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Re: Regulation Respecting Complaint Processing and Dispute Resolution in the Financial Sector

FAIR Canada is pleased to provide comments in response to the above-referenced consultation.

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. As part of our commitment to be a trusted, independent voice on issues that affect retail investors, we conduct research to hear directly from investors about their experiences and concerns. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.¹

A. General Comments

We appreciate the opportunity to comment on the revised draft regulation on complaint processing and dispute resolution in the financial sector (the Draft Regulation).

FAIR Canada applauds the AMF's objectives of helping to ensure that consumer complaints are processed fairly and diligently and establishing common rules to help financial institutions identify and address recurring issues. Effective and easy to navigate complaint handling systems are important cornerstones of a well-functioning and vibrant financial services industry and help instill and maintain consumer confidence. Overall, we support the Draft Regulation and are pleased to see that it includes concrete measures designed to assist consumers, manage timelines, analyze complaints data, and address systemic issues.

¹ Visit www.faircanada.ca for more information.

Below are our recommendations on specific aspects of the Draft Regulation.

B. Recommendations

1. Section 12(5) – Additional Time for Firm’s Final Response to Complainant

Section 12(4) of the Draft Regulation requires financial institutions to provide the complainant with a final response no later than 60 days following receipt of the complaint. The Draft Regulation includes a new s. 12(5) that gives the financial institution up to 90 days to provide the final response “where warranted by circumstances that are exceptional or beyond its control.”

FAIR Canada questions the need for such an exemption and notes that it is inconsistent with other complaint resolution processes. For example, under the *Bank Act* and its accompanying regulations, banks must, without exception, provide a final response to the complainant within 56 days.² According to the Department of Finance, the change from 90 to 56 days was meant to align Canada with best practices internationally for bank complaint handling.³

Under the complaint regime in the United Kingdom, firms regulated by the Financial Conduct Authority (FCA) must resolve complaints within eight weeks.⁴ A narrow exemption is permitted in the case of payment services or e-money complaints. These types of complaints typically require a response within 15 business days and may only be extended to 35 business days (not 90 days) in exceptional circumstances.⁵

In both examples, the strict deadlines apply to a wide range of institutions of varying sizes. Moreover, the FCA (which is an integrated regulator similar to the AMF) regulates widely diverse institutions, including mortgage lenders, insurers, credit unions and investment dealers, that each vary in size.

If financial institutions are given discretion to apply this exception, we are concerned with the lack of guidance or clarity as to what might constitute “exceptional circumstances” or circumstances “beyond their control.” Every person or institution will have their own sense of what this means.

In the UK, for example, the FCA issued a statement after the outbreak of COVID-19 about how firms should handle complaints during the pandemic.⁶ In its statement it recognized “that operational challenges could result in some firms finding it more difficult to meet certain requirements.” However, only five months after issuing the statement, the FCA considered enough time had passed for firms to meet their obligations. Briefly stated, the

² [Financial Consumer Protection Framework Regulations](#), s. 14.

³ Fasken Martineau DuMoulin LLP, [The Wait Is Over: Federal Government Releases Regulations For Financial Consumer Protection Framework](#), August 25, 2021.

⁴ [Financial Conduct Authority Handbook](#), s. DISP 1.6.2.

⁵ *Ibid.*, s. DISP 1.6.2A.

⁶ FCA, [Firm handling of complaints during coronavirus](#), May 1, 2020.

FCA provided guidance that an ongoing pandemic was considered an exceptional circumstance, but only for a brief period.

Further, it is unclear whether the AMF will monitor delays to ensure reliance on the exemption is appropriate. Without greater clarity or a commitment to review delays, we have concerns that some financial institutions may overuse the exemption to delay the complaint resolution process, making it less timely and efficient for complainants.

We recommend that the AMF provide guidance to illustrate the types of circumstances that would warrant the application of s. 12(5).

Moreover, the AMF should strengthen s. 21 of the Draft Regulation, which we believe is inadequate to stop potential abuse of s. 12(5). Currently, it requires the firm to send the client a written notice explaining why it used s. 12(5) and advising the client that they can ask the AMF to examine the complaint record. In our view, s. 21 should be enhanced by mandating that financial institutions also notify the AMF of the circumstances they are relying on to justify the use of s. 12(5).

During COVID-19, the FCA specifically required any firm experiencing difficulties in meeting the requirements to contact the FCA and advise them of the steps it was taking to manage and address its non-compliance.⁷ We believe including a similar notice provision in the Draft Regulation will help to limit any potential abuses and ensure the extended timeline is only used in truly exceptional circumstances.

2. Section 10 – Disclosure Documents

We are pleased to see that s. 10 has been added to the Draft Regulation. Essentially, it requires financial institutions to draft any disclosure documents relating to the complaint in a form that is clear and not misleading and to highlight the key elements required for informed decision-making in a way that avoids misunderstanding. It also requires financial institutions to ensure that staff use clear and plain language in any interactions with complainants.

This is an important provision because complaint handling systems can be confusing and overwhelming for the average lay person. In addition, financial institutions' disclosure materials regarding the complaint process are often written in legalese and can be difficult to understand. In our experience, many financial institutions do not draft their complaint resolution pamphlets in a way that the average reader can easily understand, or, worse, they are written in a way that could mislead them about how the process works. For example, we have seen complaint handling brochures that suggest, following delivery of a final response, the complainant must first appeal the firm's decision internally before they are permitted to bring their complaint to an external service provider.

To help complainants better understand the avenues for redress, we recommend that firms be required to clearly explain the options available to the complainant if he or she is

⁷ Ibid.

unsatisfied with the financial institution's response. Further, firms should be required to explain when a complainant can use these other options. For example, a complainant may be able to bring the complaint to an external complaints body or an adjudication process or pursue other legal avenues 60 days after complaining to their firm, or earlier if the firm's response was not satisfactory. This disclosure could be required in the firm's final response to the consumer and in the summary of the firm's complaint processing and dispute resolution policy on its website.

3. Section 13 – Time for Client to Respond to Offer

In the 2021 draft regulation, the complainant had a minimum of 20 days to respond to a firm's offer. Further, s. 28(3) of the 2021 draft regulation provided an administrative monetary penalty (AMP) of \$2,500 for failing to give the complainant a minimum of 20 days to assess and respond to an offer.

The current Draft Regulation no longer includes a specific period. Instead, it requires the firm to give the complainant "a reasonable amount of time" to respond to the firm's offer and there is no longer an AMP for failing to do so.

We fail to see a reason for the proposed change. In our view, "a reasonable amount of time" is open to interpretation and creates regulatory uncertainty. We also believe it further tilts the complaint process unfairly in favour of the firm against the interests of the complainant, since it will be the firm that determines what is reasonable. We believe it is inappropriate to give firms the discretion to determine what constitutes a reasonable amount of time. To help ensure public confidence in the complaint process, it is important that consumers be given a defined minimum amount of time to carefully assess and respond to offers.

In our experience, firms have tried to pressure complainants by insisting on a response within a few days. The purpose of having a fixed period (in this case, 20 days) is to deter firms from using such pressure tactics. In our view, the Draft Regulation should include a fixed minimum period to respond to offers, as well as an AMP for failing to meet it. We believe that 20 days remains appropriate.

4. Section 5 – Independence and Avoidance of Conflicts of Interest

The 2021 draft regulation included a requirement in s. 5(2) for the complaints officer and staff processing complaints to act with independence and avoid any situation in which they would be in a conflict of interest. We are disappointed that this language has been removed from the current Draft Regulation and encourage the AMF to re-insert it.

This provision is important to ensure that staff address complaints based on the merits, as opposed to the self-interest of the employee or the firm. In addition, requiring that firms ensure staff can act independently should help insulate staff handling complaints from recrimination or from being otherwise disadvantaged from a career perspective.

In the alternative, we recommend that the AMF require the complaints officer and complaints staff to make it clear to complainants that they work for the financial institution and are not independent.

5. Section 11 – Assistance with Complaints

We are pleased to see that the Draft Regulation contemplates broader assistance to complainants beyond just the drafting of the complaint.

Section 11 in the 2021 draft regulation required the financial institution to provide a complaint drafting assistance service to any client expressing a need for it. The revised s. 11 requires financial institutions to, when necessary, assist complainants in making their complaints.

We support this more expansive notion of assistance, which would require financial institutions to help complainants with aspects of the complaint beyond drafting, such as gathering appropriate documents to support the complaint. Assistance is a critical tool in leveling the playing field between the firm, with its resources, expertise and institutional knowledge, and the consumer. We also support the revised provision because it does not require the complainant to express a need for assistance. Rather, it indicates that firms should proactively help complainants navigate the complaint handling process where needed.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for consumers in the complaint handling process. We intend to post our submission on the FAIR Canada website and have no concerns with the AMF publishing it on its website. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at [redacted] or Tasmin Waley, Policy Counsel, at [redacted]

Sincerely,

[redacted signature]

Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights