



August 20, 2009

Re: IIROC response to comments on Client Complaint Handling Rule and Guidance Note and amendments to IIROC Dealer Member Rules 19, 37 and 2500

This summary responds to the comment letters received on the proposed complaint handling requirements and the proposed amendments to IIROC Dealer Member Rules 19, 37 and 2500 (previously IDA By-law Nos. 19 and 37 and Policy No. 2) that were published for comment on February 13, 2009. The comments specific to the proposed Rule and Guidance Note have been summarized to correspond with the various sections of the Rule, followed by IIROC staff response.

GENERAL

Definition of a complaint

We have received the following comments which relate to the definition of a complaint:

- Three comment letters suggest that the definition of what is included as a complaint is very broad and ambiguous. One of the comment letters indicates that the Rules Notice discussing the proposed amendments implies that three conditions must exist at once, but there is no such stipulation in the Rule. The comment letters suggest that the Rule should narrow and clarify what is included as a complaint.
- Two comment letters indicate that the inclusion of the phrase “includes, but is not limited to” in the section defining “alleged misconduct” could potentially extend the scope of a complaint to alleged misconduct not related to the client accounts or client dealings with firms. One of the comment letters suggested if there is any other misconduct which is contemplated it should be clearly itemized.
- One comment letter points out that the English and French versions differ: The French version states that “A complaint...may include...”, while the English version states “A complaint...is deemed to include...”
- One comment letter states that the wording relating to the exemption for matters which are the “subject of litigation” is ambiguous in the French version of the proposal.

***IIROC staff response***

The scope of the definition of a complaint was addressed in IIROC's response to comment letters dated January 28, 2009. As we mentioned then, the definition in the proposed Rule is intended to specifically target retail client complaints alleging mishandling of their account or accounts. It would be undesirable to define complaints in an overly narrow way, as this may lead to some justified complaints being left out of the scope of the Rule. As we have indicated in the past, as well as in our Rules Notice of February 13, 2009 requesting comments, 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.

A complaint must be submitted by a client or person authorized to act on behalf of a client and it must relate to alleged misconduct in the handling of the client's account. We believe that the scope of complaints potentially captured by the Rule is clear and unambiguous. The above-noted parameters should preclude complaints other than those intended as the target of the Rule from being subject to the Rule. Furthermore, all the matters included in the definition of alleged misconduct relate to issues in the handling of client accounts or client affairs. In order to further clarify the definition, however, we have added a section which elaborates on the scope of alleged misconduct to the Guidance Note. Essentially, the guidance indicates that other matters not enumerated in the definition of alleged misconduct which may be captured by the phrase "includes, but is not limited to" should be matters that relate to client accounts or client dealings with firms which are of a serious nature and warrant being dealt with through the formal complaint handling process.

In terms of the three conditions of application of the Rule mentioned in the preceding paragraph being at odds with the Rule itself, we would affirm that the relevant conditions mentioned are present in the Rule. The relevant provisions of the proposed Rule state as follows:

A "complaint" subject to this rule *must be submitted by a client or a person authorized to act on behalf of a client* and includes:

- *A recorded expression of dissatisfaction* with a Dealer Member or employee or agent *alleging misconduct*; and
- *A verbal expression of dissatisfaction* with a Dealer Member or employee or agent *alleging misconduct* where a preliminary investigation indicates that the allegation may have merit.



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 activities outside of the Dealer Member. (*emphasis added*)

As indicated by the emphasized text, the proposed Rule encompasses the three conditions of its applicability.

We have made the necessary wording changes to address the comments expressed with respect to the differences between the English and French language versions of the proposed Rule.

Nature of complaint received

We have received the following comments which relate to a verbal expression of dissatisfaction being included in the definition of a complaint:

- Three comment letters submit that only written complaints should be covered by the Rule in order to ensure clarity in complaint handling.
- Two comment letters note that the Guidance Note appears to indicate that Dealer Members may require that a complaint be documented, but the Rule does not require this; the Rule and guidance should be made consistent.
- One comment letter stated that a concern with permitting verbal complaints is the potential inability of Dealer Members to determine when the 90-day timeframe begins because verbal complaints are subject to various elements that are not conducive to working within a specific timeframe.

IIROC staff response

We previously addressed the issue of including verbal complaints in the proposed Rule in our response to comments dated January 28, 2009. To address the potential concerns associated with verbal complaints, we stated in the Guidance Note that Dealer Members may request that verbal complaints that may have merit be documented in a recorded form prior to the issuance of a substantive response letter. This guidance confirms that the current practice of some Dealer Members to request that verbal complaints be put into writing is viewed as acceptable. However, such a request does not mean that a Dealer Member may delay sending a substantive response letter if a client does not document his or her complaint. As we noted in our previous response, the 90-day timeline to issue a substantive response commences from the time a complaint is made, whether verbally or in writing. To the extent that Dealer Members wish to make use of a documented complaint for purposes of their investigation of the matter complained of, then Dealer Members should make every



effort to request that a verbal complaint be documented in a recorded form as early as possible in the complaint handling process. Provision by a client of a complaint documented in recorded form cannot be made a pre-condition to the Dealer Member issuing a substantive response in a timely manner.

We have revised the Guidance Note to clarify that a substantive response must be sent within the timeframe required whether or not a client has provided a documented complaint in response to such a request from a Dealer Member. As a request by a Dealer Member that a client document in recorded form a verbal complaint is not a requirement, we do not believe it is appropriate to amend the Rule in this regard. We have clarified the Guidance Note to indicate that a Dealer Member may “request” that a client document a verbal complaint in a recorded form, rather than “require” a client to do so.

With respect to the concern regarding the ability of Dealer Members to determine when the 90-day timeframe begins in the case of a verbal complaint, the timeframe begins from the day the complaint is first made, whether or not all the elements of the complaint are known at that moment.

Person authorized to act on behalf of the client

We have received the following comments regarding the submission of a complaint by a person authorized to act on behalf of a client:

- One comment letter indicated that it is unclear that people legally authorized by a client are permitted to submit a complaint because the guidance states that non-client complaints are not subject to the Rule.
- One comment letter suggested that the scope of authority should be clarified in the guidance to enumerate the various forms of legal authority under which a person may make a complaint on behalf of a client.
- One comment letter mentioned that only clients and those legally authorized to act on a client’s behalf should be permitted to file complaints in order to ensure client privacy.

IIROC staff response

Non-client complaints are not subject to the Rule. Complaints submitted by a person authorized to act on behalf of the client are subject to the Rule, because they are complaints of a client. The Guidance Note has been amended to clarify this distinction.

In keeping with industry practice, a written authorization on the part of the client will be valid to make a complaint on behalf of a client. To require a specific form of formal legal authorization would be unnecessarily restrictive for clients. We have added language to the Guidance Note indicating that both written client authorizations, as



well as formal legal documents, such as powers of attorney or court appointments, are acceptable forms of documentation for establishing a person's authority to act on behalf of a Dealer Member's client.

Client privacy is not an issue, as the intent of the proposed Rule has always been that a complaint should only be dealt with if brought forward by the client or a person legally authorized to act on behalf of a client.

DESIGNATED COMPLAINTS OFFICER (DCO)

In connection with the newly created position of Designated Complaints Officer (DCO), we have received one comment letter indicating that it is not clear whether a dealer can have more than one DCO, and whether the DCO is expected to communicate with clients directly.

IIROC staff response

The DCO is the person with ultimate supervisory authority over the complaints process at a Dealer Member. It is expected that there will be only one DCO at each Dealer Member. It is not expected that communication regarding individual complaints would necessarily be handled by a DCO, but this would certainly be a possibility, particularly for smaller Dealer Members.

COMPLAINT PROCEDURES/STANDARDS

Client access to the complaint handling process

We have received the following comments in relation to the complaint handling information to be provided:

- Two comment letters suggest that a brochure describing the complaint process should only have to be sent once in response to a complaint, not twice.

IIROC staff response

The issue of describing the complaint process to clients and the requirement for a complaint process brochure to be sent at each step of the complaint ensures that clients are fully informed of their options. We addressed this issue in our previous response to comments, and IIROC's position remains the same. Ensuring that clients are fully aware of their complaint handling options is an important part of the proposed Rule and we see no disadvantage to informing clients on more than one occasion.



Complaint acknowledgement letter

We have received the following comments regarding the complaint acknowledgement letter:

- One comment letter states that the full contact info of the person at the Dealer Member handling the complaint should not have to be provided.
- One comment letter suggested that the five-day timeframe to acknowledge a complaint should be extended when special circumstances exist that would warrant so, or alternatively, the time period for acknowledgement should be extended to at least 10 days.
- One comment states that it is not clear that the contact information to be included with the acknowledgement letter is to be for the DCO, or for the person handling the complaint.

IIROC staff response

By providing the contact information of the person handling the complaint at the Dealer Member to the client, duplication of efforts on the part of the Dealer Member and frustration on the part of the client can be avoided. In this manner, a client knows a specific contact person to whom they may direct any additional information or inquire with about the status of their complaint. The advantages of providing a single contact point for a client outweigh any disadvantages in providing this contact information to a client.

In IIROC's response to the first round of comment letters, it was noted that special circumstances may occasionally result in an extension of time to acknowledge a complaint. However, it is expected that these circumstances would be rare, and we continue to view a five-day period to acknowledge that a complaint has been received as reasonable.

The proposed Rule states that the acknowledgement letter must include "the name, job title, and full contact information of the individual at the firm handling the complaint". Therefore, the information provided should be for the person actually handling the complaint, whether or not that person is the DCO.

Complaint substantive response letter

Various issues were raised with respect to the substantive response letter:

(i) 90-day timeframe for response

- One comment indicates that it is unclear why a 90-day timeframe for responding to complaints is prescribed, when the majority of Dealer Members are able to respond within 180 days, and by comparison OBSI has a 180-day standard in which to respond to complaints.



- One comment letter suggests that that the Rule should be clarified to include a provision that clients should be informed of the right to proceed to OBSI if a final response is not received within 90 days.

IIROC staff response

As stated in our previous response, we continue to view the 90-day timeline as reasonable in light of existing completion rates. Where the nature of a particular complaint may make it difficult to respond within the required timeframe, this will be taken into account where the explanation provided in the notification filed with IIROC is reasonable.

The Guidance Note makes it clear that clients must be informed that OBSI will consider a client complaint if a final response is not received within 90 days.

(ii) Content of substantive response

- One comment letter suggests that the requirement to include the options available if the client is not satisfied with the Dealer Member's response should be deleted from the substantive response requirements because the options available are already listed in the IIROC-approved complaint handling brochure.
- One comment letter indicates that the requirement for Dealer Members to provide an explanation with their final decision is inadequate, because an inadequate or flawed explanation could be given.
- One comment letter states that the requirement for Dealer Members to provide a summary of the complaint, results of the investigation, and a final decision is inadequate to achieve the proposal's objectives. The comment letter suggests that the requirements relating to the substantive response are inadequate to ensure the fair handling of complaints.

IIROC staff response

The proposed Rule requires Dealer Members to have written policies and procedures to ensure that complaints are dealt with effectively, fairly and expeditiously. While it may be true that an inadequate or flawed explanation could be given in a final decision letter, it would be impossible for any Rule to effectively preclude this possibility. The resolution of client complaints will inevitably involve a subjective assessment. Furthermore, as the complaint handling process is an internal process of the Dealer Member, Dealer Members may not always be impartial in investigating complaints in which they are involved. The proposal seeks to ensure the fair handling of complaints where the parties may have opposing interests. The proposal seeks to set a process and framework within which Dealer Members must respond to complaints. If a client is dissatisfied with a Dealer Member's response, or does not want to pursue the internal complaint process at all, other avenues such as litigation, arbitration, or filing a regulatory complaint are open to them.



Nonetheless, we have revised the proposed Rule by adding language that calls for Dealer Members to have policies and procedures addressing the investigation of complaints, the process by which assessments of complaints are made, the process for determining what offer should be made to a client where a complaint is determined to have merit, and the remedial actions which may be appropriate to be taken within the firm. The proposed Rule has also been revised to underscore that the substantive response to the client must be presented in a manner that is fair, clear and not misleading.

(iii) Internal ombudsman process

- Two comment letters suggest that the wording of the notification may trivialize internal ombudsman processes; the wording should be changed to indicate that the ombudsman process is “voluntary” instead of “not mandatory”.
- One comment letter suggests that the Rule require that clients use an internal ombudsman or an internal dispute resolution process before using OBSI services.
- It should be made clear that it is not mandatory to use an internal ombudsman before using OBSI services.

IIROC staff response

We have changed the wording in the proposed Rule to read that the use of an internal ombudsman process is “voluntary”, instead of “not mandatory”.

We believe it should be up to clients to decide if they want to use an internal ombudsman. Furthermore, it is beyond IIROC’s jurisdiction to require that clients utilize an internal ombudsman prior to pursuing OBSI or other avenues.

The proposed Rule requires Dealer Members to outline options available if a client is not satisfied with a Dealer Member’s response, including the fact that the ombudsman’s service is available if a request is made within 180 days of the Dealer Member’s final response, and that the use of an internal ombudsman is voluntary. Dealer Members are required to provide this information in a manner that is fair, clear and not misleading. We therefore believe that it is clear from the proposed Rule that it is not mandatory to use an internal ombudsman before pursuing a complaint with OBSI. The possible paths to resolving a client complaint will also be outlined in the brochures that are provided to clients at account opening and during the complaint handling process.

(iv) Conflict of interest

- One comment letter suggests that Dealer Members should not have a duty to assist clients with complaints, as this places them in a conflicted position.

***IIROC staff response***

It is not expected that Dealer Members will assist clients in formulating the substance of their complaints. However, it is expected that Dealer Members will assist clients in informing them of the complaint handling process. Informing clients of how to pursue a process does not place Dealer Members in a conflict.

Duty to co-operate in client complaint resolution

We have received the following comments in relation to the duty amongst Dealer Members to co-operate in client complaint resolution:

- One comment letter suggests that IIROC should coordinate information sharing between Dealer Members related to complaints.
- Two comment letters indicate that requiring Dealer Members to cooperate and share information regarding complaints may be a breach of confidentiality or client privacy. One of the two comment letters also added that such co-operation may also breach employment laws.

IIROC staff response

As matters relating to client complaints may take place at more than one firm due to movement within the industry by Approved Persons, the proposed Rule calls for co-operation amongst Dealer Members in the handling of client complaints. While IIROC may assist in brokering cooperation between Dealer Members to facilitate effective complaint handling, it would be inappropriate for firms to rely entirely upon IIROC for this purpose.

All Dealer Members will be expected to cooperate when required to. As we indicated in our previous response, where another Dealer Member fails to co-operate in a specific Dealer Member's complaint investigation, this should be noted in any ComSet filing if such refusal has complicated a full and fair response to the client.

Settlement agreements

We have received one comment letter suggesting that the words "other enforcement authorities" should be removed from the wording restricting the confidentiality of settlement agreements because the French version which reads "autorités chargées de l'application de la loi" is too broad and vague, and could encompass entities other than securities regulators.

IIROC staff response

The proposed Rule does not change current practice and was intended as a restatement of generally accepted industry practices. We believe that the wording in the English and French versions convey the appropriate meaning and accurately reflect the intent of the Rule. The restriction on confidentiality of settlements does not relate



solely to securities regulators; it would be inappropriate for the restriction not to cover other enforcement authorities which may be relevant. For example, a client complaint involving a fraud should not be precluded from being pursued as a criminal matter by the terms of a settlement agreement.

Complaint record retention

We have received the following comments regarding the retrieval, retention and centralization of records:

- One comment letter indicates that a “reasonable period of time” should be the standard for record retrieval, rather than specific time frames as set out in the guidance.
- One comment states that it is unclear whether branches have to maintain records if a head office maintains records centrally.
- One comment letter suggests that the proposal should not require records to be centrally stored and located, so long as documents can be retrieved within a reasonable period of time.

IIROC staff response

The time frames set out in the guidance for record retrieval are guidelines only; the “reasonable” standard in the proposed Rule will allow for longer periods if justified by the circumstances.

The proposal states that records must be kept in a “central, readily accessible place”. There is no requirement that branches maintain records separately.

Requiring that records be centrally located will help Dealer Members properly maintain their records in an organized manner and ensure that they are readily accessible.

OTHER MATTERS

Rule Generally

We have received the following comments regarding the proposed Rule generally:

- One comment letter suggests that some items in the Guidance Note that appear to set standards should be included in the Rule itself.
- One comment letter states that the proposed amendments relate only to complaint handling rules and administrative processes, suggesting that the focus should be on preventative rather than corrective and administrative measures. The comment letter proposes that efforts and resources be focused on compliance with rules, enforcement and transparency and disclosure matters.



- One comment letter maintains that the Rule should include clear enforcement provisions to deal with unfair handling of complaints.
- One comment letter indicates that the Rule does not do enough to address the issue that clients may rely inappropriately on decisions of Dealer Members.

IIROC staff response

The Guidance Note is intended to provide additional clarity to Dealer Members, without being overly prescriptive.

All Dealer Members are monitored for compliance with IIROC Rules, and breaches of Rules are corrected, or penalized through enforcement as warranted. Since all Dealer Member Rules are enforced by IIROC, specific enforcement provisions for this specific Rule are unnecessary.

The proposed Rule will require that clients who file a complaint with a Dealer Member be provided with information on various options regarding their complaint. This information should help to ensure that clients do not place undue reliance on the decision of a Dealer Member regarding their complaint.

Consultation Process

We have received the following comments regarding the consultation process generally:

- One comment letter indicates that it appears that IIROC did not widely canvas market participants before amendments were made to the proposal; there should be a more comprehensive consultation process to confirm that the proposed amendments are necessary and will assist with the complaint process.
- Two comment letters expressed disappointment that issues raised in a previous submission resulted in few changes in the current proposed amendments.
- One comment letter suggests that consideration of the proposed amendments should include consultation with SIPA.
- One comment letter states that a 30-day comment period for proposals that concern the public interest is inadequate.

IIROC staff response

All interested parties have an equal opportunity to comment on proposed IIROC Rules upon publication of proposals for public comment, and IIROC staff take into account all comments received. Consultations with interested parties have been undertaken as part of IIROC's rulemaking process.



In light of the significance of and interest in this proposal, we acknowledge that 30 days may have been too brief a comment period. IIROC has since revised our practice so that comment periods generally consist of 60 to 90 days.