

IIROC NOTICE

Rules Notice Request for Comments

Dealer Member Rules

Please distribute internally to:

Legal and Compliance

Retail

Senior Management

Contact:

Jamie Bulnes

Director, Member Regulation Policy

416-943-6928

jbulnes@iiroc.ca

09-0048

February 13, 2009

Amendments to complaint handling requirements - client complaint handling rule and guidance note and amendments to Dealer Member Rules 19, 37 and 2500

Summary of nature and purpose of proposed Rule

The proposed amendments to the complaint handling requirements seek to establish an effective framework for the client complaint handling process. The proposed new rule sets out specific standards and timelines to be adhered to in acknowledging, investigating and responding to client complaints that allege misconduct relating to the handling of the client's account(s). The rule also requires the Dealer Member to adequately inform the client of all the subsequent options available to them should the client be dissatisfied with the final response from the Dealer Member. In addition to the new rule regarding complaint handling, the proposed amendments will repeal the current complaint handling requirements set out in IIROC Dealer Member Rule 2500, Section VIII, and replaced it with a general requirement that Dealer Members establish policies and procedures to deal effectively with all client complaints and respond to all written complaints.

Current rules

IIROC Dealer Member Rule 2500, Section VIII sets out general requirements for the handling of retail client complaints. The current rule requires Dealer Members to establish procedures to effectively deal with client complaints, including the following: the acknowledgement of all



written complaints; the conveyance of the results of investigations to clients in due course; the requirement that sales practice complaints be in writing and signed by the client and then handled by sales supervisors or compliance staff; and the obligation that written complaint submissions be filed with the compliance department. In addition, there are complaint recordkeeping requirements and procedures that must be put in place for internal disciplinary action and the escalation of complaints to senior management when appropriate.

Relevant history

In May 2005, the Ontario Securities Commission (OSC) held an Investor Town Hall. A panel of representatives from the Investment Dealers Association (IDA), the Mutual Fund Dealers Association (MFDA), the Ombudsman for Banking Services and Investments (OBSI), the Small Investor Protection Association (SIPA) and the OSC listened to the concerns of retail investors. Investors emphasized what is essential in a regulatory regime - accountability, transparency, fairness, and effectiveness. A commitment to address these concerns resulted in the formation of a joint working committee of executives and senior management from the OSC, the OBSI, the MFDA, and the IDA to analyze the issues and develop solutions. One of the most significant concerns identified was complaint handling, both in terms of process transparency and timeliness.

To begin to address the concerns expressed with the complaint handling process, the IDA issued a Member Regulation Notice (MR0441) in December 2006. The objective of the notice was to detail the existing complaint handling rules and expectations of the IDA, and now IIROC, and to outline best practices that Dealer Member firms should consider adopting. The notice also indicated that the then IDA expected to submit to the OSC and other CSA jurisdictions, changes to its complaint handling rules which would include complaint handling timelines, a possible requirement to designate one or more individuals to oversee a Dealer Member's complaint handling process and further clarification of complaint handling standards.

The proposed amendments were developed in consultation with IIROC advisory committees and with public input from investors and other stakeholders. Two previous versions of these proposed amendments have been issued. The first version was approved at the October 2007 meeting of the IDA Board and was published for comment on November 9, 2007. A second version incorporated revisions that IIROC proposed to make to address comments that had been received. As these revisions were not material, IIROC determined that these proposed amendments did not need to be republished for public comment. The second version was adopted by the IIROC Board on July 16, 2008 and subsequently forwarded to the CSA and posted on IIROC's website.

On May 28, 2008, the CSA constituted a working group which developed a framework for harmonizing the complaint handling rules in each of the IIROC and MFDA proposals, and proposed National Instrument 31-103 – *Registration Requirements*. IIROC staff participated in



the working group and the current proposed amendments reflect the revisions that IIROC staff has made to the previous IIROC proposal in light of the framework. It should be noted that harmonization of the IIROC and MFDA complaint handling proposals does not mean that the language of the two proposals will be the same, but rather that the respective proposals will be broadly consistent with each other and with the CSA's framework. The CSA has indicated that the framework will constitute the baseline for approval of the IIROC and MFDA proposals.

Proposed rule

Complaint handling rule scope

The proposed rule is targeted to the handling of retail client complaints alleging misconduct in the handling of their account or accounts. As such, a complaint subject to this rule:

- must be submitted by a client or a person authorized to act on behalf of a client;
- may be either a recorded expression of dissatisfaction or a verbal expression of dissatisfaction; and
- must allege misconduct in the handling of their account or accounts.

Alleged misconduct includes, but is not limited to, allegations of breach of confidentiality, theft, fraud, misappropriation or misuse of funds or securities, forgery, unsuitable investments, misrepresentation, unauthorized trading relating to the client's account(s), other inappropriate financial dealings with clients and engaging in securities-related activity outside of the Dealer Member.

Designated Complaints Officer to oversee complaint handling process

The proposed rule will require a Dealer Member to appoint a Designated Complaints Officer (DCO) with the knowledge, experience, and authority to manage the complaint handling process and to act as a liaison with IIROC. The DCO need not be a registered individual position. Dealer Members may choose to name the Chief Compliance Officer or the Ultimate Designated Person or an individual acting in a supervisory capacity over the complaints process for the DCO position.

Specific standards and procedures handling timeline

As part of the proposed rule, Dealer Members will be required to establish procedures and standards. In addition to having written complaint handling procedures in place, Dealer Members must facilitate client access to their complaint handling process by making available a written summary of the firms' complaint handling procedures (either on their website or by other means). The written summary must provide the contact information for complaint submission and the designated complaints officer.



Both the acknowledgement letter and the substantive response letter have several requirements that all firms must include in the respective correspondence. The acknowledgement letter must be sent to a client within five (5) business days of receipt of a complaint. The initial response to the client must consist of the following: the contact information of the individual handling the complaint; a statement that a client may contact the above noted individual for a status update; an explanation of the internal complaint handling process; a reference to an attached copy of an IROC approved complaint handling process brochure and a reference to the statute of limitations contained in the document; a reference to the maximum 90 calendar days timeline to provide a substantive response; and a request for any information reasonably required to resolve the complaint.

The substantive response letter must be accompanied by an IROC approved complaint handling process brochure and be sent to a client as soon as possible, but no later than 90 calendar days from the date of receipt by the firm. A Dealer Member is obligated to advise a client if a final response will not be sent within the stated timeline in addition to contacting IROC with an explanation for the delay. The substantive response must comprise the following elements: a summary of the complaint; results of the investigation; the final decision with an explanation; and a statement delineating the options available if a client is unsatisfied with a Dealer Member's response.

There is also a duty to assist in client complaint resolution for both Approved Persons and Dealer Members. Approved Persons must co-operate after moving to a different firm and Dealer Members must do likewise if events relating to a complaint occurred at more than one Dealer Member or the Approved Person is an employee or agent of another firm.

Settlement agreements

Confidentiality restrictions in a settlement agreement must not restrict a client from initiating a complaint or continuing with any pending complaint in progress or participating in any further proceedings.

Complaint record retention

Record retention requirements stipulate the maintenance of files for a minimum of seven (7) years, and maintenance in a central, readily accessible place for two (2) years. Information to be retained includes the following: the complainant's name; the date of the complaint; the name of the individual who is the subject of the complaint; the security or services which are the subject of the complaint; the materials reviewed in the investigation; the name, title, and date individuals were interviewed for the investigation; and the date and conclusions of the decision.

Internal discipline



Procedures must be established to ensure appropriate internal disciplinary measures are applied for breaches of IIROC rules and applicable securities legislation.

Corollary amendments to IIROC Dealer Member Rules 19, 37 and 2500, Section VIII

As a result of the proposed rule, some corollary amendments must be made as follows:

- The repeal of IIROC Dealer Member Rule 19.4 (formerly IDA By-law No. 19.4), a requirement to maintain for twenty-four (24) months an up-to-date record of all written complaints in a central, readily accessible place. This requirement is now contained within the proposed rule.
- The repeal of IIROC Dealer Member Rule 37.3 (formerly IDA By-law No. 37.3), a requirement to provide the client with a copy of the IIROC approved complaint handling process brochure at the time of account opening or when the client submits a complaint. This requirement is now contained within the proposed rule and has been expanded to also require that the client be provided with a copy of the IIROC approved complaint handling process brochure when the substantive response is provided to a client regarding a complaint they have submitted.
- The repeal and replacement of IIROC Dealer Member Rule 2500, Section VIII (formerly IDA Policy No. 2, Section VIII), which sets out the current complaint handling requirements, with a general requirement that Dealer Members establish policies and procedures to deal effectively with client complaints, including complaints falling outside the scope of the proposed rule (such as service complaints), and respond to all written complaints.

The proposed rule does not duplicate certain requirements that are currently set out in IIROC Dealer Member Rule 3100 (formerly IDA Policy No. 8) relating to the handling of complaints and therefore will be applied in conjunction with the requirements set out IIROC Dealer Member Rule 3100.

Issues and alternatives considered

During our consultations with the Compliance and Legal Section (CLS), a concern was raised that the scope of the complaint definition was too broad so as to permit anyone to file a complaint of any nature which would require investigation. To address this concern, IIROC staff have agreed to restrict the definition of “complaint” for the purposes of the proposed rule to expressions of dissatisfaction by a client or a person authorized to act on behalf of the client relating to the handling of their account(s). The requirements set out in IIROC Dealer Member Rule 3100 will continue to apply to a broader range of complaints and other matters such as registration and civil claims.

In drafting the newly created position of Designated Complaints Officer (DCO), IIROC staff considered mandating registration of the position. After much consideration, it was deemed



unnecessary as the objective of the rule is to name an individual with the knowledge, experience, and authority to manage complaint handling, not to hold the DCO exclusively responsible for complaint handling; the proper handling of complaints is an overall firm responsibility.

The issue of what processes would be considered internal processes under the rule was also discussed. Specifically, a number of financial institution groups offer a centralized internal ombudsman process to clients of all institutions within the financial institution group. Offering this internal process to clients of Dealer Members is not regulatory requirement. However, because the process is offered centrally to clients of all institutions within a number of financial institution groups, the affected Dealer Members indicated that they did not have control over the time taken by the internal ombudsman process and therefore argued that this process should not be included in determining compliance with the proposed maximum complaint handling timeline.

As a result, as part of its consideration of the October 2007 proposal, the IDA Board of Directors considered two options:

- (1) The original proposal to set a maximum six (6) months¹ timeline for the completion of all internal complaint handling processes (**including** any internal ombudsman process offered by the firm or its affiliates); or
- (2) A proposal to set a maximum ninety (90) day timeline for the completion of all internal complaint handling processes (**excluding** any internal ombudsman process offered by an affiliate of the firm)

The Board has decided to propose the second option provided:

- (1) Where an affiliate of a Dealer Member offers an internal ombudsman process, the client is informed when the substantive response letter is issued:
 - (a) that the use of the internal ombudsman process is not mandatory;
 - (b) the estimated / maximum time the process is expected to take; and
 - (c) that the selection of the internal ombudsman process by the client may leave little remaining time in the statute of limitation period.

and:

- (2) Where after ninety (90) days, either a substantive response has not been issued or the complaint is still being considered within an affiliate-offered internal ombudsman

¹ As Dealer Members currently send a substantive response to clients within six (6) months 83.6% of the time, it was concluded that this time frame was an appropriate starting point. There was an intention if this option was pursued of shortening this timeline over time.



process, the client is informed that the option of the Ombudsman for Banking Services and Investments (OBSI) considering their complaint is now available.

Comparison with similar provisions in other jurisdictions

United Kingdom

The Financial Services Authority (FSA) has rules relating to the handling of complaints by firms and licensees, including the procedures which a firm must put in place; the time limits within which a firm must deal with a complaint; the forwarding of complaints; the records of a complaint which a firm must make and retain; and the requirements on a firm to report information to the FSA. These requirements ensure that complaints are handled fairly, effectively, and promptly, and resolved at the earliest possible opportunity, minimizing the number of unresolved complaints which need to be referred to the Financial Ombudsman Service. This purpose is consistent with the FSA's statutory objective of consumer protection.

The FSA mandates that a firm have effective and transparent procedures in place for the reasonable and prompt handling of complaints. A complaint is defined as any oral or written expression of dissatisfaction, whether justified or not, from or on behalf of a person about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

A firm must send a written acknowledgement to the complainant promptly upon receipt of a complaint and keep complainants informed of progress on their complaints thereafter. Firms should attempt to resolve complaints at the earliest possible stage. At the end of eight (8) weeks after receipt of a complaint, a firm must send either a final response or a written response that explains why the firm is still not in a position to provide a final response, along with an estimate of when it expects to be able to provide a final response. If a final response is not sent within eight (8) weeks, clients must be advised that they need not wait to refer their complaint to the Financial Ombudsman Service. A complainant may decide to give a firm more time before exercising any right to refer a complaint to the Financial Ombudsman Service. When a firm sends its final response, clients must be informed that if dissatisfied, they have six (6) months to refer a complaint to the Financial Ombudsman Services. In the case of both a final response and an interim response sent within eight (8) weeks, a copy of the Financial Ombudsman Service's standard explanatory leaflet must be enclosed in the correspondence. Complaints that are resolved within one (1) business day are exempt from these timelines.

United States

The complaint related rules of the Financial Industry Regulatory Authority (FINRA) direct clients towards arbitration and/or mediation processes. Critics in the U.S. are demanding an overhaul of the system to allow clients to seek redress in a court of law.



FINRA advises that the first course of action should be to report a discrepancy or a disagreement to the broker's manager. Management may take steps that will resolve the problem quickly. If the brokerage firm's management does not resolve a complaint within a reasonable period, it is suggested that a client seek legal advice. Mediation should be the first step in the dispute resolution process. If efforts to settle a dispute are unsuccessful, arbitration should be a consideration. The new account agreement may contain a clause that requires a client to use the arbitration process. Therefore, access to courts may be limited. It should be noted that arbitration decisions are final. Arbitrators cannot reconsider decisions even if new evidence is found. Although an arbitration decision may be challenged in court, decisions are rarely reversed.

Proposed Rule classification

IIROC has determined that the proposed rule is a Public Comment Rule.

Statements have been made elsewhere as to the nature and effects of the proposed rule, as well as analysis. The purposes of the proposed rule are to:

- ensure compliance with securities laws;
- prevent fraudulent and manipulative acts and practices;
- promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith;
- foster fair, equitable and ethical business standards and practices; and
- promote the protection of investors.

It is believed that the proposed rules and amendments will be effective in facilitating improvements to the Dealer Member's complaint handling processes to ensure that clients are aware of the process they should follow should they have a complaint and to ensure the fair and prompt handling of complaints. Further, it is believed that Dealer Member adherence to a common complaint handling framework will lead to greater complaint handling consistency from one Dealer Member to the next and, ultimately, enhanced client confidence in the integrity and fairness of the compliant resolution process within the industry. As a result, the Board has determined that the proposed amendments are in the public interest.

Effects of the proposed Rule on market structure, Dealer Members, non-Dealer Members, competition and costs of compliance

The proposed amendments do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's regulatory objectives. They do not impose costs or restrictions on the activities of market participants (including Dealer Members and non-Dealer Members) that are disproportionate to the goals of the regulatory objectives sought to be realized.



Technological implications and implementation plan

It is not expected that there will be a major systems impact on Dealer Members as a result of the proposed amendments. To meet the timelines set out in the proposed rule, Dealer Members must be aware of complaint aging. It is anticipated that Dealer Members may use the Complaints and Settlement Reporting System (ComSet) to track the aging of complaints that are in process.

The proposed amendments will be made effective on a date determined by IIROC staff after approval is received from IIROC's recognizing regulators. IIROC anticipates that there will be either a requirement for immediate implementation or a short implementation period once the rule is made effective. Dealer Members should consider using this time prior to approval of the rule to prepare for the ninety (90) days timeline. Once these proposed amendments are approved and implemented, IIROC will monitor compliance with the new framework and will determine if any changes are necessary to address practical issues or potential enhancements that become apparent.

Request for public comment

Comments are sought on the proposed amendments. Comments should be made in writing. Two copies of each comment letter should be delivered by March 16, 2009 (30 days from the publication date of this notice). One copy should be addressed to the attention of:

Jamie Bulnes
Director, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, ON
M5H 3T9

The second copy should be addressed to the attention of:

Manager of Market Regulation
Ontario Securities Commission
19th Floor, Box 55
20 Queen Street West
Toronto, ON M5H 3S8

Those submitting comment letters should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "IIROC Rulebook - Dealer Member Rules - Policy Proposals and Comment Letters Received").



Questions may be referred to:

Jamie Bulnes
Director, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
416-943-6928
jbulnes@iroc.ca

Attachments

[Attachment A – Proposed Amendments enacting a new Dealer Member Rule and Guidance Note on client complaint handling and amending IIROC Dealer Member Rules 19, 37 and 2500](#)