

# IIROC NOTICE

## **Rules Notice Notice of Approval/Implementation and Guidance Note**

Dealer Member Rules

*Please distribute internally to:*

Legal and Compliance

Retail

Senior Management

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## **Client Complaint Handling Rule and Guidance Note; and amendments to Dealer Member Rules 19, 37 and 2500**

This Rules Notice is comprised of two parts. Part A relates to the Notice of Approval/Implementation of the new client complaint handling requirements, and Part B consists of guidance relating to the new requirements.

### **Part A – Notice of Approval/Implementation**

#### **I. Introduction**

This Rules Notice provides notice of approval by the applicable securities regulatory authorities (the “Recognizing Regulators”) of amendments to the Dealer Member Rules concerning the handling of retail client complaints (the “amendments”). The amendments will take effect on February 1, 2010.

The amendments were previously published with IIROC Rules Notice 09-0242 on August 19, 2009 to provide Dealer Members with advance notice of the rule changes. At that time, the



amendments were still subject to approval by the Recognizing Regulators. The Recognizing Regulators have now approved these rule changes.

Since the preview of the rule changes published on August 19, 2009, and in response comments received from the CSA, IIROC staff has added two lines to the Guidance Note associated with the new rule making it clear that all client complaints must be handled by qualified sales supervisors/compliance staff or the equivalent, and that under no circumstances should individuals who are the subject of a complaint handle complaints made against them.

The new rule will be known as Dealer Member Rule 2500B – Client Complaint Handling. A copy of Dealer Member Rule 2500B is attached as “Appendix A”.

## **II. Objectives of the amendments**

The amendments to the complaint handling requirements seek to establish an effective framework for the client complaint handling process. The new rule sets out specific standards and timelines to be adhered to in acknowledging, investigating and responding to client complaints that allege misconduct relating to the handling of the client’s account(s). The rule also requires the Dealer Member to adequately inform the client of all the subsequent options available to them should the client be dissatisfied with the final response from the Dealer Member. In addition to the new rule regarding complaint handling, the proposed amendments will repeal the current complaint handling requirements set out in IIROC Dealer Member Rule 2500, Section VIII, and replaced them with a general requirement that Dealer Members establish policies and procedures to deal effectively with all client complaints and respond to all written complaints.

IIROC believes that the amendments will be effective in facilitating improvements to the complaint handling processes of Dealer Members by ensuring that clients are aware of the course they should follow if they have a complaint, and by promoting the fair and prompt handling of complaints. Further, it is believed that Dealer Member adherence to a common complaint handling framework will lead to greater complaint handling consistency from one Dealer Member to the next and, ultimately, enhanced client confidence in the integrity and fairness of the complaint resolution process within the industry.

## **III. Summary of the amendments**

### *Scope of the complaint handling rule*

The new rule is targeted to the handling of retail client complaints alleging misconduct in the handling of their account or accounts. As such, a complaint subject to this rule:

- must be submitted by a client or a person authorized to act on behalf of a client;
- may be either a recorded expression of dissatisfaction or a verbal expression of dissatisfaction; and
- must allege misconduct relating to the handling of a client’s account(s) or dealings with a Dealer Member.



Alleged misconduct includes, but is not limited to, allegations of breach of confidentiality, theft, fraud, misappropriation or misuse of funds or securities, forgery, unsuitable investments, misrepresentation, unauthorized trading relating to the client's account(s), other inappropriate financial dealings with clients and engaging in securities-related activities outside of the Dealer Member.

*Designated Complaints Officer to oversee complaint handling process*

The rule requires a Dealer Member to appoint a Designated Complaints Officer (DCO) with the knowledge, experience, and authority to manage the complaint handling process and to act as a liaison with IROC. The DCO need not be a registered individual position. Dealer Members may choose to name the Chief Compliance Officer, the Ultimate Designated Person or an individual acting in a supervisory capacity over the complaints process to the DCO position.

*Specific standards and procedures handling timeline*

As part of the new rule, Dealer Members are required to establish procedures and standards. In addition to having written complaint handling procedures in place, Dealer Members must facilitate client access to their complaint handling process by making available a written summary of the firm's complaint handling procedures (either on their website or by other means). The written summary must provide the contact information for complaint submission and the Designated Complaints Officer.

Both the acknowledgement letter and the substantive response letter have several requirements that all firms must include in the respective correspondence. The acknowledgement letter must be sent to a client within five (5) business days of receipt of a complaint. The initial response to the client must consist of the following: the contact information of the individual handling the complaint; a statement that a client may contact the above noted individual for a status update; an explanation of the internal complaint handling process; a reference to an attached copy of an IROC-approved complaint handling process brochure and a reference to the statute of limitations contained in the document; a reference to the maximum 90 calendar days timeline to provide a substantive response; and a request for any information reasonably required to resolve the complaint.

The substantive response letter must be accompanied by the IROC-approved complaint handling process brochure and be sent to a client as soon as possible, but no later than 90 calendar days from the date of receipt by the firm. A Dealer Member is obligated to advise a client if a final response will not be sent within the stated timeline in addition to contacting IROC through ComSet with an explanation for the delay. The substantive response must comprise the following elements: a summary of the complaint; the results of the investigation; the final decision with an explanation; and a statement delineating the options available if a client is unsatisfied with the Dealer Member's response.

There is also a duty to assist in client complaint resolution for both Approved Persons and Dealer Members. Approved Persons must co-operate after moving to a different firm and Dealer Members must do likewise if events relating to a complaint occurred at more than one Dealer Member or the Approved Person is an employee or agent of another firm.



### Settlement agreements

Confidentiality restrictions in a settlement agreement must not restrict a client from initiating a complaint or continuing with any pending complaint in progress or participating in any further proceedings.

### Complaint record retention

Record retention requirements stipulate the maintenance of files for a minimum of seven (7) years, and maintenance of an up-to-date record of complaints in a central, readily accessible place for two (2) years. Information to be retained includes the following: the complainant's name; the date of the complaint; the nature of the complaint; the name of the individual who is the subject of the complaint; the security or services which are the subject of the complaint; the materials reviewed in the investigation; the name, title, and date individuals were interviewed for the investigation; and the date and conclusions of the decision.

### Internal discipline

Procedures must be established to ensure appropriate internal disciplinary measures are applied for breaches of IIROC rules and applicable securities legislation.

### Corollary amendments to IIROC Dealer Member Rules 19, 37 and 2500, Section VIII

As a result of the new rule, some corollary amendments have been made as follows:

- The repeal of IIROC Dealer Member Rule 19.4 (formerly IDA By-law No. 19.4), a requirement to maintain for twenty-four (24) months an up-to-date record of all written complaints in a central, readily accessible place. This requirement is now contained within the new rule.
- The repeal of IIROC Dealer Member Rule 37.3 (formerly IDA By-law No. 37.3), a requirement to provide the client with a copy of the IIROC-approved complaint handling process brochure at the time of account opening or when the client submits a complaint. This requirement is now contained within the new rule and has been expanded to also require that the client be provided with a copy of the IIROC-approved complaint handling process brochure when the substantive response is provided to a client regarding a complaint they have submitted.
- The repeal and replacement of IIROC Dealer Member Rule 2500, Section VIII (formerly IDA Policy No. 2, Section VIII), which sets out the current complaint handling requirements, with a general requirement that Dealer Members establish policies and procedures to deal effectively with client complaints, including complaints falling outside the scope of the new rule (such as service complaints), and respond to all written complaints.

A copy of the corollary amendments is attached as "Appendix B".

The new rule does not duplicate certain requirements that are currently set out in IIROC Dealer Member Rule 3100 (formerly IDA Policy No. 8) relating to the handling of complaints and therefore will be applied in conjunction with the requirements set out IIROC Dealer Member Rule 3100.

## **IV. Publication for comment and summary of written comments**



The amendments were published for comment with IROC Rules Notice 09-0048 on February 13, 2009. IROC staff has considered all of the comments received and thank all of the commenters. A summary of the comments received and IROC staff's response to the comments is attached as "Appendix D".

IROC has made some minor revisions to the complaint handling proposal in response to CSA and public comments received. The basic framework for the handling of complaints remains the same as the proposed amendments that were published for comment in February, 2009. There have been no changes to the general process and timelines for the handling of complaints, and none of the revisions are substantive in nature. Therefore, the revisions have not been republished for a further comment period.

## **V. Summary of changes**

In response to CSA and public comments received, the amendments reflect some minor revisions IROC has made to the complaint handling proposal. A black-lined copy of the revisions made since the publication for comment of proposed amendments in February, 2009 is attached as "Appendix C".

Noteworthy changes made since the publication in February, 2009, are as follows:

### Definition of a complaint

In section 2 of the Rule, we have revised the wording relating to verbal complaints in order to better express the types of verbal complaints captured by the definition. The wording relating to verbal complaints now captures verbal expressions of dissatisfaction alleging misconduct "where a preliminary investigation indicates that the allegation may have merit." IROC staff believe the revised wording simply clarifies the intent of the provision, and should address any concerns that the previous wording may have conferred too much discretion to Dealer Members in regards to verbal complaints. The section in the Guidance Note relating to verbal expressions of dissatisfaction has also been revised accordingly.

In addition, in order to further clarify the definition of a complaint, we have added a section which elaborates on the scope of alleged misconduct to the Guidance Note. Essentially, the guidance indicates that other matters not enumerated in the definition of alleged misconduct which may be captured by the phrase "includes, but is not limited to" should be matters that relate to client accounts or client dealings with firms which are of a serious nature and warrant being dealt with through the formal complaint handling process.

### Policies and procedures

Section 4 of the Rule was revised by adding language that calls for Dealer Members to have policies and procedures addressing the investigation of complaints, the process by which assessments of complaints are made, the process for determining what offer should be made to a client where a complaint is determined to have merit, and the remedial actions which may be appropriate to be taken within the firm. Supplementary language was also included stating that policies and procedures must not allow for complaints to be dismissed without due consideration of the facts of each case, and that there must be a balanced approach to dealing with complaints that objectively considers the interests of the complainant, the Dealer



Member, the registered representative, employee or agent of the Dealer Member, and/or any other relevant parties.

#### Substantive response letter

The Rule has been revised to underscore that the substantive response to the client must be presented in a manner that is fair, clear and not misleading.

#### Miscellaneous translation revisions

In some instances minor revisions were made to wording in order to facilitate a translation that will allow for equivalency of meaning between the English and French versions.

### **VI. Complaint handling brochures**

The IIROC-approved brochure entitled “An Investor’s Guide to Making a Complaint” replaces the brochure called “Investor Protection for Clients of IIROC Regulated Firms”.

The new brochure is available now, and can be ordered at <http://www.iroc.ca/English/MemberResources/Brochures/Pages/InvestorProtection.aspx>

Dealer Members must begin using the new brochure once the amendments are implemented.

### **VII. Implementation plan**

The amendments will be implemented on February 1, 2010.

The new rule will be known as Dealer Member Rule 2500B – Client Complaint Handling. A copy of Dealer Member Rule 2500B is attached as “Appendix A”. Guidance relating to the new rule is included as Part B of this Notice.

IIROC plans to monitor compliance with the new complaint handling framework and will determine at a later date if any changes are necessary to address practical issues or potential enhancements that become apparent.

#### **Appendices to Part A**

[Appendix A](#) - Dealer Member Rule 2500B – Client Complaint Handling

[Appendix B](#) - Corollary amendments to IIROC Dealer Member Rules 19, 37 and 2500, Section VIII

[Appendix C](#) - Black-lined copy of amendments compared to proposed amendments published for comment in February, 2009

[Appendix D](#) - Summary of comments received and IIROC staff response to comments



## **Part B – Guidance Note**

### **Guidance regarding Client Complaint Handling**

#### **COMPLAINTS GENERALLY**

The fair and timely handling of client complaints is vital to the overall integrity of the investment industry. Dealer Members should regard the handling of all client complaints as an essential element of the proper servicing of client accounts generally. Addressing client complaints fairly and on a timely basis demonstrates to clients that their issues are dealt with seriously and enhances investor confidence in the industry. An effective framework for dealing with client complaints is in keeping with appropriate standards of professionalism for the industry.

As a result, it is important that Dealer Members establish policies and procedures to deal effectively with client complaints. Such policies and procedures must address the general requirements of Rule 2500, Section VIII, and the specific requirements of Rule 2500B regarding client complaint handling. Rule 2500, Section VIII, requires Dealer Members to provide a written response to all complaints made in writing. Further, where a written complaint does not relate to a matter within the scope of Rule 2500B, Rule 2500, Section VIII also requires that the Dealer Member resolve and respond to the complaint within a reasonable time frame.

#### **COMPLAINTS SUBJECT TO THE REQUIREMENTS OF DEALER MEMBER RULE 2500B**

##### **GENERAL**

##### **Alleged misconduct**

The types of allegations enumerated in the Rule are not an exhaustive list of all matters that may constitute alleged misconduct; other matters may constitute alleged misconduct. Alleged misconduct includes such other matters that relate to client accounts or client dealings with Dealer Members which are of a serious nature and warrant being dealt with through the formal complaint handling process.

##### **Recorded expression of dissatisfaction**

A recorded expression of dissatisfaction includes any written submission, electronic communication, or verbal recording.

##### **Verbal expression of dissatisfaction**

As set out in the Rule, verbal expressions of dissatisfaction alleging misconduct where a preliminary investigation indicates that the allegation may have merit are to be treated as a complaint subject to the Rule. Implicit in this requirement is the need for Dealer Members to expeditiously undertake a preliminary investigation in order to assess the merits of a verbal expression of dissatisfaction. It is expected that such a preliminary investigation will entail a summary assessment of the merits of a client complaint, and that it will not involve the type of investigation undertaken once a complaint is being dealt with under the formal complaint handling process.



Where a preliminary investigation of a verbal expression of dissatisfaction has been performed and the Dealer Member determines:

1. that there is evidence to indicate that the client complaint may have merit, the complaint should be treated in the same manner as a recorded expression of dissatisfaction. In accordance with its normal investigative process, the Dealer Member may request that the client document the complaint in a recorded form, however a substantive response must be sent within the required timeframe whether or not a client has provided a documented complaint in response to such a request.
2. that the nature of the client complaint is unclear or there is no evidence to indicate that the client complaint has merit, the Dealer Member shall request that the client document and submit the complaint in a recorded form. Where the client:
  - (a) documents and submits the complaint in recorded form, the complaint should be treated in the same manner as if it had originally been submitted as a recorded expression of dissatisfaction; or
  - (b) fails to document and submit the complaint in recorded form, the Dealer Member may exercise their professional judgment and terminate their investigation of the complaint.

### **Decision to not investigate a complaint or to terminate an investigation of a complaint**

A sales supervisor / compliance staff or the equivalent may exercise their professional judgment in deciding whether a complaint requires an investigation. In assessing whether a complaint should be investigated, Dealers Members must consider whether the client would have a reasonable expectation that the complaint should be handled through the process outlined in the Rule. The decision and reason not to commence an investigation of a complaint must be fully documented and maintained in accordance with the complaint record retention requirements.

Complaints made by individuals who are not clients of the Dealer Member are not subject to the Rule, other than complaints submitted by a person authorized to act on behalf of a client. Written client authorizations, as well as formal legal documents, such as powers of attorney or court appointments, are acceptable forms of documentation for establishing a person's authority to act of behalf of a client.

### **DESIGNATED COMPLAINTS OFFICER**

The designated complaints officer is not a registered individual position. The purpose of the position is to ensure that the Dealer Member has someone with the requisite knowledge, experience and authority in place to manage the proper handling of complaints.

Dealer Members may choose to name the Ultimate Designated Person or Chief Compliance Officer or an individual acting in a supervisory capacity over the complaints process for the position of designated complaints officer.



Dealer Members are encouraged to make available to the designated complaints officer and their staff specific training relating to dispute resolution.

## **COMPLAINT PROCEDURES / STANDARDS**

### **Client access**

The information provided to clients on an ongoing basis would include the first point of contact in submitting a complaint and the contact information for the designated complaints officer. The information provided may include the stipulation that the designated complaints officer should generally only be contacted when a complaint had been submitted and the client wishes to express concerns with the handling of the complaint. All client complaints must be handled by qualified sales supervisors/compliance staff or the equivalent. Under no circumstances should individuals who are the subject of a complaint handle complaints made against them.

### **Complaint substantive response letter - timelines**

The ninety (90) calendar days timeline to provide a substantive response to clients must include all internal processes (with the exception of any internal ombudsman processes offered by an affiliate of the firm) of the Dealer Member that are made available to the client that involve but are not limited to the supervisory function / branch management, the compliance function, and legal review.

### **Complaint substantive response letter - OBSI information**

Member firms must inform clients that OBSI will consider a client complaint at the earlier of:

- (i) the date the complaint substantive response is provided to the client; or
- (ii) ninety (90) days after the receipt of the complaint.

This can be done, depending upon the status of the complaint, either as part of the substantive response letter or as part of any letter informing the client that the complaint will not be resolved within ninety (90) days.

### **Duty to assist clients in documenting complaints**

Dealer Members should be prepared to assist clients in submitting a complaint, in particular if the client is handicapped in any way, is a senior with special needs or a language or a literacy issue is involved.

## **COMPLAINT RECORD RETENTION**

Records in a central, readily accessible place must be retrievable within two (2) business days and documents kept for an extended period of time must be retrievable within five (5) business days unless there are reasonable, extenuating circumstances.