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Canadian Advocacy Council

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April 14, 2022

VIA EMAIL

Member Regulation Policy
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Re: Proposed Amendments respecting Reporting, Internal Investigation and Client Complaint Requirements (collectively, the "Proposed Amendments")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "**CAC**") appreciates the opportunity to provide the following general comments on the Proposed Amendments and respond to certain of the specific questions posed.

We believe the Proposed Amendments provide a rigorous analysis of the existing reporting requirements and appropriately set out changes to eliminate duplicate reporting while focusing on potentially harmful matters. We are supportive of many of the changes to the reporting and internal investigation requirements in Parts A and B of Rule 3700 (the "**ComSet Reporting Requirements"**) as they will be more consistent with existing regulatory expectations and reduce duplicative reporting requirements.

We particularly support the requirement to report (and investigate) serious misconduct through ComSet. We have concerns that some of the principled-based determinations with respect to the examples provided of "serious misconduct" will be too subjective. Terms such as "material harm", "reasonable risk" and "material non-compliance" are open to interpretation, especially when looked at from a firm's perspective. We are unsure why in the definition of "serious misconduct" relating to harm to clients or the capital markets, both a "reasonable risk" and "material harm" qualifiers are necessary pre-cursors to a report. If these qualifiers remain, the referenced updated guidance, particularly with respect to clarification of the meaning of "material risk of harm" and certain serious misconduct activities, will be extremely important for Dealers.

In addition, in the definition that refers to "material non-compliance with IIROC requirements, securities laws or any other applicable laws", we do not believe a materiality qualifier is appropriate for breaches of securities or other laws. In our view,

[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.

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breaches of laws (securities or otherwise) should draw major conduct questions and will need to be reported and investigated in all cases.

We note that some of the proposed examples of serious misconduct do not seem to be of equal magnitude– for example, while there may be a reasonable explanation for a product choice by a Dealer where there is an initial concern about suitability determination, there is unlikely to be any available reasonable explanation if the activity involves criminal fraud.

The Proposed Amendments do not contain any reference to the effect of the activity as being a factor in determining whether the activity amounts to "serious misconduct"; which we believe is appropriate. It is the act itself which should be reviewed (i.e. fraud is fraud) rather than the effect on the client or harm produced in determining whether the activity is reportable and requires further investigation.

We note that proposed Rule 3712 (Failure to Report) appears to be more permissively worded than is our preference, in that it indicates that a failure to report within the required timelines *may result* in IIROC imposing an administrative fee or other penalties. Unless there is a persuasive reason to explain the late report, we believe that, at the very least, administrative penalties should be levied on member firms to encourage compliance.

While we understand the privacy and other concerns that may arise with sharing the ComSet data with third parties such as other regulators, we believe these issues should be overcome in the case of other regulators via confidentiality considerations in contracting, as we believe that a centralized repository of data and events is in the best interests of clients and the industry. It is currently unclear how the data placed in ComSet will be utilized for trend analysis, etc.

With respect to the client complaint handling requirements in Parts D and E of Rule 3700 (the "**Complaint Requirements**"), we are supportive of measures that help market participants better understand the rules and expectations clearly as well as setting out client complaint best practices.

We are particularly supportive of the inclusion of requirements on acceptable practices for communicating internal dispute resolution and the Ombudsman for Banking Services and Investments ("**OBSI**") services, and the prohibition on the use of misleading terms such as "ombudsman" when referring to a dealer's internal dispute resolution service.

It is important that any complaint resolution rules put forth does not further complicate the existing array of complaint handling and dispute resolution mechanisms from the perspective of financial services consumers. One of the primary concerns we have is the fact that Canada's financial complaint handling systems are fragmented and cannot be easily understood from the perspective of a financial services consumer. Financial consumers should not be expected to distinguish whether a particular product or service is regulated as a banking, securities, mortgage or insurance product or service – all of which have different recourse mechanisms, some of which then further vary amongst Canadian jurisdictions. We believe the framework for Canada's complaint handling system across financial services could and should be significantly simplified.

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The Financial Consumer Agency of Canada has consulted on its proposed guideline on complaint-handling procedures for banks and authorized foreign banks. Our consultation response noted that from a consumer's perspective, the timeline for dealing with complaints is a very important feature of the complaint resolution process. We understand that banking rules provide that a complaint must be dealt with within 56 days following the day it is received. While we do not have a view on the quantitatively appropriate number of days within which a complaint must be dealt with, we do note that whether it is 56 days or 90 days, it is confusing to consumers to try to navigate (or be aware of) multiple varying timelines. Noting that a shorter timeframe is usually more consumer-friendly, we would strongly support harmonization of these requirements, including clearer definition with respect to when the clock begins to run on the timelines. The resolution to issues such as these could be facilitated though a new MOU between IIROC and the FCAC.

As a next step, we recommend reviewing the possibility of standardizing the description of services and products that may lead to a complaint and thus require reporting across various member firms, and also other stakeholder groups, including the securities regulators and the FCAC. We believe that a number of issues may stem from the fact that certain types of financial products are treated differently across industry members (e.g. preferred shares are characterized as equity by some market participants for complaints purposes, and debt by others) thus leading consumers down a confusing complaint resolution path. A similar taxonomy for assessing misconduct and related issues could help market participants develop policies and potentially reduce future investigations and complaints.

With respect to the Proposed Amendments relating to the gatekeeper obligations of directors, officers and employees of Participants in UMIR Rule 10.16 (the "**Gatekeeper Obligations**"), we support the philosophy of burden reduction and the need to eliminate overlapping reporting requirements. We strongly support the requirements for gatekeeper reports to be made in ComSet, but as noted above, it is important that the data be utilized widely as a broader regulatory tool to assist in the identification of any systemic issues underlying individual complaints.

We do note that these Gatekeeper Obligations do not appear to mention the amendments made to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to reflect the Client Focused Reforms, including KYP obligations. As an example, one of the activities that would constitute serious misconduct is a violation of the suitability requirement in Rule 3400, without any specific mention of the requirement to act in the best interests of the client. We believe all such amendments must be reflected or referenced in the Proposed Amendments.

We previously commented on the proposed amendments to Rule 9500, which currently restricts the information IIROC can receive from OBSI. We continue to agree that the proposed changes to this rule are necessary to align with other Canadian securities regulators. When information is shared across regulators, it can assist regulatory investigations, which is consistent with an investor protection mandate, but also help dealers meet best practices expectations.

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We would continue to encourage IIROC to help reduce regulatory burden on registrants and work collaboratively with other standard setting bodies and regulators. In the context of information sharing, we note that ongoing collaboration may identify more serious underlying problems at a registrant or with a particular product or practice and assist in the prevention of further problematic activity. Through such co-operation, over time, there should be a way for institutions to collectively become more effective at identifying and resolving problems that are leading to frequent conduct issues and complaints, through escalation to and collaboration with IIROC or the relevant other agency.

As currently constituted, it is very important for regulators such as IIROC and the FCAC to speak to each other and remove boundaries about sharing information. It is important not to provide an opportunity to a registrant facing regulatory investigation or a complaint to forum shop. As a result, it would be helpful if any one particular regulator had the authority to shift the complaint to the right forum if it is initially made to the incorrect regulatory body or complaints resolution authority.

Responses to Specific Questions:

Question #2

Do you think 6 months would be an adequate amount of time for Dealers to implement the Proposed Amendments? If not, how much time do you think Dealers would need?

We believe 6 months is an adequate implementation period that balances Dealer needs with the pressing need for the improvements in investor protection that these amendments represent.

Question #3

Are there specific areas of the Proposed Amendments you would like further clarity on in the updated guidance? If so, please let us know which areas and why such clarity is needed.

Yes – we have indicated these areas, particularly relating to definitions and materiality qualifiers in our introductory comments.

Concluding Remarks

We support many of the changes that have been made in the Proposed Amendments, particularly those that allow for burden reduction through reduced duplicative reporting requirements. We think guidance will be particularly important for Dealers in helping to identify “serious misconduct”, given the subjective nature of the current definition. We continue to urge IIROC and other regulatory bodies that deal with consumer complaints to look at additional ways to share and analyze data in order to identify systemic issues in the market.

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.

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

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