FAIR
Canadian Foundation *for* Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement *des* droits *des* investisseurs

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Submitted via e-mail to: consultation-en-cours@lautorite.qc.ca

RE: AMF - Complaint processing and dispute settlement draft regulation

FAIR Canada appreciates the opportunity to provide comments on the Autorité des marchés financiers (the "AMF") consultation on Draft Regulation on complaint processing and dispute settlements in the financial sector (the "Draft Regulation").

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. It advances its mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly moving the needle in the interests of retail investors and financial consumers.

General Comments

FAIR Canada applauds the AMF for taking this initiative. Overall, we support the Draft Regulation because it addresses documented deficiencies in the internal complaint handling system of banks[1] and other financial institutions. Particularly encouraging are the concrete measures designed to assist consumers, improve timelines, analyze complaints data, and address systemic issues.

Effective and easy to navigate complaint handling systems are important cornerstones to any well functioning and vibrant financial services industry. In contrast, public confidence and trust in financial services is eroded when consumers' complaints are not managed and resolved in a timely and appropriate manner.

As stated in the G20 endorsed Principles on Financial Consumer Protection, all jurisdictions

[1] Industry Review: Bank Complaint Handling Procedures

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"should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient."[2]

We believe the Draft Regulation will further enhance financial consumer protection in Quebec consistent with the G20 Principles. It could also serve as an effective model for other provincial governments and regulators to adopt across Canada.

We are particularly supportive of the following provisions:

1. Section 4 requires firms to establish policies for complaint handling and dispute resolution based on sound principles.

   We agree with the enumerated requirements to "objectively consider the interests of the complainant," establish a "simple to follow" and cost-free process, and that it be well documented, including the procedures for how complaints are to be analyzed by firms. We note that firms will also be required to act fairly based on section 168.1.1 of the governing legislation.

2. Subsection 5(2), which requires those responsible for complaint handling to "act with independence and avoid any situation in which they would be in a conflict of interest."

   This provision is important to ensure that responsible staff address complaints based on the merits, as opposed to the self-interest of the employee or the firm itself. In short, the policies should empower responsible staff to "do the right thing" when dealing with complaints, even if it might result in the firm incurring additional costs.

   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.

3. Section 12, which states that firms must process a complaint and provide the complainant with a final response no later than 60 days following receipt of the complaint.

   We welcome this change as it will require more timely resolution of complaints. In our view, the current 90-day period is too long, and there is no justifiable reason firms cannot resolve complaints within two months. Importantly, the new 60-day period is aligned with established standards and best practices adopted in other jurisdictions.

4. Section 13, which states that firms must give the complainant a minimum of 20 days to assess and respond to any proposed resolution. Assuming a complainant accepts the proposal, section 13 further requires the firm to conclude the agreement within 30 days of acceptance.

[2] G20/OECD Task Force on Financial Consumer Protection, G20 High-Level Principles on Financial Consumer Protection, Page 7.

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We support a 20-day window to consider any proposal as it deters firms from using pressure tactics to force the complainant to make a hasty and potentially ill considered and harmful decision. We also welcome a 30-day period for finalizing the elements in the proposal, as it should ensure more timely resolution and closure of the complaint for all parties involved.

5. Subsection 26(2), which prohibits the use of the term "ombudsman" or "any other qualifier… that suggests that such persons are not acting on behalf" of the firm.

   This is an important prohibition that should help reduce wide-spread consumer confusion and avoid misleading consumers into believing that other avenues to resolving their complaint are now closed – which is clearly not the case.

Recommendations to help improve the complaint handling framework in Quebec:

1. Section 3 provides a definition of what constitutes a "complaint." It includes any "dissatisfaction or reproach in respect of a service or product offered by a financial institution… that is communicated by a person who is a member of the clientele… that cannot be remedied immediately and for which a final response is expected."

   We believe it is important to broadly define a complaint to better protect consumers. While we support the proposed definition, it is not clear whether complaints made verbally by telephone or communicated via social media are included. As such, we recommend that this be clarified in the final framework adopted by the AMF.

2. The Draft Regulation includes several references to "periodic" processes. For example, section 5 states that, the firm's policy "must provide… [for the] periodic review of the complaint process." Section 8 further indicates that the policy must provide for "periodic reports" of, among other things, the number of complaints received, the outcomes, and issues related to implementing the process. Section 9 contemplates that the underlying causes of complaints be "periodically" analyzed. In the case of section 10, no timeframe is prescribed for when a firm must analyze the reasons supporting a complaint.

   We appreciate that the term "periodic" has been used in certain instances because of the need for flexibility in applying the Draft Regulation to a wide range of financial institutions operating in Quebec. However, in our view, the use of this open-ended term risks creating unintended consequences, in addition to regulatory uncertainty. For example, does "periodic" mean once every five years? Those who intend on ignoring the spirit of the Draft Regulation may argue that it does.

   In our view, the better approach would be to set a minimum period by which firms would be expected to meet these requirements. For example, "once every twelve months" or "at least once a year." For smaller firms, any concerns about regulatory burden would be mitigated by the fact they would have far fewer, if any, complaints over the course of a year. In other

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words, producing reports or analyzing complaints within a specified timeframe would not entail much burden in practice since they would have little to report.

3. Section 11 requires that the firm provide complaint drafting assistance, but only if the consumer expresses a need for it.

   Requiring assistance to be provided is a key step forward in promoting effective complaint handling. This is because most consumers have little experience interacting with the system. This contrasts with financial institutions, which build up institutional knowledge and expertise over time, and have far greater resources at their disposal. We consider this assistance a critical tool in leveling the playing field between the firm and the consumer.

   We suspect many consumers will not be aware, however, that they have the right to ask for assistance. As such, the onus should not be placed on the consumer to ask for assistance, but on the firm to proactively advise them of the availability of such assistance.

   We also note that section 11 and subsection 5(2) need to work together and be scrutinized, since helping the consumer draft their complaint could create potential conflicts between the staff providing assistance and the firm that employs them.

4. Section 14 requires a financial institution to continue to manage any further exchanges with the complainant until no further action is required with respect to the complaint.

   This requirement encourages on-going engagement with the complainant until a final resolution is achieved by the complainant, which could come as a result of the firm's complaint handling system, or through external mechanisms such as the court system or an external Ombudsman. The Draft Regulation, however, is not clear about when 'no further action' is required. To assist firms in discharging this responsibility, we recommend that further clarification be provided in this regard.

5. Section 18 prescribes a list of information that must be entered into a firm's complaint register, including the date the complaint record was closed.

   The Draft Regulation does not define when a complaint record is to be considered "closed." It would be helpful to include more information in the final framework adopted by the AMF on how firms can comply with this requirement.

6. Section 21 requires the firm to provide a detailed final response to the consumer, which must include a statement of the complainant's right to request that the complaint record be examined by the Authority.

   While this reminder provides an important safeguard within the framework, we believe it could be improved by requiring firms to summarize other options available to the complainant if unsatisfied with the firm's response. For example, they may be able to bring their complaint

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to an external Ombudsman, an adjudication process, or pursue other legal avenues.

7. Section 24 states that a firm must summarize its complaint process in a clear and simple manner and make it readily accessible to any person.

   We assume that "readily accessible" means posting the summary in a prominent manner on the firm's website and recommend this be clarified in the final framework adopted by the AMF.

   Moreover, we see no reason the summary of the firm's complaint process should not also be included with the acknowledgement of receipt contemplated under section 20 of the Draft Regulation. Providing the summary to the client at this time would help them better understand the process and expectations at the outset.

Conclusion

We congratulate the AMF for taking the lead on this significant issue, one that directly impacts consumers of financial products.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. We would be pleased to discuss our submission with the AMF should you have questions or require further explanation of our views on these matters. Please contact me at jp.bureaud@faircanada.ca.

Sincerely,

Jean-Paul Bureaud,
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