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VIA EMAIL

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Re: Proposed Amendments respecting Reporting, Internal Investigation and Client Complaint Requirements ("Proposed Amendments")

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to provide comment on the Investment Industry Regulatory Organization of Canada ("IIROC") Proposed Amendments.

The IIAC is the leading national association representing Dealers who comprise the vast majority of the financial services provided to Canadian retail investors. Our members distribute a variety of securities such as mutual funds and other managed equity and fixed income funds and provide a diverse array of portfolio management, and advisory services.

Summary: The IIAC is concerned that proposed changes to IIROC's complaint handling rules are untimely and result in an uneconomical use of resources, without clear investor benefit.

Key Recommendations:

- The consultation should be postponed until after the client complaint handling rules for the consolidated SRO are published to allow all stakeholders, particularly Mutual Fund Dealers and their investor clients, to fully consider and comment on the harmonized rules that will apply

- The definition of serious misconduct is overly broad. It also unnecessarily includes certain activities such as the Best Execution and Client Priority Gatekeeper Obligations which should remain in UMIR Rule 10.16. The UMIR Rule can result in a better client outcome as non-material violations are expeditiously resolved.

- IIROC should publish the Updated Guidance on the Proposed Amendments and provide a comment period on the complete rule proposal before the final version of the Proposed Amendments are released

Consultation Timing

The timing of IIROC's consultation and request for comment on the Proposed Amendments is out of step with the work of the CSA's Integrated Working Committee and the launch of the New SRO in nine months time. Asking stakeholders to review and comment on changes to IIROCs complaint handling rules, without the details of what will be carried forward into the consolidated rules of the New SRO, is not appropriate and is an inefficient use of time and resources. We recommend IIROC postpone the consultation on the Proposed Amendments until after the New SRO complaint handling rules are published and stakeholders have time to review these rules. We do not believe there is any negative impact to investors if the consultation is conducted after existing SRO rules are harmonized under the New SRO.

Postponing the consultation until after the New SRO's complaint handling rules are published will also provide Mutual Fund Dealers and MFDA registrants with the opportunity to comment on the rule changes that they will be required to comply with under the New SRO. It is critical that Mutual Fund Dealers be given the opportunity to participate in any consultation that may affect their business processes and compliance obligations. We note that the Proposed Amendments, if approved, would result in some inconsistencies with how complaints are required to be handled by MFDA members, such as the test for what constitutes a reportable

matter; the requirements to report investigations; and the definition of compensation. Proceeding without mutual fund dealer input to the consultation would be a significant oversight.

The Definition of Serious Misconduct

A. Generally

The Proposed Amendments are intended to provide a clear and consistent understanding of what is to be investigated and reported by all Dealers, codifying existing best practices. To achieve these objectives, new defined terms have been introduced, including a principles-based definition of "serious misconduct". The definition of serious misconduct is very broad. Depending on the interpretation of "reasonable risk of material harm" and "any applicable laws", almost any misconduct could be considered a serious misconduct matter. This will have a significant impact on business level supervisory processes and oversight activities conducted by compliance staff. In addition, to provide clarity and consistency across Dealers, the definition of serious misconduct should be made exhaustive, rather than inclusive.

The interpretation of "material risk of harm" is critical when there is a misconduct infraction as this is the primary determinant of a serious misconduct violation and as noted above, is then required to be reported. Section 4.2 Updated Guidance of the Notice states that additional guidance will be issued with the final version of the Proposed Amendments to clarify "material risk of harm and certain serious misconduct activities". Publishing this guidance with the final rules is not appropriate as it does not allow stakeholders to consider and comment on IIROC's interpretation of this important term and what the regulator considers to be a serious misconduct activity. As the definition of serious misconduct is principles-based, stakeholders should be provided this guidance before the final rule is published and provided the opportunity to provide comment on the entire framework.

With respect to part (ii) of the definition of serious misconduct, the Proposed Amendments refer to "any applicable laws" which should be deleted as IIROC requirements and securities laws encompass all obligations within IIROC jurisdiction. While an alleged breach of a non-securities law may affect an individual's fitness for registration, there are rules that set out the obligations under that process which is distinct from this consultation.

The activities that IIROC proposes to include in its definition of serious misconduct include some activities that may not give rise to material harm and/or may otherwise be addressed efficiently and in the clients' best interest. Notwithstanding, Dealers would be required to report these activities. This increased reported did not result in investor benefit.

B. Suitability

The serious misconduct definition also includes possible violations of the suitability determination obligation in Rule 3400. While the inclusion of suitability within the definition of serious misconduct makes sense if it is part of a client complaint, for example, the requirement

to conduct and report an investigation into every potential violation of suitability is excessive. Suitability is a major focus of Tier 1 and Tier 2 trade surveillance, with potential violations being investigated and addressed, in the clients' best interest, under these programs. In addition, the volume of reporting for any dealer will be significant and across the industry, IIROC will be inundated with reports that have very low value. Accordingly, suitability should be carved out of the definition of serious misconduct unless it pertains to a client complaint.

C. Best Execution and Client Priority

IIROC's Notice fails to provide an adequate policy reason for bifurcating the Gatekeeper Obligations in UMIR Rule 10.16. The Notice indicates that the best execution and client priority requirements are moved to Rule 3700 as these activities create a real risk of material harm to the client or the capital markets, or there is material non-compliance with IIROC requirements, security laws or any other applicable laws. This suggests that violations of the other Gatekeeper Obligations do not result in a material risk to clients or the capital markets, which we do not believe is correct and does not provide a policy reason to change the reporting of Gatekeeper Obligations.

Under current UMIR Rules, the result of an investigation is reported if there is a material violation of a Rule, which allows for timely resolution of non-material violations. In the Proposed Amendments, all best interest and client priority violation are considered "serious misconduct" matters and there is no materiality consideration for these types of violations. Therefore, there is no ability to expeditiously resolve non-material violations which can provide for a better outcome for the client.

As IIROC has not identified any systemic problems with how these trade desk compliance matters are currently managed, and for the reasons detailed above, the best execution and client priority obligations should remain under UMIR Rule 10.16.

If the best execution and client priority obligations are included in Rule 3700, each violation will need to be reported multiple times; when becoming aware of a violation; when commencing an investigation; and upon the conclusion of the investigation regardless of the finding of the investigation. Reporting multiple times will significantly increase the compliance burden associated with these violations. Moreover, it will be difficult for non-executing Dealers to report as executing Dealers are better placed to monitor, investigate, and report violations based on patterns and other criteria with data at their disposal. Therefore, we suggest that a materiality threshold be added for best execution and client priority violations if they are moved to Rule 3700, which would reduce the compliance burden for Dealers, without negatively impacting client outcomes.

In Appendix 4 – Blackline of Proposed Amendments to UMIR, there is a proposed addition of "other" to section (6) of UMIR 10.16 Gatekeeper Obligations of Directors, Officers and Employees of Participants and Access Persons (last paragraph). It is not clear what other self-regulatory entity would require the reporting of an investigation into a UMIR rule violation.

Reporting Requirements

The definition of serious misconduct includes material breach of client personal information that is under the Dealer Member's control. As breaches of personal information are already required to be reported to the Privacy Commissioner, there would be duplication of reporting and investigation obligations if the Proposed Amendments are adopted. To avoid this duplication, we recommend that this requirement be removed from the definition of serious misconduct.

Some of the Approved Person obligations in Rule 3710 are overly broad and/or require the reporting of unproven allegations. Specifically, being charged with a criminal offence is an unproven accusation and should not be included in 3710(1)(e)(i), 3710(2)(d)(i) and 3711(1)(d)(i). Similarly, "investigations" are preliminary in nature and should not be included in 3710(1)(e)(ii) and (iii), 3710(2)(d)(ii) and (iii), and 3711(1)(d)(ii) and (iii).

Please note that the clean (Attachment 1) and blackline (Attachment 2) copies of the Proposed Amendments are not consistent in the use of clause and sub-clause identifiers. All references to rule clauses in this letter are based on the clean copy of the Proposed Amendments.

Appendix 8 - Impact Assessment, indicates that the policy reasons for including" reporting when Approved Persons and employees are subject to investigations" includes ensuring IIROC is aware when another regulatory body investigates an Approved Person or a Dealer Member's employee. The Impact Assessment goes on to say this will help IIROC communicate with other regulators on overlapping files, assess a dealer's risk of non-compliance to inform examinations and assess an Approved Person's or employee's fitness for registration/approval should they submit and application. These are poor policy reasons as overlapping and duplication of files should be avoided. As investigations are not determinative, these processes have no relevance to registration and an individual's fitness for registration, and in the case of an employee, should only be assessed if an application for registration is submitted. Due to privacy concerns and lack of relevance, it is not appropriate to prospectively report investigations particularly with respect to employees who are not registrants and over whom IIROC has no jurisdiction

New rule 3710(2), requires Dealer Members to develop policies and procedures to ensure that their employees report certain matters defined in the rule. To comply with this rule, Dealer Members may need to re-write their employment contracts to incorporate the requirements of the rule, compelling employees to report in accordance with the rule. As a result, there may be employment law issues that will affect a Dealer Members ability to comply with the rule in some jurisdictions. In addition, as employees are not Approved Persons and are not under IIROC regulatory jurisdiction, it is not clear on what basis IIROC will govern these employees and what sanctions IIROC will be imposing on employees if they are required to report to IIROC. Further, the Proposed Amendments fail to provide data to substantiate any harm to clients arising specifically from employees at dealer firms. As such, IIROC should remove references to employees throughout the Proposed Amendments.

The new requirement 3711(1)(b), requiring a Dealer Member to report to IIROC if the Dealer Member or Approved Member or employee has paid substantial compensation to a client either directly or indirectly, should be modified to limit the reporting to compensation paid in relation to a client complaint. There are many service-related reasons for compensating a client that have nothing to do with a complaint and we believe these are outside of the intended scope of the rule. Appendix 8 of the Notice indicates that the net positive of the reporting of substantial compensation is to help IIROC investigate potential rule violations, assess a Dealer's risk of non-compliance to inform IIROC examinations and assess an Approved Person's or employee's fitness for registration, should they apply. However, the reasons for and amount of compensation paid to a client can be established for valid business reasons and not in relation to rule violations. Therefore, the policy rational for this new rule is not substantiated.

The clarification in sub-clause 3711(1)(d)(ii), that dealers must report any time a Dealer Member, a current or former Approved Person or employee named as a defendant or respondent in, or is the subject of, any proceeding, disciplinary action, or investigation alleging contravention of any securities laws or applicable laws, is not reasonable and should be restricted to securities related matters and, as noted above, employees should not be included. Appendix 8 of the Notice indicates that this clarification will have a "minor impact" on Dealers. However, developing and implementing policies and procedures to require the reporting of this information to the Dealer and developing monitoring and reporting processes can be complex and costly, especially for large Dealers. IIROC's assessment that this is a minor impact is significantly understated. The "Net Positive" resulting from this requirement, as detailed in the Appendix 8, is IIROC will have more information to help assess a Dealer's risk of non-compliance to inform examinations and to assess an Approved Person's or employee's fitness for registration, should they submit an application. As there are disclosure and reporting obligations when fitness for registration is conducted, the benefit is limited. Therefore, the cost/benefit of reporting alleged violation of all laws and any civil claim is not substantiated.

One of the stated purposes of the Proposed Amendments is to reduce duplicative reporting by eliminating overlapping ComSet reporting requirements. With this objective in mind, IIROC should not require multiple ComSet reports for the same underlying conduct matter. For example, a complaint that alleges serious misconduct could give rise to three separate reporting obligations, namely as a complaint matter, an investigation, and possibly a discipline matter. IIROC should clarify that a single report can be made, so long as it is updated as appropriate to include required details. (e.g. report on discipline within the client complaint event report).

Client Complaint Reporting discrepancy - Rule 3711(2) vs. Rule 3751(1): The retail client complaint obligations set out in Part E apply only to complaints alleging "serious client-related misconduct", while the reporting obligation in Rule 3711(2) applies more broadly to "all complaints involving allegations of serious misconduct...". As a result, the current proposal requires Dealers to report complaint matters in respect of which the requirements of Part E do not apply. The ComSet reporting obligation should accordingly be limited to complaint matters that fall within Part E, complaints alleging serious client-related misconduct.

Client Complaints

The definition of complaint is very broad and includes verbal complaints. As all serious misconduct complaints must be reported and investigated and the Proposed Amendments require Dealers to report at each stage of the investigation process, most Dealers will have increased reporting and investigation obligations. The requirement to respond to all verbal complaints will also increase the reporting obligations for Dealers as the Proposed Amendments no longer permits Dealers to conduct a preliminary investigation of verbal complaints to determine if the allegation has merit. This increase in reporting will impact resource requirements at most Dealers.

In accordance with Part E – Client Complaints, the client complaint file requirements of Rule 3758, may satisfy the internal investigation requirements of rule 3720(1) and the investigation records requirements of rule 3721. We recommend that the Proposed Amendment to Rule 3720(1), be amended such that for client complaints, the internal investigation is the investigation of the complaint itself. Conduct that is the subject of a reported complaint should not need to be reported separately as an internal investigation matter.

Rules 3755(2) and 3756(3) - Complaint acknowledgement letter and Response to client complaints:
The Proposed Amendments requires the acknowledgement letter and the response letter to be "written in plain language and be in a format readily accessible and understandable by the complainant". However, IIROC's commentary at 1.19 notes, as an example, that the above requirements mean that if a client can only read Mandarin, and is serviced in Mandarin, the Dealer would have to respond in writing in Mandarin. While the primary IA relationship may be conducted in a given language (e.g. Mandarin), we expect that most Dealers' documentation (account agreements, statements, etc.) are provided in an official language of Canada. In this context, it's not clear why complaint correspondence should not be consistent with the language of the documentation that governs the legal relationship. To the extent that formal translations are mandated, such a requirement would involve additional time, which could jeopardize the ability to meet mandated deadlines. Any additional expense incurred by Dealers should be able to be offset with reasonable fees, consistent with other legal obligations such as requests for documents under privacy legislation.

Rule 3759(1)(e) - the 90-day deadline for substantive response from internal dispute resolution service:
While this 90-day deadline reflects a reasonable baseline expectation, it should be subject to the same flexibility afforded to the initial substantive response letter, as set out in Rule 3756(5), namely, the ability to inform the client if the dispute resolution service is unable to provide a substantive response within 90 days, including the reason for the delay and the new estimated time of completion.

With the new Financial Consumer Protection Framework coming into force on June 30, 2022, and with the impending publication of the AMF Draft Regulations on Complaint Handling and

Dispute Resolution in the Financial Services Sector, we encourage IIROC to confirm with the FCAC and the AMF how a client complaint that overlaps these regulatory jurisdictions should be resolved to avoid duplication.

Implementation Period

We believe a six-month implementation period is an insufficient amount of time for Dealers to implement the Proposed Amendments. As some Dealers will be focused on the implementation of the FCAC Framework, a 12-month implementation period would be a more appropriate amount of time for the implementation of the Proposed Amendments as the same resources would be responsible for implementing both sets of rules. In some cases, there will be the need for additional resources to be hired to deal with the anticipated significant increase in reporting. As such, additional time is required to hire and train new resources, and to develop and implement a new complaints regime.

As mentioned at the outset of this letter, we believe the entire consultation should be postponed until after the New SRO has published its harmonized rules, allowing both IIROC and MFDA registrants to comment. If following that consultation, the Proposed Amendments or substantially similar amendments are proposed, then a similar 12-month period is appropriate as the New SRO rules will requirement implementation at approximately the same time.

We would be pleased to respond to any questions that you may have in respect of our comments.

Yours sincerely,

Investment Industry Association of Canada