OBSI OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS
OSBI OMBUDSMAN DES SERVICES BANCAIRES ET D'INVESTISSEMENT

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Re: Comments on CIRO's Rule Consolidation Project – Phase 5

The Ombudsman for Banking Services and Investments (OBSI) is pleased to provide our comments to the Canadian Investment Regulatory Organization (CIRO) in response to its recent consultation, *Rule Consolidation Project – Phase 5* (the "Consultation").

OBSI is a national, independent, and not-for-profit organization that helps resolve and reduce disputes between consumers and nearly 1500 financial services firms from across Canada in both official languages. We provide services to federally regulated financial institutions and provincially regulated securities firms and credit unions from across the country. We have been providing these services for over 29 years. As such, we are uniquely positioned to share our views and insights for this important consultation.

Effective complaint handling is globally recognized as an essential component of financial consumer protection

We commend CIRO for recognizing the importance of effective complaint handling processes for registered firms and investors, as well as the utility of complaints data for its regulatory work. Strengthening this vital information channel will improve CIRO's ability to assess risk and identify harmful conduct, and will add to the effectiveness of CIRO's compliance, enforcement and member regulation mandates.

Effective complaint handling is recognized as an essential component of financial consumer protection and is of regulatory interest worldwide. The Organization for Economic Cooperation and Development (OECD) has focused significant attention and analysis on the importance of effective complaint handling to

financial systems in recent years through the work of its Committee on Financial Markets and its Task Force on Financial Consumer Protection. This global effort resulted in the development of the OECD High Level Principles on Financial Consumer Protection in 2011 as well as a substantial body of technical and analytical reports in the years that followed. The OECD/G20 High Level Principles, which were revised and updated in 2022[1], have been endorsed by all G20 finance ministers and central bank governors. The updated version recognizes 12 key principles, one of which is complaints handling and redress. The key elements of this principle include that financial services consumers should have access to complaint handling and redress mechanisms that are "accessible, affordable, independent, fair, accountable, timely and efficient."

The World Bank released a technical note in 2019 intended to provide methodological guidance for regulators and financial services providers when developing and implementing internal dispute resolution frameworks to ensure they are consistent with international good practices.[2] This technical note calls to readers' attention the systemic importance of effective internal dispute resolution, observing that:

> *Core to an effective financial consumer protection framework is an accessible and efficient recourse mechanism that allows consumers both to know and to assert their rights to have their complaints addressed and resolved in a transparent and just way within a reasonable timeframe. Complaints handling mechanisms are especially important for low-income and vulnerable financial consumers, to whom timely and effective recourse processes can have a decisive influence over their trust in their financial service provider (FSP) and in the financial sector in general. Increased trust contributes to consumers' uptake and sustained usage of financial services and, consequently, their economic livelihoods.*

The Board of the International Organization of Securities Commissions (IOSCO) published a report on complaint handling and redress for retail investors in 2021[3] in which they observed that "When an investor or financial consumer is harmed by misconduct or illegal practices, the existence of effective mechanisms for addressing the issue is important not only for the aggrieved individual, but also for producing positive externalities such as improving market discipline and promoting investor confidence in financial markets."

Overview of comments

In this submission, we will primarily focus on Questions 1-5 of the Consultation, which are directly related to OBSI's role and experience. The key areas we focus on in this response are:

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[1] https://www.oecd.org/en/publications/g20-oecd-high-level-principles-on-financial-consumer-protection-2022_48cc3df0-en.html

[2] https://documents.worldbank.org/en/publication/documents-reports/documentdetail/773561567617284450/complaints-handling-within-financial-service-providers-principles-practices-and-regulatory-approaches-technical-note

[3] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD670.pdf

- CIRO has put forward a number of notable enhancements of the Dealer and Consolidated Rules in the proposal which we support and, in some cases, recommend expanding.
- The proposed definition of complaint should be broadened to include prospective clients
- Relying on dealers to identify serious misconduct is vulnerable to inconsistency and under-identification
- The 90-day time limit to provide a substantive response letter is reasonable
- The 90-day time limit for resolving disputes should be inclusive of all internal dispute resolution processes

Notable improvements in the proposed rule amendments

CIRO HAS PUT FORWARD A NUMBER OF IMPORTANT IMPROVEMENTS IN THE PROPOSED RULE AMENDMENTS

OBSI strongly supports a number of important amendments that CIRO has proposed to enhance the effectiveness of the Dealer and Consolidated Rules. We note these areas of support below, in some cases with suggestions for further enhancement. We also commend CIRO on adopting some of the suggestions from OBSI's response to IIROC's April 2022 consultation on Proposed Amendments respecting Reporting, Internal Investigations and Client Complaint Requirements.

- We support the requirement to report the payment of client compensation at section 3711(1)(iii). However, we disagree with limiting this reporting to "substantial compensation". This introduces a subjective standard that may lead to inconsistent reporting among dealers and not capture some forms of client compensation that may be of regulatory interest. If CIRO is concerned about potential over-reporting of insignificant matters, we recommend that rather than using the trigger of "substantial compensation", this reporting requirement could include any redress of:
    - $500 or more in financial compensation;
    - any non-financial redress (such as correcting of records or reversal of transactions) with an economic value of $500 or more; or
    - any resolution affecting five or more accounts that are similarly affected (e.g. fee refunds).
- We support the requirement at section 3711(3) for the reporting of resolutions of serious misconduct investigations.
- We are strongly supportive of CIRO's decision to expand the complaint handling rules of sections 3750-3759 to all complaints submitted in writing as well as those alleging serious misconduct.
- We also support the new stipulation at 3754(4) that the individual who is the subject of a complaint must not handle the complaint.
- We support the addition of section 3752(5) to require dealers to provide complaint drafting assistance. However, we note that complainants may need assistance beyond drafting. For

example, complainants may need assistance in understanding the applicable rules and the subject matter of their complaint.

- We support CIRO's proposal to eliminate the requirement to address complaints in a "balanced" manner in section 3753(1) and add the new general standard for complaint handling at section 3750(1) that requires all dealers to respond to retail client complaints in a manner a reasonable consumer would consider effective, fair and expeditious. We recommend supplementing this requirement with guidance to help dealers interpret it, as well as how to place consumer interests first in complaint handling. For example, the guidance could stipulate that:
    - dealers should assist clients in articulating their complaints where possible
    - dealers should assist clients in understanding the rules applicable to the subject matter of their complaint
    - if the dealer identifies other issues in the investigation of the client complaint, such issues should be investigated and remediated for the client
    - if the dealer identifies an error or wrongdoing, they should take action or offer compensation that places the consumer in the position they would have been had the error not taken place
    - all consumer communications should be in plain language
- We commend CIRO on maintaining the prescribed content for the complaint acknowledgement letter and substantive response letter in sections 3755 and 3756, and we are particularly supportive of the decision to add the requirement at sections 3755(2) and 3756(2) that require these letters to be written in plain language and in a format readily accessible and understandable by the complainant. Such clear communications are essential to client accessibility and can serve to enhance consumer trust and reduce misunderstandings and tensions.
- We support CIRO's expansion of section 3753(2) to require dealers to consider redress and remediation when frequent or repetitive complaints arise that may indicate a serious problem. This is a recognized best practice for all dealers.
- We support the elimination of the term "ombudsman" in reference to dealers' internal dispute resolution service or to the persons assigned to its internal dispute resolution service in section 3759(2). We note that this change is consistent with the Bank Act changes that came into force in June 2022 and Quebec's *Regulation respecting Complaint Processing and Dispute Resolution in the Financial Sector* that will come into force on July 1, 2025.
- We support the expansion of the requirement at section 3770 to maintain a copy of each client complaint file. CIRO has proposed the reduction of the retention period from 7 years to 2 years, which we view as reasonable given applicable limitation periods. However, we recommend that the 2-year period should start from the date of the dealer's final response letter and not from the date of the original complaint.

- We support the requirement to report complaints of "serious" misconduct at section 3711(2), however, we note that other complaints that do not meet the "serious" definition have important systemic value and can offer important insights of regulatory interest, particularly when considered in aggregate. We therefore recommend that CIRO implement a requirement for aggregate reporting of all retail investor complaints. Such reporting requirements are common internationally and have been adopted for Canadian Banks pursuant to the Bank Act.
    - To facilitate meaningful reporting of complaints to CIRO, we recommend that CIRO should establish a classification and coding framework of products and issues to facilitate sector-wide data aggregation and trend analysis.
- We commend CIRO on eliminating the restrictions on information sharing with OBSI at section 9504. This change will enhance the ability of OBSI to comply with the systemic reporting requirements as set out in our memorandum of understanding with securities regulators and is reflective of international best practices for financial ombudservices.

Question 1 - Definition of "complaint": The proposed definition of "complaint" includes current and former clients. Should "prospective clients" also be included, as they are in the current MFD Rules? Do "prospective clients" generate a significant number of substantive complaints that present a material regulatory concern, rather than just service issues?

THE PROPOSED DEFINITION OF COMPLAINT SHOULD BE BROADENED TO INCLUDE PROSPECTIVE CLIENTS

OBSI supports CIRO's decision to further clarify the definition of "complaint" in the proposed rules and we recommend that the proposed definition of complaint should include prospective clients. Under OBSI's Terms of Reference, a 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 in writing or verbally. Our Terms of Reference also define a customer as an individual who, or small business that, ***requested or received*** a Financial Service from a Participating Firm or its Representative, regardless of whether the Financial Service was received through an account at the Participating Firm, provided it is reasonable for the individual or small business to believe that they were requesting or receiving a Financial Service from a Representative or a Participating Firm.

In our experience, while complaints from prospective clients are not common, they do occur and can be legitimate and significant. Examples include complaints involving off-book transactions, or those made by beneficiaries of accounts or transferees, or individuals whose accounts were not opened in accordance with their expectations, all of which may raise potentially valid issues relating to an investment firm.

Question 2 - Definition of "serious misconduct": Does the proposed definition of "serious misconduct" cover the appropriate elements that should be reported, investigated, and dealt with in respect of complaints? Note that the proposed definition does not specifically include harm to the Dealer. Should it encompass conduct that harms the Dealer, even where that harm does not pose a reasonable risk of material harm to clients or the capital markets, nor result in material non-compliance with applicable laws?

RELYING ON DEALERS TO IDENTIFY SERIOUS MISCONDUCT IS VULNERABLE TO INCONSISTENCY AND UNDER-IDENTIFICATION

OBSI believes that the proposed definition of "serious misconduct" places a reasonable limit on the cases to be reported to CIRO and subject to internal investigation. However, through this distinction is appropriately no longer relevant to the application of rule 3750 for retail client complaints, we continue to have concerns regarding CIRO's reliance on dealers to identify complaints alleging serious misconduct, which is vulnerable to under-identification for the reasons outlined in our April 2022 comment letter to IIROC.

The definition of "serious misconduct" is based on a firm's assessment of whether an alleged activity "creates a reasonable risk of material harm to a client or the capital markets". The system of reliance on dealers to determine whether a given complaint meets this definition is vulnerable to variable interpretation among dealers and individuals because it depends on individual dealer interpretation of complex and often ambiguous consumer complaints. This may lead to under-reporting and introduces the risk that any such interpretation will be viewed through the lens of the dealer or the individual receiving the complaint, and how it is interpreted will be based at least in part on their own subjective views.

In our work, we have observed that firms and consumers frequently have differing interpretations of the nature of the investor's complaint and its seriousness. The reliance on firms to make this assessment is therefore somewhat problematic. To the extent possible, rules should not rely on this dealer-identified subset of complaints.

Question 3 - Definition of "non-reportable complaints": Is the definition of "non-reportable complaints" appropriate to minimize reporting where there is no material risk of harm to clients or the capital markets, or instances of non-compliance, while still ensuring that material complaints are addressed?

THE CONCEPT AND DEFINITION OF "NON-REPORTABLE COMPLAINTS" MAY BE UNNECESSARY

CIRO should consider whether the inlcusion of the definition and concept of "non-reportable complaints" is necessary. In the proposed rules, non-reportable complaints only appear to be relevant to section 3710(1)(iii), which does not provide a distinction from reportable complaints. It appears that reportable complaints are now defined through "serious misconduct", while non-reportable complaints encompass any complaints that do not allege serious misconduct.

Question 4 - Time limit to provide a substantive response letter: Is the 90-day time limit to provide a substantive response letter to a complainant appropriate, given that the Autorité des marchés financiers has moved to a 60-day period (with a 30-day flex period), while the other CSA members recommend a 90-day period (per Companion Policy 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations)?

THE 90-DAY TIME LIMIT TO PROVIDE A SUBSTANTIVE RESPONSE LETTER IS REASONABLE

The 90-day limit to provide a substantive response letter to a complainant is reasonable. In our 2023 submission to the Autorité des marchés financiers, we acknowledged that a 60-day period is consistent with international standards and corresponds closely to the response time mandated by FCAC for federally-regulated banks. However, we also noted that in our experience, a 90-day timeframe is appropriate for the fair resolution of investment complaints at the firm level. While many complaints, particularly those that are less complex, can and should be resolved by firms in less than 60 days, many complaints are complex, require internal research and discussion, and can reasonably require up to 90 days to resolve satisfactorily.

Question 5 - Time limit applicable to internal dispute resolution: Is the proposed time limit for internal dispute resolution processes reasonable, considering the need to balance an expedient resolution for clients while still allowing an appropriate amount of time for Dealers to determine an effective and fair resolution?

THE 90-DAY TIME LIMIT FOR RESOLVING DISPUTES SHOULD BE INCLUSIVE OF ALL INTERNAL DISPUTE RESOLUTION PROCESSES

OBSI recognizes that in this consultation CIRO has reduced the proposed internal dispute resolution timeframe from an aggregate of 180 days to 120 days. We view this as an improvement. However, we recommend that section 3756(4)(i) be amended to stipulate that the 90-day timeframe is inclusive of all internal processes, including any internal dispute resolution service.

Such a timeframe would be consistent with changes in Canada's Bank Act that came into force in June 2022 which require banks to resolve all consumer complaints within 56 days, inclusive of all internal complaint handling processes. These changes were intended to eliminate internal escalation steps for aggrieved consumers, improving the consumer experience and outcomes for both consumers and banks.

Maintaining an overall limit of 90 days would require dealers that wish to offer internal dispute resolution services to their clients to do so in a timely manner and possibly incline them to work collaboratively with such affiliated services to enhance their dispute resolution process and outcomes, which is consistent with dealers' obligation to place client interests first. In our view, such systems will lead to more efficient and effective dispute resolution practices, less complaint attrition and increased levels of investor satisfaction and confidence.

Thank you for providing us with the opportunity to participate in this important consultation. We would be pleased to provide further feedback to CIRO at any time.

Sincerely,

Sarah P. Bradley
Ombudsman & CEO