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November 11, 2013

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EBA joint-committee@eba.europa

Reference : 'JC complaints-handling CP 2013-03'
http://www.esma.europa.eu/system/files/jc-cp-2013-03_draft_guidelines_for_complaints-handling.pdf

Kenmar Associates Submission and Commentary

Introduction

Kenmar Associates is pleased to respond to the consultation. Kenmar Associates is dedicated to investor education and protection. We have published over 100 articles dedicated to all aspects of financial consumer education. We are actively engaged with securities and banking regulatory reform. Kenmar also assists complainants with the organization, filing and advice of their complaints on a gratis basis. Our website is www.canadianfundwatch.com

We agree in principle that using the EIOPA guidelines as a base, and by accounting for the different regulatory provisions for complaints handling between the securities and banking sectors, and the Alternative Dispute Resolution Directive, ESMA and the EBA that adapted, without fundamental change, the EIOPA guidelines for the securities and banking sectors, harmonization can be cost-effective. This approach should help to ensure a consistent approach to complaints-handling across the banking, investment and insurance sectors - to the benefit of firms (some of which increasingly sell products/services from more than one sector), regulators (which oversee implementation of one set of guidelines in their respective jurisdictions), and financial consumers (who will be able to rely on the same approach irrespective of what type of financial product or service they have been sold). We do however recommend consider ISO 10002 as another benchmark. ISO 10001 is another document well worth considering to prevent complaints in the first place.

As an aside, you may be interested in reviewing a document related to Canadian bank complaint handling prepared by the Financial Consumer Agency of Canada [Commissioner's Guidance- Internal Dispute Resolution <http://www.fcac-acfc.gc.ca/Eng/forIndustry/publications/commissionerGuidance/Documents/CG-12-eng.pdf>] . It is not nearly as robust as we would like but it has some interesting features.

Commentary

We generally agree with the 7 Guidelines announced. We especially like the requirement for firms to analyze and report on systemic issues and patterns of complaint in a timely manner and the need for root cause analysis.

Here are some high level comments on the Guidelines that, in our experience ,can make a firm's complaint handling process accessible, responsive and fair:

The term *complaint* should be defined viz an expression of dissatisfaction made to an organization related to its products/**services** , or **the complaints handling process itself**, where a responsible response/ resolution is explicitly or implicitly expected.

All schemes should be required to provide privacy protection for complainants and security of system files whether electronic or paper.

A minimum record retention period (say 7 years) should be delineated across all industry sectors.

All responses should be **substantive** so that the complainant can understand how and why the firm came to its conclusion(s).

We understand that complaint handling schemes may encounter practical difficulties in obtaining some information about complaints, particularly demographic information about complainants. A scheme should have a case management system that enables this information to be recorded where available. Demographic information provides an invaluable guide about a scheme's accessibility e.g. seniors, physically impaired,, new immigrants and distribution of complainants (e.g. the elderly).

There may be some classes of complainants or disputants who, for geographic, economic or other reasons, are not accessing the complaint process in proportion to their use of investment or banking products and services. The scheme's outreach program should actively promote its existence, particularly to those complainants that are under-represented in the composition of people who access the scheme.

In a multicultural society such as Europe's, Scheme access should be opened up to include other languages based on local demographics and needs.

A provision to assist complainants to draft and lodge their complaints or disputes should be embedded in the operating policies . The assistance provided should also consider the needs of persons with disabilities or other special needs so that they may participate effectively. The Schemes key materials should be available in in Braille or large font, and in audio format .

The firm's website should allow complainants to submit a complaint online, and exchange information electronically.

All Scheme documents should comply with plain language principles, ensuring that information is easy to access, user-friendly, practically relevant and disseminated at key stages of the complaint resolution process.

The reporting requirements (annual) should include more than just the number of complaints. In our experience, information on the nature of the complaints, the percentage of complaints dismissed ,complaint handling cycle times , trends , complainant demographics and a narrative overview from the firm are extremely useful

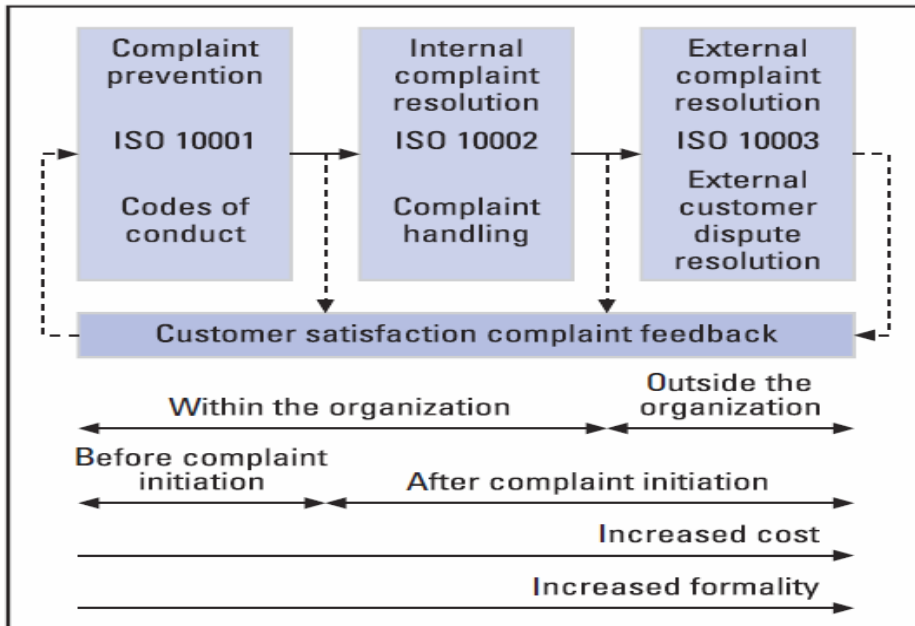
to regulators.

We believe that above all else the complaint handling system must be transparent. The publication of information is not intended as a form of jurisprudence. We expect that the following benefits will be derived by publication of complaint handling documentation:

1. Education for complainants , consumers and industry participants
2. Spotlight firm/industry wrongdoing
3. A cross-check on decision consistency and fairness
4. A source of information for regulators to revisit rules /compliance processes
5. An identification of emerging / systemic issues impacting consumers
6. Acceptance of the system by financial consumers
7. Permit independent assessment by analysts, academia, media and others
8. Identification of Best Practices

It's hard to imagine a more cost-efficient way protect consumers than by letting them know where the financial land mines are buried.

Our vision for an integrated approach to customer satisfaction/complaint handling is depicted in the Chart below:



Note the positive role feedback plays in such an integrated system.

We recommend that embedded in one of the Guidelines should be a sentence on how the

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firm's complaint system will interact with regulators, law enforcement and Ombudsman services.

Summary and Conclusion

We applaud the initiative to harmonize Guidelines for complaint handling across the three main financial services sectors. Indeed , we envy Europe. In Canada ,we have 13 provincial securities regulators. Each province regulates insurance and there is minimal regulation of banking market conduct. Enforcement is light weight . Federal laws allow banks to contract with multiple external complaint resolution bodies even those that are for profit. The Ombudsman for Banking Services and Investments (www.obsi.ca) is in the process of ending its mandate of investigating and providing compensation related to systemic issues. As a result , we are all too well aware of what a disjointed and dysfunctional complaint handling regime can do to disadvantage retail financial consumers.

Approval is granted for public posting of this Comment letter.

We thank you for the opportunity to provide our comments and views in this submission. Should you have any questions regarding our Comment letter , please feel free to contact us.

Sincerely,

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