VIA EMAIL February 17, 2023

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la cité, tour Cominar
2640, boulevard Laurier, 3ième étage
Québec (Québec) G1V 5C1

Re: Regulation respecting complaint processing and dispute resolution in the financial sector

---

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments regarding the *Regulation respecting complaint processing and dispute resolution in the financial sector* (the **Consultation** or the **Draft Regulation**).

PMAC represents over 300 investment management firms registered to do business in Canada as portfolio managers (**PM**s) with the members of the Canadian Securities Administrators (**CSA**), including the Autorité des marchés financiers (**AMF**). We have 165 member firms that are registered to do business in Quebec, including 42 that are principally regulated by the AMF. PMAC's members encompass large and small firms, and "traditional" as well as on-line firms, managing total assets in excess of $3 trillion for their clients.

OVERVIEW

As we noted in our response to the 2021 Consultation on this Draft Regulation (**2021 response**), PMAC's mission statement is "advancing standards"; we are consistently supportive of measures that elevate standards in the industry and improve investor protection. We encourage the harmonization of regulatory requirements for asset managers across Canada and internationally where possible, and discourage requirements that impose duplicative and/or conflicting obligations.

PMAC supports the AMF's goal of ensuring the fair processing of consumer complaints in the financial sector and of imposing standards for investor complaints across different types of firms. It is clear that the AMF took stakeholder feedback

into account and, as a result, made substantial changes to the Draft Regulation. We appreciate this approach and agree with many of the revisions.

While we appreciate that the AMF has added flexibility to the Draft Regulation with respect to the policy and procedural requirements and timelines, the Draft Regulation will nonetheless impose additional compliance burden and costs, especially for smaller firms, without a corresponding investor benefit. We have detailed our key recommendations and concerns below.

KEY RECOMMENDATIONS

Our key recommendations are as follows:

1. **Exclude PMs from the Draft Regulation:** While the revised Draft Regulation is less prescriptive than the original proposal, it nonetheless remains onerous, and we still do not understand why the regulation is necessary for PM firms. There is nothing to indicate that the existing complaint handling regime set out in the *Securities Act* (Quebec) (**Act**) is not working well for PM firms and their clients. We do not believe that a "one-size-fits-all" model for the entire financial sector is in the best interests of the clients of PM firms. We request that PMs be excluded from the Draft Regulation.

2. **Exclude non-individual permitted clients and other institutional investors from the Draft Regulation:** The process and timelines set out in the Draft Regulation are not appropriate for non-individual permitted clients and institutional investors. These investors have a variety of arrangements with their advisers which may require a more specialized approach to complaint management. These investors also have the sophistication and means to pursue other forms of dispute resolution. They may prefer to use alternate means to do so. Excluding non-individual permitted clients and other institutional investors from the regulation would be consistent with National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

3. **Alternatively, harmonize the Draft Regulation with the complaint resolution requirements in NI 31-103:** If no exclusion is given to PMs, the Draft Regulation will cause significant additional compliance burden, as a result of the differences between the proposed complaint handling regime and the existing regimes under NI 31-103, the Act, and Ombudsman for Banking Services and Investments (**OBSI**). Examples of these differences include the proposed 60-day response period, the proposed broadened definition of "complaint", the requirement to appoint a responsible person and to adopt specific detailed policies and procedures, the requirements to acknowledge receipt of the complaint in addition to other response requirements, to transfer

the file to the complaint handling department within 10 days, to record all dissatisfactions, the expanded timeframe for the complainant to respond to a complaint, the on-going obligation to communicate with the complainant, and the expanded record retention period. Imposing these new requirements will cause additional burden for firms across Canada that have clients in Quebec, whether or not they are principally regulated by the AMF. PMAC does not believe that there is any additional investor protection policy reason to deviate from the existing complaint handling regime.

These key recommendations are discussed in further detail below, and we have also provided some additional commentary on the Draft Regulation.

Exclude PMs from the Draft Regulation

As we noted in our 2021 response, we are supportive of efforts to elevate the complaint processing standards across the financial sector. However, any regulatory response should be proportionate, and resources should be directed to those segments of the industry responsible for the largest number of complaints. It is not clear why the changes proposed in the Draft Regulation are needed with respect to PM firms, or that the existing complaint handling requirements are not adequately protecting the clients of PM firms. In our 2021 response, we raised evidence to suggest that PMs are responsible for only a very small percentage of client complaints within the securities industry.[1]

A one-size-fits-all approach for the entire financial industry – one that would treat an insurance broker the same as a PM, for example - is inappropriate. PM firms owe a fiduciary duty to their clients and are already subject to a comprehensive supervisory regime that includes complaint handling and documentation provisions under the Act and NI 31-103. We therefore believe that PM firms should be excluded from the Draft Regulation.

PMs' clients have a unique investor profile. They are typically high net worth private clients who are sophisticated or accredited investors and/or institutional investors including pensions, large public companies, foundations, endowments, etc. Both private high net worth clients and institutional clients command a higher financial proficiency and sophistication than retail clients.

The relationship between a PM and a client is customized for each client and guided by the client's investment objectives and constraints. The PM and client work together to develop investment policies and strategies, taking into consideration a

[1] the Ombudsman for Banking Services and Investments (**OBSI**) publishes complaint statistics in its Annual Report. While PMs represent 58% of OBSI members, complaints against them were only 9% of the total complaints regarding investments in 2021. This does not take into account complaints in the banking, insurance and credit rating sectors.

number of factors, including client objectives, a client's investment time horizon, market and economic conditions. The PM implements investment policies and strategies including security research, selection, analysis, and portfolio construction to meet the client's individual investment needs. These relationships are typically long-standing and there is a heightened focus on preserving the relationship. In this regard, our members are committed to providing clients with high-end customized services with a view to maintaining a long relationship. To this end, PMAC members have established effective and efficient internal dispute-resolution processes that are reflected in the establishment and dissemination of policies and procedures for complaint handling which support and enhance client relationship preservation.

These relationships are maintained, among other things, by regular contact. PMs and their clients enjoy a personal and service-based relationship as opposed to a transaction-based relationship more typical of retail banking clients.

The PM sector has historically experienced a low complaint volume and high internal resolution rate. We believe that this is partly driven by the nature of the fiduciary relationship and the fundamental duty of the PM to act in the client's best interests. In the event of disagreements, the nature of the fiduciary relationship drives a strong desire to clarify any misunderstandings and to satisfy the client. Many private clients and institutional investors have consultants acting on their behalf, and PMs recognize that if a client isn't happy, the business may go elsewhere, and the PM is at risk of losing other business as well. This fact has led to the vast majority of private client / institutional disputes being resolved internally.

PMs' client complaint volumes are significantly lower than in other sectors of the industry. The nature of the discretionary management relationship makes complaints less likely (including the detailed know-your-client (**KYC**) process, relationship disclosure information (**RDI**), investment management agreements (**IMAs**), investment policy statements (**IPSs**) and frequency of communication with clients); therefore, PMs do not typically rely on external dispute resolution service providers. For the minimal number of complaints received, these are generally resolved internally and do not escalate to third party dispute resolution.

The fact that PMs owe clients a fiduciary duty and the nature of the discretionary management relationship, the presence of detailed IPSs and IMAs and the frequency of client communication, likely contribute to the low volume of complaints. PMs also typically have fewer clients per registered adviser and higher assets under management (**AUM**) per client. Finally, PM advisers have high ethical and education standards (Certified Financial Analysts (**CFAs**) have rigorous training and annual sign-off on code of ethics), and fewer conflicts within their compensation structures (no conflict of interest in churning or selling new issues/high margined product as compared to commission-based models), which also contribute to an enhanced relationship with clients and lower likelihood of disputes.

Exclude non-individual permitted clients and other institutional investors from the Draft Regulation

We were disappointed to see that this recommendation was not implemented in the revised Draft Regulation. We strongly believe that non-individual permitted and other institutional investors should be excluded from the Draft Regulation, as they are from the dispute resolution requirements in NI 31-103. These are sophisticated entities that are often advised by experts and have the ability and means to pursue dispute resolution in a manner that suits them best. Section 13.16 (1)(8) of NI-31-103 specifically excludes non-individual permitted clients from the dispute response process described in that section. We believe that other institutional clients that do not qualify as permitted clients should also be excluded.[2] As noted in our 2021 response, the requirements may not be applicable to the unique circumstances of these sophisticated investors, and they may wish to engage other dispute resolution mechanisms. Requiring PMs to engage the complaint handling processes for these clients would add additional burden for both the firm and the client. These clients should be excluded from the Draft Regulation.

As noted above, PMs have the highest standard of duty as fiduciaries to their clients, meet the highest conditions of registration and proficiency with the securities commissions, and have clients, who are for the most part sophisticated, accredited and institutional investors. As a result, PMs have a consistently low complaint volume from their clients and occupy a very unique space in the investment management industry. This registrant profile and institutional investor profile would require a much different dispute resolution service than the AMF provides.

Because of the nature and size of their portfolios, institutional clients need specific expertise and access to investments that are not available to investors with smaller portfolios, which is why they work with PMs. PMs that manage assets for institutions are diligent about providing investment detail, often well beyond what is required at the mass-market level. Our members' institutional clients include some of the largest and most widely known companies, financial institutions, organizations, charitable foundations, pensions and endowments. A typical mandate for institutional clients is $10 million and over.

Given that institutions of this nature are highly unlikely to use the AMF for dispute resolution, the requirement for firms with such clients to adhere to the proposed

2 Examples of certain clients that do not meet the Permitted Client definition and the financial thresholds in NI 31-103 are: Health and welfare trusts (distinct entities under the Income Tax Act (Canada)); Unions and union-related benefit plans; Multi-employer benefit plans; Some foundations and registered charities; Some overflow pension accounts (associated with pension plans, but not pension plans themselves); Supplemental employee retirement plans; Disability Plans; First Nations trust vehicles (i.e.: for government monies) and Retirement Compensation Arrangements.

regulation does not seem to fit within the policy rationale and retail investor focus of the proposals. The inclusion of non-retail investors in the Draft Regulation will significantly increase regulatory burden and cost for firms servicing institutional clients.

Harmonize the Draft Regulation with the complaint resolution requirements in NI 31-103

The lack of harmonization with NI 31-103 is a significant problem and will cause inordinate burden on registrants across Canada. This includes requirements under the Draft Regulation such as the specific and detailed required content of policies and procedures, the requirement to designate a complaints officer, the requirement to analyze complaints (under section 9) and record-keeping requirements. Firms will be required to incur additional time and expense for implementation, training and compliance monitoring.

Further, the lack of harmonization could result in inconsistent treatment of complaints depending on where the client resides. The proposed 60-day response timeframe in the Draft Regulation will cause differential treatment between investors who reside in Quebec compared to investors residing in other provinces, given that the OBSI dispute resolution service is mandatory outside of Quebec and provides a 90-day timeframe to provide a response. This lack of harmonization will cause significant compliance burden to firms and will also be confusing to clients of Quebec firms that are members of OBSI. This outcome is not in the best interests of clients.

Although we appreciate that the revised Draft Regulation includes the possibility of extending the response period to 90 days in extenuating circumstances, this will not resolve the harmonization issue noted above.

PMAC does not believe that there is any investor protection reason to justify the changes. We therefore, once again, urge the AMF to maintain the existing regime under the Act for PMs, which is aligned with the complaint handling regime under NI 31-103 and OBSI and regarding which no investor protection or other concerns have been articulated in the context of PM clients.

Additional comments

In addition to the above key recommendations, we request additional clarity on the following portions of the Draft Regulation:

a. *Definition of "complaint"*

We remain concerned that the definition of "complaint" is ambiguous, and the exclusion from the definition is too narrow. The definition is also overly broad by

including any client "dissatisfactions", regardless of their nature, severity, or relevance. This has the potential to considerably increase the number of complaints reported and submitted to the AMF and will defeat the purpose of allowing firms to identify recurring issues and remedy them.

As we noted in our 2021 response, section 168.1.2(1) of the Act provides more flexibility for a registrant to determine what constitutes a complaint that would trigger the complaint handling process. The same is true of the definition in NI 31-103 and the OBSI definition. In our 2021 response we also noted that it is not clear what the expectation of a final response adds to the definition of "complaint". PMs should continue to have the ability to exercise their professional judgment in determining what constitutes a "complaint" and when the requirements should be engaged, in accordance with their fiduciary duty to the client.

b. Requirement to "assist complainants in making their complaints"

We acknowledge and agree with the changes made to section 11 of the Draft Regulation with respect to removing the requirement to provide a complaint drafting service. However, we remain concerned with the requirement to "assist complainants in making their complaints". We agree that a firm should be expected to explain the complaint process to clients, and to understand the complaint, but we do not agree with the requirement to "assist complainants in making their complaints". We believe that this phrase should be deleted, for the reasons set out in our 2021 response[3], including significant conflict of interest concerns.

We also disagree with the wording in the second paragraph of section 11 of the Draft Regulation, specifically the following highlighted portion:

> When a financial institution, financial intermediary or credit assessment agent determines, in the course of its analysis, that a complaint it has received may have repercussions on other persons who are part of its clientele, it must take the necessary actions to remedy the complaint.

It is not clear what is required by this paragraph. A firm should not be required to "remedy the complaint," and we ask that this phrase be removed. Depending on the circumstances, a firm may need to take steps to inform the other party and, if applicable, to describe the steps to be taken or the options available to the other party, but it should not automatically be required to provide a remedy.

3 These include that investors may place undue reliance on the firm; the requirement could become very onerous if the client's concerns are not clear, if the client requires significant assistance, and if the client is not satisfied with the wording of the complaint; and, there is a risk that the firm would be in a direct conflict of interest with a client in a way that risks confusing the client.

Members have also raised concerns with respect to the following sections:

- The change in section 13 of the Draft Regulation from a 20-day period to a "reasonable" period for the complainant to respond to an offer is less certain and will increase burden for registrants. We also disagree with the change to section 14, which allows the complainant to continue to submit new facts, questions and comments for an indefinite period after a final response has been delivered. The result of these changes is that complaints may take more time to resolve, and there is less certainty for both the complainant and the registrant as to their final resolution.

- The requirements in section 15 regarding notification of the complainant where the complaint involves other entities are unclear. The firm may not have the necessary information to explain to the client the extent to which other entities are involved. It would be preferable to change to wording to a "reasonable belief" regarding the involvement of other entities, and a requirement to make "reasonable efforts" to provide information to the complainant. The second part of the paragraph implies that the registrant must provide the complainant with information to allow the complainant to file a complaint against it. It is not clear why this sentence is included in this section, and it seems duplicative of the requirements in section 11.

- Section 17, as drafted, would eliminate the 7-year retention period, and implies that records would need to be maintained indefinitely ("for the same retention period as applies to any information relating to the complainant"). This is an onerous record-keeping requirement that will result in added compliance burden and expense for registrants.

Conclusion

We respectfully request that the AMF maintain the existing complaint handling regime in the Act for PM firms, taking into account the fiduciary duty owed by PM firms to their clients, and the small proportion of client complaints related to PM firms.

We are concerned that the Draft Regulation will impose undue regulatory burden on PM firms, without a corresponding investor benefit. If the Draft Regulation is enacted, we strongly urge the AMF to harmonize the requirements with NI 31-103 and OBSI, and to exclude non-individual permitted and institutional clients.

We would be pleased to discuss any of our comments with you at your convenience. Please do not hesitate to contact Katie Walmsley at [redacted] or Victoria Paris at [redacted].

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

[redacted]

Katie Walmsley
President

[redacted]

Margaret Gunawan
Director, Chair of Industry, Regulation and Tax Committee,

Managing Director – General Counsel, Americas (ex-US) & Canada CCO, BlackRock Asset Management Canada Limited