved complaint handling brochure in the body of the substantive response letter and which were also provided to clients upon account opening and when sending the complaint acknowledgment letter. We suggest that the requirement to include the options available if the client is not satisfied with the member’s response be deleted. Our members continuously hear from clients that too much information can be confusing. Such a review should be undertaken to eliminate any duplication.

## **OBSI Information**

The Guidance Note states that clients can pursue the OBSI route at the earlier of (i) the date the substantive response is provided to the client; or (ii) ninety days after the receipt of the complaint. Allowing clients to pursue the OBSI option prior to exhausting all internal processes including the internal ombudsman process essentially means that clients may circumvent the internal ombudsman process which is a process that has proven to be extremely effective in the past for clients, members and the industry generally. By using the internal ombudsman process fewer complaints will need to seek review by OBSI and the complainant will have their concerns/questions addressed by their institution in a more timely and effective manner. We suggest that IIROC revise this provision to require clients to use the internal ombudsman process or formal internal dispute resolution process prior to pursuing the OBSI route.

## **Duty to Assist in Client Complaint Resolution**

The Proposed Rule requires approved persons and member firms to co-operate with each other and share information about a complaint where a complaint took place outside the member’s business. The IIAC is concerned with this provision because it may require the disclosure and sharing of personal client information between approved persons and

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members. This disclosure and sharing of personal client information may potentially lead to a breach of client confidentiality and client privacy. There is also the possibility that members may be exposed to liability as a result of disclosing or sharing of information. Furthermore, some members may refuse to co-operate which may leave the other member in a position of uncertainty as to how to proceed with handling the client's complaint. The Response to Comments indicates that should other relevant members not co-operate it should be noted in the ComSet filing. However, as an alternative to the current formulation of this provision and in order to avoid the concerns set out above, we suggest that IIROC co-ordinate information sharing between members and make use of the information already available on IIROC's complaints reporting system.

### **Complaint Record Retrieval**

The specific time frames for record retrieval set out in the Guidance Note provide that records in central, readily accessible places must be retrievable within two business days and documents that are kept for an extended period of time must be retrievable within five business days unless there are extenuating circumstances. The IIAC re-iterates that this time frame does not accommodate all business structures, particularly large registrants with significant data storage. It can take a great deal of time to search for e-mails or tapes, and two business days does not reflect business practicalities. The language in the Proposed Rule states that records must be retrievable within a reasonable time frame. However, the Guidance Note stipulates the two and five day time frames and as such is inconsistent with the Proposed Rule. Furthermore, the Response to Comments states that flexibility will be provided in the administration and enforcement of the rule. However, such information must be communicated and made consistent in the Proposed Rule and Guidance Note to ensure the proper functioning of rules. We submit that the better formulation of the retrieval time frame is that set out in the Proposed Rule which refers to a reasonable period of time.

We also require clarification with respect to the requirement to keep an up-to-date record in a central place of complaints. In instances where a member's head office handles client complaints and maintains the complaint records at their head office, would the branch itself also need to retain copies of the complaint records?

Furthermore, in instances where branches handle complaints and keep the complaint records at the branches, it is burdensome to then have to make duplicate copies of the records for purposes of centrally storing them. We submit that as long as members are able to retrieve complaint documents within a reasonable period of time members should not have to also ensure that the documents are centrally located.

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## **Guidance Note**

There are a number of items in the Guidance Note that may be better suited for the Proposed Rule. Provisions of importance in the Guidance Note that are setting standards, rather than simply providing general suggestions, should be included in the Proposed Rule after they are clarified. At minimum, both the Proposed Rule and Guidance Note should be made consistent.

We would be pleased to discuss these comments with you.

Yours sincerely,

*“Ian Russell”*