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Comments on Rule Consolidation Project – Phase 5 Proposal
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According to the 2024 OBSI Annual Report, investment cases decreased slightly to 649 from an all-time record high of 662 cases in 2023. Nearly one third (30%; 216 / 721) of investment complaints received compensation that they otherwise would not have obtained if OBSI was not available.
These statistics suggest that Dealer complaint resolution is in need of improvement.

Kenmar appreciate the opportunity to provide feedback on Phase 5 of the Rule Consolidation Project. Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via articles hosted at www.canadianfundwatch.com Kenmar also publishes the Fund OBSERVER on a monthly basis discussing consumer protection issues primarily for retail investors. Kenmar is actively engaged with regulatory affairs. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused consumers and/or their counsel in filing investor complaints and restitution claims.

We understand that the primary intent of this initiative is to consolidate and harmonize rules across IIROC Dealers and MFDA Dealers. However, we are of the view that CIRO should use this golden opportunity to ensure that Dealer Member complaint handling rules are modernized. Accordingly, we will provide some constructive ideas for improvement with a focus on the section addressing Dealer Member complaint resolution.

There are a number of deficiencies and shortcomings in the Dealer complaint resolution process that need addressing especially in these times of client economic, financial and social distress. The deficiencies/gaps include, but are not limited to:

- Lack of core complaint handling principles
- Lack of senior management engagement
- The system is difficult to navigate
- Reliance on flawed KYC/ KYP process documents
- Lack of Root cause analysis
- Open loop corrective action system
- Adversarial approach to resolution

- Loss calculation methodology disconnect with OBSI
- Low-ball settlements
- Use of NDAs as a bargaining chip
- Systemic issues end up in a sinkhole
- Wearing down of complainant- " complainant fatigue "

These deficiencies need to be addressed to minimize investor harm.
See also our **Commentary on Investment Dealer complaint handling**
http://www.canadianfundwatch.com/2025/

Valid complaints may not be regarded as *serious misconduct* but can have serious financial and non-financial impact on investors: Long account transfer times, double billing, wrong choice of account type, incorrect fee level and poor complaint resolution. Negligence, lack of proficiency, use of signed blank forms and a flawed risk profiling process can be the root cause of many high impact complaints.

Many causes of complaints can be traced to management policies, stretch sales quotas , pressure to unload IPO's, poor advisor training, conflicted supervision, advice skewing compensation practices, deficient tools and IT support systems and overall corporate culture.

A January 2018, Morningstar article on industry fee mischarging stated "*In all cases, there are no admissions of intentional wrongdoing. But the grand total to date of the make-good payouts- $358 million - speaks volumes about how thousands of retail investors were poorly served by their trusted financial providers."* **Investors recover $358 million from compliance failures**: Morningstar CA I https://www.morningstar.ca/ca/news/190788/investors-recover-%24358-million-from-compliance-failures.aspx
No intentional misconduct, but hundreds of millions of dollars of investor harm!

We fully expect Dealers and CIRO to treat "serious harm" complaints with as much priority and importance as those involving *serious misconduct*.

Good complaint resolution should be led from the top, focused on outcomes, fair and proportionate, and sensitive to complainants' needs and rights. Complaints present a valuable picture of client service and the impact of policies and procedures that might not be visible otherwise. As a risk management tool, a robust customer complaint resolution process can help Dealer's proactively identify risks of customer harm, compliance management program deficiencies and customer service issues.

We strongly recommend that nonconformity with CIRO complaint resolution rules be added to Appendix 6, given its adverse impact on victims and investor perception of the financial services industry. Effective complaint handling is an essential component of financial consumer protection.

Comments on specific aspects of consultation

Effective complaint handling involves receiving, documenting, investigating, and fairly resolving complaints, while also implementing corrective actions to prevent recurrence and ensuring a customer-focused, accessible, and timely process.

Here are our thoughts on the consultation and a few suggestions for improvement.

Definition of complaint: We recommend a definition similar to those used by OBSI, FCAC or FSRA (*A complaint is a statement of a consumer's dissatisfaction with the action, service, or product of a financial service provider or an authorized agent) .*According to OBSI ,Complaint " means an expression of dissatisfaction made by a Customer about the Provision of a Financial Service in Canada by a Participating Firm, or Representative of a Participating Firm, made (a) in writing; or (b) verbally,…" The key word in the CIRO definition is *offered*. Complainants file a complaint based on the service or products that were provided.

3702 (i) Change *a service or product offered by a Dealer Member to* **a *service or product* provided *by a Dealer Member*.**

The definition of "complaint" should include current and former clients.

Complainants should be able to file in English or French and such other languages deemed appropriate for the Dealer's client base.

We suggest allowing clients to raise complaints through various channels, including phone, FAX, email, online forms and in person.

3750 Client complaint handling standard: *A Dealer Member must document and, in a manner that a r**easonable retail client** would consider effective, fair and expeditious, respond to each retail client complaint made to the Dealer Member.* Retail investors typically have little knowledge of applicable laws, Dealer complaint systems, rules or applicable terminology that would empower them to be a "reasonable retail client". We suggest wording that the substantive response letter should contain sufficient detail and connectivity so the retail complainant can make an informed assessment of the response letter.

3752 Handling client complaints (1) *Complaints must be handled by supervisory or compliance staff and a copy of the complaint must be filed with the compliance department or function (or the equivalent) of the Dealer Member.* We question whether supervisory staff are sufficiently unbiased to review complaints against the Approved persons they are paid to supervise especially if their compensation is dependent on the sales "production" of the staff .This relationship creates a material conflict-of-interests. Also, they must have the time available to thoroughly review each complaint within the 90 calendar day timeline. In addition, they would need to be formally trained in complaint handling, empathetic with strong inter-personal relationship skills. **We recommend that Complaint investigators should be organizationally independent of operations**.

Response time The 90 calendar day cycle time for responding to a client complaint is disappointing. This might have been OK in 1995 but in the age of the internet, high speed communications, database management, block chain, digital networks and artificial intelligence, it is unjustified. We recommend 60 calendar days to match the AMF standard (chartered banks must respond within 56 calendar days)

In all cases, the Dealer response should be made within 90 calendar days and include **ALL** complaint investigation and internal dispute resolution services. The 90 calendar day standard lags FCAC, AMF cycle time standards and falls well below international standards.

We are of the view that it is fundamentally unfair that complainants dealing with a Quebec domiciled Dealer (AMF regulated) have a faster, more robust complaint resolution process than Canadians in other provinces.

Misrepresentations of independence: Kenmar agree with the prohibition on the use of any misleading terms, including "ombudsman" or similar terms, in referring to a Dealer Member's, or its affiliates, "internal dispute resolution service", an internal appeals service. The banking industry made this change years ago. [some IDRS units now assert they are **unbiased** as opposed to independent**]. The internal dispute resolution service should explicitly state it is not independent of the Dealer.**

The IDRS is an internal appeal mechanism to review the Dealer Member decision. It is a competitor to OBSI although, unlike OBSI, it is neither independent nor an ombudsman. Our experience is that a complainant that has chosen the IDRS route is very unlikely to pursue the complaint to OBSI due to complainant fatigue. We are of the firm conviction that such complainants would have been far better served if they had gone directly to OBSI.

We do not agree that there should be an internal two-step process, as related many times to IIROC and the MFDA. OBSI is specifically designed to handle appeals. If CIRO retains the oppressive internal appeals process, regardless of terminology, its work must be completed within the 90 calendar day envelope for responding to a client complaint.

If internal dispute resolution service (IDRS) entities are permitted, they must be subject to CIRO approval and oversight and all applicable complaint resolution rules and regulations.

Restrictive provisions: We welcome an inclusion of a provision to prohibit Dealer Members from preventing clients, via a release agreement or otherwise, from communicating or sharing information with securities regulatory authorities or other enforcement authorities. We recommend adding Human rights Commissions, Law enforcement, Privacy Commissions and licensed medical practitioners. We have added medical practitioners so that clients can receive medical treatment for the

stresses imposed on complainants navigating the system and compelled to sign NDAs.

Balancing of interests: We welcome the removal of the requirement in the IDPC Rules that Dealer Members must handle complaints in a balanced manner considering the interests of the client, Dealer Member, Approved Person and employee. The new rule should be congruent with CFR, fairness principles, client service and C*lient first* practices (see APPENDIX I Client first practices) –suggested CIRO Guidance for operationalizing "Client first".

3753 Complaint policies and procedures: (1) While it is necessary to establish fair and effective policies and procedures, there must also be an explicit requirement to implement them. We recommend that text be added requiring operationalizing the complaint policies and procedures .This would include staff training, specialized tools, an information system, database, calculators, management reporting and periodic audit.

(2) We recommend adding after "_.. *the Dealer Member must*" **determine *the root cause(s) of the complaint:***
(2) (i) We recommend replacing the proposed text with *review its systems, policies, procedures and practices,*
(2) Add (v) *Management shall take action to remedy the root cause(s) giving rise to the complaint(s).*This will ensure that the corrective action cycle is closed. This would typically involve staff training, changes in procedures, improved disclosure, improvement in KYC capture, enhancement of risk profiling process, product removal from shelf and the like.

We note that sometimes even a single complaint can point to a systemic issue. For example, a software problem, a fee-based account also collecting trailing commissions or a discount broker collecting mutual fund trailing commissions. Prompt attention by Dealers can help avoid significant client harm.

Procedures should distinguish between redress for financial loss and redress for material distress/inconvenience.

We suggest adding this text*: Procedures should ensure that lessons learned as a result of OBSI determinations are effectively applied in future complaints*.

Dealers shall not attempt to prevent or delay the filing of any complaint with OBSI by a client (or former client) which is within OBSI's mandate (a complaint which is in accordance with OBSI's definition of a complaint).

3756 Response to client complaints: (3*) The substantive response letter must be written in plain language and be in a format readily accessible and understandable by the complainant*. We recommend the following alternative wording: The substantive response letter must be written in plain language with sufficient detail and information to permit the complainant to make an informed assessment of the letter.

In our experience, most "substantive response letters" do not provide the complainant sufficient information to make an informed decision on the Dealer's response. Explanations should be fulsome, seek to expose the background, context and reasons, cover why procedures were used in the way they were and include the rationale for the decision.

As a minimum, the response letter should provide a clear statement of facts, the rationale, the rules/principles and standards applied to the decision, the documents, files and records used in the analysis, and the basis behind the method of calculation if restitution is offered. Spreadsheets employed should be provided if requested. Any and all time-line constraints should be defined and the entire communication should be in plain language, free of acronyms, industry jargon and legalese.

If the complainant will be required to sign an NDA as a condition of settlement acceptance, this fact must be stated in the substantive response letter.

There should be requirement to put:
(a) the client's interests above the interests of the Dealer in the handling of complaints as required and (b) that Dealer's resolve material conflicts-of-interest inherent in the complaints process in the client's best interest.

This section requires the response letter to inform clients of the availability of an internal complaint resolution service (ICRS). But Joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin 0736-M - Complying with requirements regarding the Ombudsman for Banking Services and Investments | OSC states that : *A registered firm should not make an alternative independent dispute resolution or mediation service available to a client at the same time as it makes OBSI available. Such a parallel offering would not be consistent with the requirement to take reasonable steps to ensure that OBSI will be the independent service that is made available to the client. Except in Québec, we expect that alternate complaint service providers will only be used for purposes of section 13.16 in exceptional circumstances.* We suggest that the IDRS, whether independent or unbiased, not be mentioned in the final response letter to prevent complainant diversion from OBSI.

Complainants should be provided a minimum of 30 calendar days to accept/reject the Dealer's response letter.

Complaint and complainant information is confidential and should not be shared with an affiliate of the Dealer or third party without the express written consent of the complainant.

3757 Duty to assist in client complaint resolution To the extent practicable, we recommend the duty to assist extend to any Dealer regulated by the CSA, not just those regulated by CIRO. CIRO is a delegated entity recognized by the CSA.

Reporting of compensation paid to clients to CIRO: We agree with the provision as it will contribute significantly to CIRO's knowledge base and understanding of Dealer Member complaint handling practices. To ensure uniformity of reporting, a definitive number (say $500) should be the threshold. It may also be useful to have non- financial redress actions reported e.g. correction of a credit record.

Reference to ombudsman service: References to an ombudsman service should be replaced by Ombudsman for Banking Services and Investments (OBSI). If this is not done, CIRO should explain to the public why it does not refer to OBSI. The CIRO Board does not have to approve- OBSI is the sole CSA approved ombudsman service.

Cooperation with OBSI: When a Dealer Member complaint is referred to the OBSI, the Dealer Member must (1) cooperate fully with the OBSI investigation and (2) comply promptly with any settlement recommendations made by it. If the Dealer Member does not comply, OBSI shall notify CIRO and the JRC of the non-compliance and implement its Name and Shame protocol.

Calculation of loss methodology: Dealer Members should utilize the Opportunity cost methodology, as applicable, to personalized advice complaints. The overall objective of the method is to determine a reasonable estimate of the financial position the investor would be in if unsuitable investment advice had not been given and acted upon. See https://www.obsi.ca/en/how-we-work/our-approaches/comprehensive-investment-loss-calculation/. Use of the Opportunity cost method will ensure investors are fairly compensated for harm incurred.

Like OBSI, Dealer Members must be required to publicly disclose their loss calculation methodology. Transparency of the loss calculation methodology would enhance retail investor confidence in the fairness and integrity of complaint resolutions.

Root Cause Analysis (RCA): RCA is regarded as a basic component of modern complaint handling. We strongly recommend that Root Cause Analysis be mandatory for use by Dealer Members in the investigation of complaints. Root Cause Analysis in complaint handling is a systematic approach to identify and address the underlying causes of problems or complaints, rather than just their symptoms, to prevent recurrence reduce client harm and improve client satisfaction. RCA helps ensure fairness, a key principle of complaint resolution. See what is **What is Root Cause Analysis (RCA)? |** ASQ https://asq.org/quality-resources/root-cause-analysis?srsltid=AfmBOooj8bcc3hkR5GgJCrCqqhAFFY88cFY-P-extfO6ySiytWzI79bo

Feedback: Dealers should be required to solicit feedback from complainants and use the information to identify areas for improvement in the complaint resolution process. OBSI use a user survey approach as part of their continuous improvement program.

CIRO should institute aggregate reporting of complaints: We support the OBSI suggestion "*For these reasons, we recommend that IIROC implement a requirement in Part A of Rule 3700 for aggregate reporting of all retail investor complaints. Such reporting requirements are common internationally and have recently been adopted for Canadian Banks pursuant to the Bank Act.4 .IIROC should also publicly report this aggregate data to increase transparency and provide valuable information to the public and interested observers. Such reporting is consistent with the G20 High Level Principles on Financial Consumer Protection5, which note the importance of aggregate reporting of complaints data, observing that "at a minimum, aggregate information with respect to complaints and their resolutions should be made public."* (https://www.obsi.ca/media/wmqedcff/obsi-comment-on-iiroc-proposed-amendments-respecting-client-complaint-requirements-april-2022.pdf page 7.

Non- financial redress: **The consolidated rules should address the non-financial redress issue as it is very important to complainants**. Redress may include a letter of apology, restoring a product or service, correcting a credit bureau record, explanatory letters to a client's creditors or a modest sum for inconvenience, delay.

Registrant settlements: **Approved persons and employees should not be permitted to settle complaints with clients. The contractual relationship is between the Dealer and the client and settlements should be between those parties**.

Internal investigations and discipline: The consultation proposes to base the trigger for an internal investigation on the concept of "serious misconduct" and extend the rules to the conduct of employees. We're not sure if post-signature document adulteration or the use of blank/ partially complete signed forms are regarded by CIRO as *serious misconduct*. Their use can certainly cause significant investor harm. Is an "employee "defined per the applicable employment standards Act?

CIRO arbitration program: We support the inclusion of mutual fund Dealers in the program. The program should not be available to clients with individual claims less than $350K when OBSI has a binding decision mandate. If OBSI declares a complaint out of mandate, such cases can be filed with CIRO arbitration if the complaint is eligible under CIRO arbitration rules.

NDA (**GAG) orders:** We expect CIRO to ensure that a Dealer Member must not impose confidentiality or similar restrictions on a client pursuant to a release entered into between the Dealer Member and client complainant, or otherwise. These agreements silence complainants and shield CIRO Dealer Members and Approved Persons, a practice diametrically opposed to CFR principles.

Access to OBSI: Complainants should have the right to appeal to OBSI if the client was harmed as a result of any advice or any service provided by the Dealer Member if they are dissatisfied with the result of the complaint resolution. If there are

exceptions to this right, clients should be advised at account opening, prior to a transaction and/or upon filing a complaint.

Fund Dealers offering margin to retail mutual fund investors: We are very concerned about granting mutual fund Dealers margin authority. The MFDA had prescriptive requirements in its daily supervision requirements (net worth, income, age, etc.). CIRO is going more towards the IIROC approach of "principles-based" regulation. The question is whether MFDs will now see this as eliminating reasonable suitability criteria and a wide open field to start leveraging again or if CIRO continues to apply previous standards. The time-tested MFDA prescriptive standards were effective in preventing excessive leveraging.

Margin accounts were created for sophisticated investors, and for securities that are liquid in the event of a margin call. Will a margin call be answered by selling mutual funds (at a price that is **unknown** at the time of the call)? If margin is extended to the purchase of OLTF mutual funds, investor outcomes could be catastrophic. **Kenmar do not support CIRO granting MF Dealer Members margin authority applied to unsophisticated retail mutual fund investors.**

Definition of trailing commissions: *The* CSA define *Trailing commissions as:* The trailing commission is an ongoing charge for services and advice provided by your representative and their firm. https://www.securities-administrators.ca/investor-tools/understanding-your-investments/types-of-fees/#:~:text=Trailing%20commissions,on%20your%20sales%20charge%20option. Note that all FUND Facts documents state that the trailing commission is used to pay for advice and services provided. The consultation paper defines trailing commissions as *Any payment related to a client's ownership of a security that is part of a continuing series of payments to a Dealer Member or any of its registered individuals by any party.* **We strongly recommend that the CIRO definition align itself with the CSA.**

Delivery of Documents to Clients: The CIRO plan to make e-delivery the default delivery mechanism raises some concerns. We expect CIRO Dealer Members to prominently advance inform clients of this change and give them the opportunity to specifically opt out. This is especially important for seniors, those who prefer paper documents, those without internet access, clients concerned about online fraud and clients who cannot read documents on a screen. Dealers should be prevented from applying a fee for mail delivery. We recommend that CIRO leave it to each Member to set their delivery service standard. **In any event, the delivery method to existing clients should not be altered unless expressly requested by clients**.

Information sharing with OBSI: Kenmar fully support CIRO-OBSI information sharing. The more information available, the better the policy decisions, decision making and working relationship.

Misleading titles: All advisory titles should be approved by the Dealer Member. If an Approved person has been sanctioned or banned by an approved Credentialing

Body, that person must report the occurrence to the Dealer Member and not be permitted to use the FSRA FA or FP title, as applicable.

Dealing with illegal conduct We recommend that the CIRO policies and procedures provide direction on how its Members are to deal with complaint cases regarding theft, fraud, document adulteration and forgery .Are Dealer Members required to report such cases to law enforcement? Are Members accountable for the illegal activities of their representatives? Are Members required to inform all clients impacted? Are Dealers expected to continually improve their processes for early detection of illegal activity? This is an important issue because investors are aware that monetary fines are rarely collected by CIRO. The expectation is the system will ensure that justice (jail time) is imposed as an impactful deterrent for other would-be rogue individuals.

3802 Definitions *Fund expense ratio* definition .This terminology has been proposed by the CSA but has not yet been endorsed.

Summary and Conclusion

In conclusion, we are disappointed that relatively little progress has been made on complaint resolution modernization since the last consultation and that AMF leadership in complaint resolution has not been adopted.

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 fair, high quality service. Kenmar are of the firm conviction that a fair modernized complaint resolution system is crucial for rebuilding retail investor trust in capital markets.

Much of the investor financial harm is caused by more subtle approaches to financial assault than "serious misconduct". Financial loss recovery is what matters to retail investors at least as much as sanctions tied to non-compliance to rules.

We urge CIRO to work with the IAP and Investor Office to consider this Comment letter and those of other investor advocates. This is a rare opportunity for real reform and enhanced investor protection.

We'd like to see CIRO sanction guidelines updated to increase sanctions for flawed and unfair complaint handling and for Dealers who unduly refuse OBSI recommendations or provide low- ball settlements.

We encourage CIRO to introduce rules and guidelines dealing with the ethical and proper use of AI in the KYC and complaint handling processes. See *Enhancing Complaints Management with Artificial Intelligence* https://www.civica.com/en-ca/insights/enhancing-complaints-management-with-artificial-intelligence/

We do not have the motivation to provide more comments. We dedicated over 150 person hours last time. Instead, we refer CIRO to our previous comments on IIROC's 2022 consultation on complaint handling https://www.ciro.ca/media/3465/download?inline . OBSI also made numerous insightful recommendations to improve the IIROC proposal https://www.obsi.ca/media/wmqedcff/obsi-comment-on-iiroc-proposed-amendments-respecting-client-complaint-requirements-april-2022.pdf We urge CIRO to now make use of all the effort expended to support the earlier consultation.

If no changes are made to this proposal, Canadians could end up with an out-of-date complaint resolution system backed up by an OBSI without a binding mandate. A true doomsday scenario as ordinary Canadians face tough times, financial stress and stagflation.

Kenmar stand ready to support CIRO should it decide to make Dealer Member complaint resolution modernization a priority.

Feel free to contact us if there are any questions regarding this letter.

Ken Kivenko, President
Kenmar Associates

APPENDIX I Putting client interests first in complaint handling

We recommend that the consolidation rule be supplemented with Guidance about how Dealers are expected to place client interests first in complaint handling, for example by stipulating that:

o All complaint-related communications should be in plain language
o The individual handling the complaint should be independent with authority
o Dealers should assist clients in articulating their complaints as needed
o Dealers should communicate with complainants in their language of choice
o Dealers should assist clients in understanding the regulations applicable to the subject matter of their complaint
o Dealers should connect the regulations to the complaint under investigation
o If the Dealer identifies other issues in the investigation of the client complaint, such issues should be investigated and remediated for the client
o The complainant should be kept current on investigation progress
o If the Dealer identifies a wrongdoing, it should take pro-active action and/or offer compensation that places the consumer in the position they would have been had the unsuitable action or advice not taken place

REFERENCE Documents

Why Canadian Investors Should Complain, Why They Don't Complain And What To Do About It
https://www.canadianmoneysaver.ca/articles/3332

Investor advocacy group urges regulators to enact stronger standards of fairness, work with consumer and investor advocates June 2021
https://search.app/aWjx5nJ4wg7oPXQ26

Was your complaint handled fairly? Canadianfundwatch.com
http://www.canadianfundwatch.com/2015/02/checklist-was-your-complaint-handled.html

Canadian securities regulators publish results of review of conflicts of interest practices August 2023 Osler, Hoskin & Harcourt LLP
https://www.osler.com/en/insights/blogs/risk/canadian-securities-regulators-publish-results-of-review-of-conflicts-of-interest-practices/

Complaint handling for Seniors in need of major reform: K.Kivenko
Complaint investigators have not tailored their protocols to match the unique challenge of complaints from the elderly. https://search.app/ysQZ8Sos5FtxSNBj8

CSA- please make complaint handling tolerable for retail investors Feb. 2019
https://search.app/Rf9V1ATMLqv9vhrU7

Complaints Resolution: Policy Framework and Best Practices | Financial Services Regulatory Authority of Ontario
https://search.app/BJnsrJLQNs9DfF6z9

Complaints and root cause analysis: good practice and areas for improvement: FCA
https://www.fca.org.uk/publications/good-and-poor-practice/complaints-and-root-cause-analysis-good-practice-and-areas-improvement