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Regulation respecting complaint processing and dispute resolution in the financial sector

[Consultation Notice: Regulation respecting complaint processing and dispute resolution in the financial sector \(bell.net\)](#)

Kenmar Associates appreciates the opportunity to comment on the Proposed complaint handling rule for financial services. Deficient financial services industry complaint handling is a significant financial consumer issue with socio-economic underpinnings.

Kenmar Associates is an Ontario-based privately-funded organization focused on investor protection via on-line blog hosted at www.canadianfundwatch.com . Kenmar also publishes *the Fund OBSERVER* on a monthly basis discussing investor protection issues primarily for retail fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, harmed investors and/or their counsel in filing investor complaints and restitution claims. Kenmar regularly respond to regulatory and government consultation requests in the financial sector.

The cornerstone of good complaint handling is a culture where all staff understand the value of complaints and senior management are committed to delivering a high quality service. The system should be user-centric, simple to access and easy to use. We believe the proposed system meets these criteria.

The Draft Regulation will apply to Firms registered with the AMF as dealers or advisors under the Securities Act or the Derivatives Act. Per the Securities Act, the Draft Regulation is not applicable to investment fund managers, as they do not exercise their activities directly towards financial consumers.

The Regulation, when enacted, will be directly applicable to Firms registered with the AMF as dealers or advisors, including SRO members .These Firms will have to ensure they process complaints from Quebec clients in compliance with the Draft Regulation first, as it supersedes IIROC's rules on that matter according to the recognition order. It is our understanding that the AMF will work with their partners, including SROs, to ensure that the requirements of the Draft Regulation are communicated clearly. We do not believe that the creation of a new SRO will impact the application of the Draft Regulation.

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We find the proposals for client complaint handling to be well reasoned and compares favourably with international standards such as ISO 10002. It is far superior to NI31-103 complaint handling requirements. We especially appreciate the obligations to treat complaint handling as important enough to attract corporate attention, effectively deal with systemic issues and treat all clients impacted by a complaint fairly, not just those who formally complained.

The proposed rule stipulates that the staff responsible for processing complaints are able, in carrying out their duties, to act with independence and avoid any situation in which they would be in a conflict-of-interest. This is a welcome provision as it clearly separates operations staff from complaint handling personnel.

The complaint record retention period of at least 7 years from the date the complaint is received by the Firm is consistent with best practices for such data.

The requirement for a financial institution or financial intermediary to provide complaint drafting assistance service to any client expressing a need for it is a real positive. Many retail complainants need help in effectively articulating and framing their complaint. This is an important socially responsible aspect of the AMF proposal. The AMF may wish to promote the development of Investor Protection Clinics such as the York University IPC (<https://www.osgoode.yorku.ca/community-clinics/investor-protection-clinic/>) to assist complainants of modest means.

The requirement to have complaints processed promptly and efficiently within no more than 60 days from the time the Firm receives the complaint is consistent with international standards for such complaints. It is far better than the 90 calendar days permitted by the self-regulators, such as IIROC's Rule 2500B

We recommend the following points/clarifications be added to the rule:

Choice of expression: The Draft Regulation states that Firms should have policies with respect to their complaint handling process. For greater clarity, we recommend that the language explicitly state that Firms should implement policies.

Status reporting: Periodic updates on progress through the complaint process should be made to complainants.

Making clients aware of the Firm's complaint handling process: This can be effected in numerous ways: In branch brochures, part of account agreement, website etc.

Access: Require the system to permit complaints from multiple channels so clients can choose the one that best meets their specific needs. Best practice is to allow complaints to be raised by phone, email, online form, mail and face-to-face.

Fairness: The rule should include explicit language that complaints should be resolved fairly, complainants treated respectfully and complaint processes congruent with applicable client rights. The goal should be to make the complainant whole.

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Document access: Any documents utilized or cited in deciding the resolution should be made available to the client upon request and in a timely manner.

Final response letters: Must be sufficiently detailed so that the complainant can make an informed decision as to accept (or not) the recommended resolution. We recommend 30 calendar days as the time allowed for the complainant to respond to the response letter. Response letters should be written in plain language so that the response is clearly understood and actionable.

Right to communicate: Add para 26 ((1) (d) to include law enforcement, Human rights Agency or government Privacy Commission.

Loss calculation methodology: We recommend the opportunity loss method as the primary method as applicable.

Execution of accepted offer: If the complainant accepts the offer, the Firm should give effect to the offer no later than one week following receipt of such acceptance rather than the 30 days in the proposed rule. Thirty days is actually longer than the 20 calendar days provided to the retail consumer to fully assess and decide on the offer. Thirty days is far too long in our view.

Administrative penalties: The dollar amounts cited may not be sufficient to act as effective deterrents. We note that the AMF decisions regarding these penalties is publicly disclosed. Negative publicity surrounding penalties adversely impacts a Firm's reputation, so has some deterrence value. Penalties for repeat offenders should be higher or lead to robust regulatory enforcement action.

Escalation: Any client rights to escalate or appeal the response should be made clear to the complainant in a prominent and clear manner.

Restriction on gagging: Add "A Firm when it presents the complainant with an offer to resolve the complaint, attach a condition to the offer that requires the signing of an NDA". The public availability of such information can increase the public's knowledge of industry malpractices and incentivize Firms to treat clients better so as to avoid complaints. The silencing of victims of financial assault is not in the Public interest. See our commentary on gag orders at <http://www.canadianfundwatch.com/2016/01/gag-orders-purchased-silence.html>

Complaint database: The complaint database should record information with sufficient granularity and functionality to produce reliable data about complainants, complaint trends and issues.

Use of internal "ombudsman": The sentence "... complaint process or the persons assigned to implement, apply or review its complaint process the term "ombudsman" or any other qualifier of the same nature that suggests that such persons are not acting on behalf of the financial institution, financial intermediary or credit assessment agent." has the positive intent of preventing false claims of

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independence but may not prevent these entities from claiming they are unbiased and thereby confuse complainants. We would add provisions that such unregulated entities must not use the misleading "ombudsman" nomenclature, that their use is strictly voluntary and their work must fall within the AMF 60 day timeline constraint for a response.

"Days": We take this to mean calendar days.

Given the high quality of this document, it might be a good idea to share it with other CSA jurisdictions and the two SRO's. Harmonization would be a real positive.

We hope this feedback on the proposal is useful to you.

Do not hesitate to contact us if there any questions regarding our submission.

Permission is granted for public posting of this Comment letter.

Sincerely,

Ken Kivenko, President
Kenmar Associates