

# **Complaint Handling and Redress System for Retail Investors**

## **Final Report**



**IOSCO**

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## 1. Executive Summary

Investor protection is one of the three main objectives of securities regulation and of IOSCO. Retail investors are important participants in the capital markets and the protection of their rights and interests is fundamental to the healthy and stable development of capital markets. When an investor or financial consumer is harmed by misconduct or illegal practices, the existence of effective mechanisms for addressing the issue is important not only for the aggrieved individual, but also for producing positive externalities such as improving market discipline and promoting investor confidence in financial markets.

Redress or dispute resolution mechanisms are considered an important way to protect consumers against misappropriation and theft<sup>1</sup>, a fundamental component of corporate governance principles<sup>2</sup>, and a safeguard in an effective resolution regime for financial institutions<sup>3</sup>.

The IOSCO Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation<sup>4</sup> (IOSCO Methodology) states that a regulator should have adequate power to impose credible and effective corrective measures (e.g., redress and correction of securities laws violations). Access to independent, affordable, fair, accountable, timely and efficient redress mechanisms becomes therefore critical<sup>5</sup>.

Recognizing the importance of fair and effective complaint handling and redress systems, IOSCO Committee 8 on Retail Investors (C8) undertook a project aimed at providing an overview of investor complaint handling and redress mechanisms based on IOSCO members' practices and approaches. The analysis covered topics such as (i) internal handling of complaints by financial service providers and authorized agents; (ii) alternative dispute resolution (ADR) mechanisms for out-of-court resolution of disputes, including those established by public authorities and private sector entities; (iii) mechanisms put in place by regulators to handle complaints against financial service providers and their representatives; and (iv) judicial remedies, including class actions, when an investor demands compensation for harm caused by misconduct (compensatory redress), and injunctions, when an individual demands cessation of illegal practices. This analysis was supplemented by a review of relevant academic and other literature on the subject matter.

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<sup>1</sup> See Bank for International Settlements and International Organization of Securities Commissions, Principles for Financial Market Infrastructures (April 2012), available at <https://www.bis.org/cpmi/publ/d101a.pdf>

<sup>2</sup> See G20, Principles of Corporate Governance (September 2015), available at <https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>

<sup>3</sup> See FSB, Key Attributes of Effective Resolution Regimes for Financial Institutions (October 2011), available at [http://www.fsb.org/wp-content/uploads/r\\_141015.pdf](http://www.fsb.org/wp-content/uploads/r_141015.pdf)

<sup>4</sup> See Principle 3 of the IOSCO Methodology for Assessing Implementation of the IOSCO Principles <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD562.pdf>

<sup>5</sup> See G20, High-Level Principles on Financial Consumer Protection (October 2011), available at <https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf>

This Report presents the outcomes of this analysis and is aimed at assisting jurisdictions in developing and improving their complaint handling procedures and mechanisms. The Report includes a set of nine **Sound Practices (SPs)** covering the following themes:

- **SP1:** Establishing a system for handling retail investor complaints.
- **SP2:** Taking steps to raise investor awareness of various available complaint handling systems.
- **SP3:** Making available as many channels as possible for retail investors to submit complaints.
- **SP4:** Taking steps to support complaint handling systems.
- **SP5:** Encouraging financial service providers (FSPs) to offer a wide range of resolutions to retail investor complaints.
- **SP6:** Using complaint data to identify areas for new or enhanced investor education initiatives.
- **SP7:** Using complaint data for regulatory and supervisory purposes.
- **SP8:** Seeking input from retail investors about their experience with complaint handling systems.
- **SP9:** Making ADR facilities operated by or affiliated with a regulator more accessible for retail investors.

## 2. Introduction

### 2.1 Background and Context

Investor protection is the responsibility as well as one of the goals of securities regulators worldwide. An important element of investor protection is providing retail investors with effective mechanisms for handling complaints. The IOSCO Methodology makes clear the importance of access to independent, affordable, fair, accountable, timely and efficient redress mechanisms. Principle 3 states that a regulator should have adequate power to impose credible and effective corrective measures (e.g., redress and correction of securities law violations). Principle 12 states that the regulator should provide for an effective and credible use of enforcement powers, further explaining that: “It is sufficient that a system for the redress of complaints under the regulatory framework be addressed through an ombudsman, external dispute-resolution provision or other third-party scheme or through oversight of individual firm arrangements<sup>6</sup>.”

International financial institutions and organizations, such as the World Bank, have also recognized the importance of effective complaint handling mechanisms. The G20 has also supported this view: the OECD’s *High-Level Principles on Financial Consumer Protection* highlights complaint handling and redress mechanisms as critical to enhancing financial consumer protection<sup>7</sup> and indicates that:

“Jurisdictions should ensure that consumers have access to adequate complaint handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays, or burdens on consumers. In accordance with the above, financial services providers and authorized agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorized agents internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public.”

Given the importance of handling retail investor complaints fairly and efficiently, C8 undertook a project to survey the IOSCO membership on the systems used in their jurisdictions. The survey responses of the Participating Jurisdictions provide a snapshot of current complaint handling procedures. This Report is intended to be a resource for IOSCO members in identifying and ameliorating possible gaps in their complaint handling and redress systems. Appendix A to the Report contains a bibliography of relevant academic literature, while Appendix B contains a copy of the C8 survey. Appendix C contains a list of the Participating Jurisdictions.

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<sup>6</sup> See Principle 12 of the IOSCO Methodology for Assessing Implementation of the IOSCO Principles <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD562.pdf>

<sup>7</sup> See Organization for Economic Co-operation and Development, *G20 High-Level Principles on Financial Consumer Protection*, October 2011, available at <https://www.oecd.org/daf/fin/financial-markets/48892010.pdf>

## 2.2 Definitions

For purposes of this Report only,

1. “**Alternative dispute resolution**” or “**ADR**” refers to any means used to resolve a conflict other than through litigation. Examples include arbitration, negotiation, facilitated discussion and mediation.
2. “**Complaint**” refers to complaints by retail investors against financial service providers and their agents and employees. In the section on civil remedies, complaints against issuers of securities may be included.
3. “**Financial service provider**” or “**FSP**” refers to firms that provide securities products and services to retail investors, including broker-dealers, investment advisers, and, in certain jurisdictions, banks.
4. “**Regulator**” refers to securities regulatory authorities established under the securities laws of a jurisdiction that handle investor complaints.
5. “**Self-regulatory organization**” or “**SRO**” refers to a non-governmental organization with the authority to create, implement and enforce rules of conduct with respect to FSPs subject to the SRO’s jurisdiction. Such authority may or may not be derived from a grant of authority from a jurisdiction’s laws or regulation.

## 3. Comparative Study

This Report deals with (1) informal complaint handling processes by FSPs and regulators; (2) alternative dispute resolution; and (3) formal legal complaint handling for investors pursuing claims for money damages and other remedies.

### 3.1 Complaint Handling by FSPs

Most Participating Jurisdictions require investors to turn first to FSPs to resolve complaints.

#### *a) Nature and number of investor complaints against FSPs*

The number of complaints submitted to FSPs in Participating Jurisdictions varies widely, from single digits to thousands of complaints per year. When asked to list the top complaint categories received in the last year, Participating Jurisdictions collectively answered as follows:

- fraud (advance fee fraud, offering fraud, market manipulation, high-yield investment schemes, and cross-border fraud);
- sales practice issues (mis-selling of products and services, unauthorized transactions, inadequate fee or product disclosure, and inappropriate and/or unsuitable advice);

- operational issues (account administration issues, delays in order execution, late payment of sale proceeds, and IT/technical issues); and
- performance issues (product, fund, portfolio, and account).

The following are a few examples of the different FSP complaint handling systems in some Participating Jurisdictions (the features of FSP complaint handling systems are reviewed in more detail in the following sections):

- In **Argentina**, complaints against FSPs involving routine matters are filed with the regulator’s investor education unit; complaints alleging fraud or other more serious offenses are filed with the regulator’s inspection and investigative office.
- In **Australia**, complaints about financial products and services that cannot be resolved by the FSP are escalated to Australia’s single ADR body.
- In **Bahrain**, FSPs are required to have and document internal dispute resolution procedures for (a) receiving, investigating, recording and responding to complaints within appropriate timeframes; (b) referring unresolved complaints to arbitration or other appropriate external dispute resolution mechanisms; (c) identifying and recording systemic issues; and (e) reporting complaint data.
- In **Germany**, FSP complaint handling systems must be effective, objective, transparent, and conflict-free; specific procedures may vary by FSP. All communication must be clear, in easily understandable plain language.
- In **India**, investors can submit complaints through a centralized web-based grievance redress system operated by the regulator that automatically forwards complaints to the appropriate FSP; complaints can also be submitted to stock exchanges for redress of grievances against stockbrokers. Where an amicable solution cannot be reached, the regulator refers the investor to arbitration. Information on investor grievance redressal mechanisms is disseminated by both the regulator and the Market Infrastructure Institution (MII) during investor awareness activities and by prominently displaying on their respective websites.
- In **Spain**, retail investors can submit complaints to an FSP’s customer service department (CSD) or its independent ombudsman (CO), either of which can process the complaint and request information from the investor and the FSP. Unless the matter is withdrawn by the investor or a settlement is reached, the CSD or the CO is required to issue a “well-reasoned” decision.

***b) Requirements for FSPs to establish complaint handling mechanisms***

Participating Jurisdictions require FSPs, by law, regulation, or SRO rule, to establish systems for handling retail investor complaints. Participating Jurisdictions generally require an FSP to (a) inform investors about its complaint handling process, (b) respond to investor complaints within certain timeframes, and (c) advise investors of the availability of ADR if they are dissatisfied with the FSP’s response. As long as they comply with the requirements or standards



of their governing authority, FSPs in most Participating Jurisdictions have discretion to develop policies and procedures tailored to their businesses.

*c) Information regarding FSP complaint handling procedures*

FSPs inform retail investors how to submit a complaint by posting information on their websites and through social media, providing hard copy brochures and pamphlets, and conducting direct outreach. For example, in some jurisdictions, such as **South Africa**, FSPs include notice of their complaint handling procedures in account opening documents; in **Ontario**, investors are provided with information about the FSP's complaint handling procedures and the availability of an independent dispute resolution service at both the account opening and when a complaint is filed; and in **South Korea**, investors obtain information about FSP procedures from the regulator and from the SRO.

*d) How to submit a complaint with an FSP*

FSPs accept investor complaints by mail, telephone, email, web form, social media, online portal, or other reasonable channel and many acknowledge receipt of the complaint. Investors may submit complaints in their own words or complete an online form with pre-populated questions and categories to indicate the type of allegation. Investors are typically encouraged to submit supporting documentation regarding their complaints, particularly where the complaint is aged. In India, for example, there is a centralised portal called "SCORES" which may be used by investors for filing investor complaints. Investors can lodge their complaint through SCORES web-portal or SCORES Mobile App.

*e) Time limits for investors to file a complaint with an FSP*

Some Participating Jurisdictions have specific time periods within which a retail investor must submit a complaint to an FSP. These time periods generally range from one year to six years. For example, in **Armenia**, complaints must be filed within one calendar year after becoming known to the investor; in **France**, complaints must be brought within five years; in **Canada**, complaints must be brought within six years when the investor knew or ought reasonably to have known about the problem; while in the **United Kingdom**, it is within three years from when the investor knew or could reasonably have known he/she had cause to complain. Participating Jurisdictions urge investors to be aware of applicable statutes of limitation for purposes of bringing civil claims.

*f) Time limits for FSPs to respond to investor complaints*

In many Participating Jurisdictions, FSPs are required to respond to a complaint within specified time limits. For example, in **Armenia**, FSPs must respond to complaints within ten (10) business days; in **The Bahamas**, FSPs must respond to investor complaints in writing within fourteen (14) days; the requirement in **Russia** is thirty (30) days, although complaints that do not require additional examination and verification must be handled within no more than fifteen (15) days; in **India**, investor complaints must be responded within a period of 30 days and entities are required to submit an Action Taken Report (ATR) within a reasonable period but not later than 30 days; in **Bahrain**, FSPs must respond within four weeks or provide an explanation why this time limit cannot be met; in **Cyprus** and **France**, an FSP must respond

to a complaint within two months from receipt; while FSPs in the **United Kingdom** must provide investors a final written response within eight (8) weeks.

In Participating Jurisdictions in which there are no fixed time periods for responding to a complaint, FSPs are obliged to respond to complaints within a reasonable period and without undue delay. For example, in **Germany**, when an FSP is unable to respond to a complaint within a reasonable time limit, the FSP must inform the investor about the cause(s) of the delay and indicate when its investigation is likely to be completed; similarly, in **Singapore**, FSPs must establish a process to resolve complaints independently, effectively and promptly.

#### *g) Outcomes under FSP complaint handling procedures*

Investor complaints can be resolved in many ways. In approximately two-thirds of the Participating Jurisdictions, monetary settlements are the most common resolution. In other Participating Jurisdictions, monetary settlements may be used, but they are not the most common resolution. Other than monetary settlements, FSPs can resolve an investor complaint by offering an explanation of the rules or circumstances that give rise to the complaint, offering an apology, providing assistance and support, including a refund or waiver of a debt, fee or charge, changing the terms of a contract; and ceasing legal or other remedial action. In **China**, for example, depending on the type of complaint, resolutions may include offering explanations by telephone or onsite visit, lowering fees, upgrading services, or monetary compensation.

There are cases in which some investor complaints cannot be resolved. For instance, a complaint may not raise securities-related claims, the complaint may be too old, the FSP may dispute the validity of the investor's allegations, or the investor may misunderstand applicable rules or have unrealistic expectations about the terms of a settlement. In most cases, an individual dissatisfied with an FSP's resolution of a complaint has three options: (a) escalate the complaint to the regulator (see Section 3.2 below), (b) pursue ADR (see Section 3.3 below), or (c) initiate legal action (see Section 3.4 below). In **India**, for example, investors are given appropriate remedial action after their respective complaints are analysed. Investors are also informed that in case they are not satisfied with the remedy provided, they may file their grievance in SCORES, the centralised grievance redressal system of SEBI and may also file for arbitration.

#### *h) Complaint reporting requirements for FSPs*

In most Participating Jurisdictions, FSPs are required to maintain records of investor complaints. Whether through a central registry or online database, complaints must be available for review by regulators upon request or during onsite examinations. Regulators review an FSP's compliance with its internal complaint handling procedures, which may lead to inquiries in other areas. Also, FSPs are generally required to report information about investor complaints. Some examples are provided below.

- In **Argentina**, complaint data is submitted to the regulator on a monthly basis, listing the complaints received, the status of each, and how the complaint was resolved.
- In **Cyprus**, FSPs must report to the regulator on a monthly basis, while in **Russia**, FSPs report quarterly.

- In the **European Union**, National Competent Authorities (NCAs) are required to report to the European Securities and Markets Authority (ESMA) on a quarterly basis the total number of complaints, as well as a breakdown according to three criteria: the cause of the complaint, the type of financial instrument, and the type of firm being complained about. This data collection exercise aims to gather quantitative and qualitative information on complaints submitted by investors to NCAs, to Ombudsmen and to FSPs.
- In the **United States**, the Financial Industry Regulatory Authority (FINRA), a securities SRO for broker-dealers, requires member broker-dealers to make quarterly statistical reports of all written complaints and to report promptly investor complaints against the firm or its associated persons alleging (a) one or more sales practice violations for amounts exceeding a certain dollar threshold, or (b) forgery, theft, misappropriation or conversion of funds or securities.
- In **Quebec**, FSPs are required to report twice a year how complaints have been resolved.
- In the **United Kingdom**, FSPs also report twice a year and they provide the regulator a complete report concerning complaints received, pending, and resolved that is published on the regulator's website.
- In **Luxembourg**, an FSP is required to report annually the number of complaints received, classified by type of complaint, as well as a summary report of the complaints and the measures taken to resolve them. FSPs are required to report the number of complaints received, classified by type of complaint, and a summary of the complaints and measures taken.
- In **Ontario**, FSPs report the number of complaints received in the last two years based on a mandatory questionnaire circulated every two years, while members of SROs in Canada are also required to report investor complaints to the applicable SRO.

### 3.2 Complaint Handling by Securities Regulators

#### *a) Regulators with minimal or no involvement*

The extent of the regulator's involvement in handling investor complaints varies in the Participating Jurisdictions. Some examples are provided below.

- In **Australia**, the regulator does not act on behalf of individual investors (it is not a dispute or complaint resolution body and investor complaints are outsourced to an independent dispute resolution organization).
- In **France**, the regulator accepts, but does not handle investor complaints; rather, it redirects complaints to an ombudsman.
- In **Japan**, the regulator is not in a position to act as a mediator for specific transactions. It only provides advice including organizing investors' thought and introduce them to

a designated ADR body and Authorized Association (SROs). The SROs are responsible for complaint handling and dispute resolution and outsources complaint handling and dispute resolution to a designated ADR body that accepts complaints related to transactions on financial instruments and resolves disputes in a fair and neutral manner; complaints are also handled by consumer organizations.

- In **Singapore**, if investors are unable to resolve complaints with the FSP, they may file the complaint with a regulator-designated ADR facility specializing in the resolution of disputes between investors and FSPs; and it is mandatory for most FSPs to participate.
- In the **United Kingdom**, the regulator does not handle complaints. Individuals can make a complaint directly to an FSP. If the FSP fails to respond within the relevant time period or the individual is unhappy with the response received, they can take their complaint to the ADR body.

*b) Regulators that assist informally with complaints to FSPs*

In some Participating Jurisdictions, regulators are only involved with investor complaints to the extent that they forward the complaints they receive to the appropriate FSP, as illustrated by the following examples.

- In **China**, the China Securities Regulatory Commission (CSRC) forwards complaints received on its 12,386 Service Hotline to FSPs for processing.
- In **Germany**, the regulator assesses whether the complaint and supporting documentation provide an adequate basis on which to base a final decision. If not, the regulator requests a statement from the FSP. Based on the FSP's input, the regulator may continue to investigate the complaint. If the FSP is not found to be in breach of its statutory responsibilities, the regulator informs the complainant in writing. If the FSP is found to be in breach of a statutory provision and the regulator takes supervisory action, the complainant is not notified. In general, BaFin is not responsible to resolve individual claims (with exclusion of its competence as an arbitration board).
- In the **United States**, the Securities and Exchange Commission's (SEC) Office of Investor Education and Advocacy (OIEA) assists investors with problems with their investments, their investment accounts and their investment professionals. Retail investor complaints submitted to OIEA alleging fraud are generally forwarded to the agency's enforcement or examination units and can lead to formal investigations. With the investor's consent, OIEA forwards the investor's complaint to the FSP, requesting a response for the investor. If, through this informal assistance process, the investor is not satisfied by the FSP's response, the investor's options are (1) to enter arbitration or mediation (typically mandatory pursuant to the investor's customer agreement when the FSP is a broker-dealer) or (2) institute a lawsuit (if the FSP is an investment adviser). Contacting OIEA does not stop a statute of limitations or begin a legal process for the investor; these are matters an investor must address him-or herself. Nor can OIEA provide legal advice to complaining investors.

*c) Regulators that handle complaints internally*

Some Participating Jurisdictions resolve investor complaints internally. For example,

- In **Bahrain**, complaints that cannot be resolved through mediation, the investor can have the dispute proceed to arbitration.
- In **The Bahamas**, the regulator's Supervision Department (Department) acknowledges the complaint, begins an investigation, and requires persons named in the complaint to respond in writing within 14 days. After the investigation, the Department documents its findings in writing, either dismissing the preliminary complaint, submitting a formal complaint to a hearing panel composed of retired judges, or referring it to the police or other relevant authority.
- In **Jordan**, a special committee of employees from different departments of the regulator resolves investor complaints.
- In **Korea**, the regulator handles most investor complaints after requesting a statement from the FSP. If a complaint is classified as a financial dispute, the complaint is redirected to mediation.
- In **Morocco**, complaints are resolved by the regulator.
- In **Portugal**, the regulator handles complaints only after investors file them with FSPs (directly or through its complaint book mechanism). The regulator analyses the complaint received from the investor and the view of the FSP. The conclusion of the handling process will be the issue of a report by CMVM with a recommendation to the FSP or, in cases where CMVM concludes the investor complaint is not sustainable, with an explanation to the investor. The recommendation in the report is non-binding. The report can, however, facilitate the subsequent exercise of judicial or extrajudicial claims regarding compensation. Determination of possible damages and any compensation to investors who have suffered damage, can only be done through the courts or, in some cases, through ADR. Once the complaint handling and analysis procedure is terminated, the CMVM may initiate a supervisory process, if there are elements that point to the possible violation of legal rules within the scope of the CMVM's supervision.
- In **Quebec**, an investor dissatisfied with an FSP's response may ask the FSP to transfer the complaint file to the regulator, which will examine the file and may offer dispute resolution services.
- In **Spain**, an investor dissatisfied with a resolution by the FSP's customer service department or ombudsman may file the complaint with the securities regulator for a final resolution. Proceedings begin when an investor submits a complaint against an FSP with the regulator. After receiving the document, the regulator may decide whether there are grounds to accept the complaint. If so, the complaint is forwarded to the FSP, which has 15 days to respond; the complainant also has 15 days to reply to the FSP's response. The proceedings conclude when the regulator issues a report with a final

decision on whether the FSP's actions were consistent with applicable rules. If the report is favourable to the complainant, the regulator requests the FSP to decide within one month whether it will accept the report. If the FSP does not agree, the investor may go to court, providing the regulator's report, which judges tend to take into consideration when ruling. The report is not binding. The maximum period for complaints to be resolved is four months.

- The **United Arab Emirates'** complaints section resolves all complaints received through dispute resolution.
- In the **United States**,
  - The Commodity Futures Trading Commission (CFTC) receives complaints from the National Futures Association (NFA), an SRO, or directly from investors through the CFTC's reparations program. In the CFTC reparations program, investors may claim compensation from registered commodity futures merchants through (1) a voluntary proceeding for any claim amount; (2) a summary proceeding for claims lower than \$30,000; or (3) a formal proceeding for claims greater than \$30,000. A decision in a voluntary proceeding is binding on both parties, while in a summary or formal proceeding, the losing party may request reconsideration. The CFTC may revoke, modify, or maintain the original decision, and the parties can appeal to the courts.
  - FINRA accepts complaints from investors against member broker-dealers and their associated personnel. After an initial triage of complaints, it may contact the investor and the broker-dealer for additional information. If disciplinary action is taken against the broker-dealer or associated person, FINRA may impose informal and formal sanctions, including in some cases ordering the respondent to pay restitution to the customer. FINRA generally advises investors that, if their purpose in filing a complaint is to recover money or securities, they may consider arbitration, mediation or, if it is an option, the courts.

*d) Use of complaint data for investor education, regulatory and supervisory purposes*

Participating Jurisdictions differ in how they use complaint data and for what purpose. In some cases, the information on complaints is a source of information for aligning investor education programs with investors' needs and may suggest the need for new or enhanced investor education initiatives. For example,

- In **Argentina**, complaint data is analysed to improve the effectiveness of investor education programs.
- In **Thailand**, the SEC regularly monitors complaints in relation to mis-selling of mutual funds and other investment products and uses the data to identify key communication points to raise awareness among investors regarding "how to raise questions with product sellers and how to protect themselves from mis-selling".

Regulators may also use complaint data to identify gaps in policy or regulation. Complaints may provide useful insights for regulators regarding the need for new or modified existing

regulations and help identify systemic issues, issues with new products, recidivist issues with individuals or firms, and scope upcoming oversight examinations of FSPs. For example,

- In **Australia**, complaints are a source of information that may assist the regulator in deciding on the need for regulatory action (such action is more likely when the action will be in the wider public interest).
- In **Belgium** and **Singapore**, investor complaints are a major source of information for the regulator, offering insight into problems with FSPs and financial products and as important signals for the supervision of the financial sector.

Other jurisdictions use complaint data in their supervisory function. As part of their oversight responsibilities, regulators review whether FSPs have handled complaints in compliance with their internal complaint handling systems to determine whether complaints have been handled in accordance with applicable requirements. Review of retail investor complaints may also uncover possible violations of laws, rules or breaches of statutory provisions that may lead to the sanctioning of FSPs and their agents. For example,

- In **Germany**, the regulator uses complaint data for its surveillance of rule violations or breach of statutory provisions that may lead to supervisory action.
- In **India**, the data pertaining to the nature of queries/complaints received is analysed and incorporated in various educational materials for educating investors during investor education and awareness programs and also in the formulation of regulations and laying down good market practices.
- In **Italy**, even though the regulator (Consob) is not responsible by law for addressing individual disputes, investor complaints (falling under its remit) are accepted and treated as a valuable source of information for supervision. They are analysed and considered as evidence of potential misconduct by one or more FSPs that could threaten investor protection.
- In **Singapore**, complaint data is used to inform supervision and inspection focus as part of the regulator's supervision of the FSPs.
- In **Sri Lanka**, both the Colombo Stock Exchange and the Securities and Exchange Commission use the data to strengthen the regulations pertaining to broker supervision.

#### *e) Complaint data made public*

Participating Jurisdictions vary in the extent to which they make complaint data public. Some jurisdictions do not make any information public. Others publicize anonymized case studies and aggregated statistical information in annual reports. For example, in **Bahrain**, the regulator publicizes the number of complaints received, the concentration of complaints against FSPs, and the nature and status of complaints; in **India**, cumulative and yearly figures of complaints are disclosed in the Annual report of SEBI; and, in the **US**, the SEC makes public a list of the top ten complaint types received during the past year.

*f) Failure of FSPs to respond to investor complaints*

There is also variety in the regulators' potential action against failure of FSPs to respond to investor complaints. For example,

- **Bahrain** and **Greece** may take enforcement action when an FSP fails to respond to investor complaints.
- In **India**, SEBI takes appropriate enforcement action, as provided under the law, where progress in redressal of investor grievances is not satisfactory.
- In **Ontario**, the regulator can take regulatory action against a registered firm regarding a specific complaint or the process as a whole if it appears that securities laws have been breached.
- In **Quebec**, the regulator may intervene when an FSP does not honour its obligations.
- In the **United States**, firms that do not respond to requests for responses to investor complaints may be referred to the SEC's examination or enforcement units.

*g) Investor satisfaction with complaint handling procedures*

A few Participating Jurisdictions attempt to gauge investor satisfaction with complaint handling processes. For example,

- In **Australia** and **India**, the regulator seeks feedback from investors once a complaint has been closed. In India, investors have an option to indicate whether they are satisfied with the closure of complaint. If unsatisfied, the investor may tick on the 'unsatisfied' icon and provide the reasons therefor. This one-time option is available to an investor for a period of 15 days from the date of closure of the complaint in SCORES. If this option is exercised, the complaint is escalated within the Securities and Exchange Board of India (SEBI).
- In **Canada**, FSPs are not required to gauge investor satisfaction with its complaint process, but the Ombudsman for Banking Services and Investments (OBSI), an ADR body, requests feedback from consumers and participating firms who have had complaints handled by OBSI.

### **3.3 Alternative Dispute Resolution**

Nearly every Participating Jurisdiction provides ADR as a method of addressing investor complaints that may not be resolved directly with the FSP. ADR facilities can be established by regulators, SROs, or private independent bodies. Whether ADR facilities are public or private, they are generally required to be licensed.



Services provided in ADR include arbitration, conciliation, mediation, ombudsman services, and an array of hybrid procedures. ADR is generally considered less complex, less formal, and less expensive than litigation, and may offer the possibility of a speedier resolution.

*a) ADR processes operated by regulators or SROs*

ADR bodies or processes operated by regulators and/or by SROs, have a variety of structures and decision-making processes. Some dispute mediation mechanisms are part of the regulator's structure. For example, **South Korea** has a financial dispute mediation committee within the regulator to handle disputes and suggest proposals for mediation. This committee resolves financial disputes between investors and FSPs. The committee meets to suggest a proposal for mediation; the meeting must be attended by more than half of the 7 - 11 members appointed by the committee chair. A majority vote of the present members is required to offer a proposal to the parties. Once the proposal is accepted by the parties, no further legal recourse is available because the proposal has the same legal effect as a consent judgment. If settlement is possible, the parties involved are encouraged to reach a settlement within 30 days after filing a request for dispute resolution. If the parties do not reach a settlement within the designated period, the dispute is referred to the committee.

In some cases, some sort of ombudsman is used for ADR processes or services. For example,

- **South Africa** has a mix of ombudsman schemes set up by industry on a voluntary basis and those established by statute. There are currently six ombudsman schemes, each providing a free, impartial dispute resolution platform. Two of the statutory ombudsman schemes have sector-wide jurisdiction. There is an ombudsman for FSPs and another for pension fund adjudication. The ombudsman for FSPs deals with disputes relating to advice and intermediary services, irrespective of the product offering, while the "back-stop" statutory ombudsman is designated to deal with complaints when there is no other ombudsman mandated to deal with it. Funding for statutory ombudsmen comes from levies, while voluntary ombudsmen are typically funded through subscription fees in the industry. This structure was planned to be changed in November 2020 with the appointment of a full-time Ombudsman Council, a statutory body that will oversee all statutory and voluntary ombudsmen. The Council promotes the awareness, accessibility and use of the ombudsman system and take steps to improve its effectiveness by imposing standards of best practice and promoting cooperation and coordination among ombudsmen.
- In the **United Kingdom**, ADR is provided by the Financial Ombudsman Service (FOS), which can generally consider a complaint after the FSP has issued a final response, unless the parties agree to initiate ADR earlier. Assuming the complaint falls within its jurisdiction, the FOS will attempt to resolve complaints at the earliest possible stage and by whatever means appear to be the most appropriate, including mediation. In reaching an initial assessment, a case handler will decide whether the FSP has acted fairly and reasonably. There is an opportunity for both parties to agree or disagree with the case handler's initial assessment. Approximately nine in ten cases are resolved this way, without needing an ombudsman's final decision. If, however, the case cannot be resolved in this way, an ombudsman will review the complaint afresh and make a final decision. Where the complaint is upheld in favour of the complainant, and the complainant accepts the ombudsman's decision, the decision becomes legally binding

on the FSP. An FSP cannot ‘appeal’ a decision to a different ombudsman, but, as a public body, FOS’s decisions can be challenged by FSPs or investors through the judicial review process. If the FSP refuses to pay the investor, the investor can seek to enforce the award in court. If the FSP does not pay, the investor or FOS may refer the FSP to the regulator, which may take action against the FSP. The regulator does not have the power to force an FSP to comply with a FOS award, as this is the role of the courts and is provided for in legislation.

ADR services may also be provided by SROs. For example, in the **United States**, FINRA and the NFA operate dispute resolution or customer arbitration and mediation mechanisms.

- FINRA, an SRO for U.S. securities broker-dealers, operates the largest securities dispute resolution forum in the United States. It assists in the resolution of monetary and business disputes involving investors, member broker-dealers and associated persons of broker-dealers. For investors seeking to recover damages, such as money or securities, against a broker-dealer, filing an arbitration or mediation claim may offer a way to pursue damages against a firm or individual broker. FINRA’s primary role in the dispute resolution process is to administer cases brought to the FINRA forum in a neutral, efficient, and fair manner. FINRA does not participate in or assist either party in pursuing the outcome of arbitrations or mediations. FINRA provides 70 hearing locations for securities arbitration and mediation hearings—at least one in each state. Arbitrators in the FINRA arbitration forum receive a fixed honorarium. In non-FINRA arbitration forums, arbitrators set their hourly rate and are paid on a “pay as you go” basis. The FINRA arbitration forum’s filing fees are incurred on a sliding scale based on the claim size, with the scale starting at \$50 for cases seeking damages under \$1,000. FINRA member firms, rather than customers, pay approximately 85% of the arbitration cost, leaving customers with about 15% of the cost. FINRA waives fees for parties who demonstrate financial hardship and offers reduced fees and pro bono telephonic mediation to parties with small arbitration claims. FINRA has implemented an online portal for parties and arbitrators, which provides for all-electronic processing of claims. In addition, FINRA has stated its commitment to achieving arbitrator and mediator diversity and strives to provide transparency about the current demographic makeup of its arbitrator roster by posting statistics related to diversity on its website.
- The NFA, an SRO for the U.S. derivatives industry operating under the jurisdiction of the US CFTC, offers customer arbitration and mediation for futures- or forex-related disputes involving customers and NFA members, their employees, and associates. NFA maintains a roster of more than 2,000 arbitrators comprised of futures industry professionals, lawyers, accountants, and other business professionals. At NFA, the customer has the choice of having the case decided by a member panel or a non-member panel. A member panel consists of individuals who are NFA members or associated with NFA members and are generally knowledgeable about futures industry practices and procedures. A non-member panel consists of a majority of individuals who do not have a significant connection with NFA or an NFA member. The arbitrators must make their decision (award) within 30 days of the conclusion of the hearing. An award states the issues presented to and decided by the arbitrators, which party won, and the amount, if any, the opposing party must pay. An award does not contain the arbitrators' reasoning behind their decision. NFA arbitration decisions are final and binding, and

court review is much more limited than in civil litigation. NFA's arbitration services have associated fees.

***b) ADR operating independently of the regulator***

In some Participating Jurisdictions, ADR for securities and derivatives disputes is provided through bodies independent of the regulator. For example,

- In **Australia**, the regulator provides access to an independent external dispute resolution facility to handle investor complaints. It is a not-for-profit company, governed by a board of directors composed of equal numbers of consumer and industry representatives and an independent chair. Services are free for consumers.
- In **China**, there are 56 securities and futures dispute resolution forums that offer mediation services. The Securities Association of China has a dispute mediation center and a dispute mechanism for securities associations and member institutions. The Asset Management Association of China (AMAC) also provides mediation services for investors with investment fund-related disputes with AMAC members.
- In **Cyprus**, the financial ombudsman is an independent service for settling disputes between investors and FSPs. A fee is charged.
- In **France**, the regulator, *Autorité des marchés Financiers* (AMF), provides investors the opportunity to use mediation as an out-of-court solution to a financial dispute. The ombudsman is appointed by the Chairman of the AMF, after consultation with the Board, for a three-year renewable term. The ombudsman analyses an investor's mediation request and supporting documents and questions the FSP or FSP representative, who may be asked for additional information. After a hearing, the ombudsman issues a recommendation within 90 days. The ombudsman may consult an expert. If the ombudsman's recommendation finds in favour of the investor, the recommendation, once accepted by both parties to the dispute, takes the form of a total or partial payment or compensation for the loss suffered. The FSP is not required to acknowledge liability.
- **Hong Kong** administers an independent and impartial financial dispute resolution scheme with a "Mediation First, Arbitration Next" policy.
- **Italy's** regulator (Consob) runs ADR for disputes involving securities, investment funds, and some non-life insurance. The facility is considered an independent body, although the regulator provides its structure, personnel, and financing. FSPs are compelled to adhere to the decision, even though compliance with the decision is not binding on either party.
- **Jersey** offers an independent dispute-resolution service for unresolved complaints involving FSPs.
- In **Malaysia**, ADR involves mediation between the parties; if the dispute is not resolved, the case is heard and adjudicated by an official of the ADR body.

- In **Ontario**, registered firms are required to ensure that an independent dispute resolution or mediation service is made available at the firm's expense to resolve complaints regarding trading or advising activity of the firm or its representatives. Registered firms must take reasonable steps to ensure that the Ombudsman for Banking Services (OBSI) will be the services that is made available to the client. FSPs are required to inform investors about the availability of OBSI at three points in time: at account opening, as soon as possible after a client makes a complaint (for example, when a firm sends its acknowledgement), and again when the registered firm informs the client of its decision in respect of the complaint. The ADR body (OBSI) is a national, not-for-profit, independent organization and its recommendations are independent and impartial. The investor must first complain to the FSP, but if the complaint is not resolved, the investor may bring its case to the ADR body. Services are funded by industry and are free to consumers.
- In **Singapore**, a regulator-designated ADR scheme in the financial services sector allows investors to resolve claims up to S\$100,000 (approximately \$70,000 USD). The dispute resolution process has two stages: mediation and adjudication. When a complaint is received, the investor and the FSP are encouraged to resolve the dispute in an amicable and fair manner. In appropriate cases, a case manager mediates the dispute. If the dispute is not settled by mediation, complainants can choose to have the case heard and adjudicated. For the mediation process, the FSP is required to pay S\$50 per claim (approximately \$35 USD), while the process is free for the complainant. In the adjudication phase, the FSP is required to pay S\$500 (approximately \$350 USD), and the complainant pays S\$50 per claim (approximately \$35 USD).

*c) Participation in ADR by investors and FSPs*

For investors, resolving a complaint through ADR may or may not be voluntary. In some Participating Jurisdictions, brokerage agreements require customers to agree to the resolution of disputes through arbitration. Other Participating Jurisdictions make ADR mandatory for FSPs if complaints are not resolved at the FSP level. For example,

- FSPs in **Australia** are contractually bound to comply with the procedures of its ADR scheme.
- In **Canada**, all registered dealers and advisers are required to make the ADR body (OBSI) available to their clients as their dispute resolution service, except in **Quebec** where the dispute resolution service is administered by the regulator. Investors in **Quebec** are nevertheless entitled to use ADR for disputes that fall within OBSI's mandate, in lieu of the dispute resolution services provided by the Autorité des marchés financiers (AMF Quebec). However, investors may choose to use other avenues to resolve their disputes, such as through civil action.
- In **France**, mediation is voluntary. Moreover, mediation may be used by a consumer only after submitting a complaint to, and receiving a response from, the FSP.
- In **Japan**, if an investor lodges complaints or files for dispute resolution through a designated ADR body, the FSP is required to respond. In the event of a dispute between

an investor and an issuer or a securities company, both parties may apply to the investor protection institutions for mediation. If a retail investor has a dispute with a securities company and makes a request for mediation, the securities company may not refuse it.

*d) Limits on amounts required to initiate ADR and maximum awards*

In some Participation Jurisdictions, investors may file for ADR regardless of the amount of their claim, while other Participating Jurisdictions require claims to exceed certain thresholds. For example,

- In **France**, investors may file for ADR, regardless of the amount of their claim.
- In **Lithuania**, there is a 10 Eur (approximately \$11 USD) threshold for complaints handled by Bank of Lithuania.
- In **Poland**, the arbitration forum only handles disputes with a claim amount exceeding PLN 500 (approximately \$125 USD).
- In **Sweden**, customers' complaints to the National Board for Consumer Disputes must exceed a threshold of 2,000 SEK (approximately \$200 USD).

There is also diversity on the maximum amounts that may be awarded. For example,

- In **Armenia**, awards complaints submitted to its financial system mediator, the claim may not exceed 10 million Armenian drams (approximately 20,000 USD).
- In **Australia**, awards for most claims cannot exceed is \$1,000,000 (approximately 660,000 USD), with compensation caps of \$500,000 (approximately 330,000 USD).
- In **Canada**, the maximum amount that may be recommended by an independent dispute resolution service (required to be OBSI outside of Quebec) is \$350,000 (CN) (approximately \$250,000 USD).
- In **Italy**, the limit on the claim amount for complaints is 500,000 Eur (approximately \$565,000 USD).
- In the **UK**, the FOS can recommend any higher amount of compensation, but only amounts up to the award limit are enforceable, which currently is set at £350,000 (approximately \$430,000 USD) for a complaint concerning an act or omission which occurred on or after 1 April 2019, and £160,000 (approximately \$200,000 USD) for complaints before 1 April 2019.

Regarding the ways to enforce the ADR awards, for example,

- In **China**, an arbitration award takes legal effect upon its issuance. Arbitration awards made by Hong Kong's ADR facility are final and binding on the parties, and not subject to review other than on a point of law or on the ground of serious irregularity affecting the arbitrator.

- In **Italy**, any non-fulfilment by an FSP is disclosed through publication on ACF's website and in two daily national newspapers.
- In the **United States**, FINRA can suspend its member broker-dealers and their associated persons for failure to pay ADR awards.

*e) Reporting of ADR data*

Participating Jurisdictions report on ADR activity either at high-level or through more detailed arbitration statistics, and on annual or multi-year basis. For example,

- **Canada** (members of the Canadian Securities Administrators and the two SROs through the Joint Regulators Committee) and **Germany** report on high-level ADR activity.
- In **India**, stock exchanges and depositories disclose details of arbitration/appellate arbitration proceedings in a specified format.
- In **Italy**, the ADR body publishes an annual report on its activities containing data and figures referred to the previous year and a selection of the most relevant, innovative decisions taken within that period.
- In **Singapore**, the ADR body publishes statistics on the cases it has handled in its annual report available to the public. The information includes the number and types of cases received and handled, turnaround time, and outcome of claims.
- In the **US**, FINRA publishes detailed arbitration statistics on its website, including: (a) an interactive map that gives a breakdown of available arbitrators in each hearing location; (b) a chart that displays special pools of arbitrators; (c) common claims and products involved; and (d) year-end statistics for the last five years.

### 3.4 Civil action

In several Participating Jurisdictions, individual investors may initiate legal action. Investors generally seek court action to determine liability and seek damages, other monetary compensation or other possible remedies. Class actions are available in many jurisdictions, allowing individuals or entities to bring lawsuits representing other similarly situated individuals or entities that would otherwise be economically unfeasible. In either case, liability is determined by a court of competent jurisdiction; whether damages or compensation or remedies are awarded will depend on the facts and circumstances of each case.

In the **United States**, for example, legal claims must be made within certain time limits or an investor's claims may be time-barred. If a plaintiff wins, in whole or in part, courts can enforce their judgments in favour of plaintiffs against a losing defendant.

### *a) Individual civil actions*

Generally, aggrieved retail investors may initiate legal action against FSPs or their employees, provided applicable jurisdictional and other requirements are satisfied. Civil damages or remedies can be beneficial for retail investors, but the complexity and cost of legal proceedings may make it difficult for many or most investors to pursue disputes through the courts.

- In **Australia**, if they are not satisfied with the FSP's response to their complaint, individuals may initiate legal action. They are not bound by the decision in the ADR. In cases where the investor has suffered a large loss that exceeds the ADR cap of \$5,000, court action may be the only avenue available for compensation.
- In **Hong Kong**, investors may seek civil compensation for losses suffered due to misstatements in prospectuses (as against issuers); (b) wrongdoing including fraudulent, reckless or negligent misrepresentation inducing investment; (c) market misconduct, including insider dealing, false trading and disclosure of false or misleading information inducing transactions; (d) a listed issuer's failure to disclose inside information to the public as soon as reasonably practicable or if the information disclosed is materially false or misleading; or (e) false or misleading public communications concerning securities or futures contracts. The regulator may also seek injunctive or remedial relief for violations of relevant laws and such orders could include freezing an alleged offender's assets and restoring the positions of the parties prior to the breach.
- In **Tunisia**, the court, when presented with a request from the president of the regulator, may issue an urgent order to seize the assets of "persons considered suspects" or enjoin any person from acting contrary to the law and violating the rights of owners of transferable securities and financial products.
- In the **United Kingdom**, investors may pursue legal action instead of ADR. The court has wide discretion to impose remedies, including ordering an FSP to pay compensation to the investor.

### *b) Class actions*

Individual investors may also wish to pursue or participate in class actions whereby legal claims from many similarly situated individuals are bundled into a single court action and a representative of the class is the lead plaintiff. Many Participating Jurisdictions have created procedural mechanisms for compensatory redress.

- In **China**, a joint litigation in which one party represents numerous litigants may be brought by the representatives elected by the litigants. The court-approved settlement applies to all who opt in. Investor protection agencies may bring representative actions on an opt-out basis, provided they are nominated by more than 50 investors.
- In **Italy**, consumers with similar interests are entitled to file a class action lawsuit against a private company.

- In the **United Kingdom**, when claims have common or related issues of fact or law, the court may decide to manage the action under a group litigation order. ‘Opt-in’ procedures require claimants to make their own individual claims and are very different from US-style ‘opt-out’ class actions.
- In the **United States**, generally, the court must be satisfied that the plaintiffs satisfy several criteria in determining whether it can certify the class and permit the action to proceed. In the securities area, class actions are typically brought on behalf of investors who bought or sold a company’s publicly traded securities within a specific period of time and suffered economic injury as a result of the company’s violation(s) of the federal securities laws.
- Other jurisdictions in which investors may file class actions include **Australia, Canada, India, Malaysia, Russia, Republic of Korea, Chile, Poland, Thailand, and Tunisia**.

*c) Model proceedings*

Two examples are presented in relation to model proceedings.

- In **China**, the first regulation on model judgment mechanism for securities disputes was issued by the Shanghai Financial Court in January 2019. Two months later, the Court applied the mechanism for the first-time to a securities group dispute involving a false statement by a listed company.
- In **Germany**, a model proceeding is a type of representative action with the goal of obtaining a declaratory judgment. It is a procedural tool to help investors assert and enforce their rights in court. Aggrieved individuals may join in easily; their claims are time-barred until the issuance of the court’s decision, which has binding effect on all investors in the model case. Individual damage or compensation can be pursued afterwards through individual actions based on the court’s model decision.

There are two type of model proceedings. One is designed to bundle claims for compensation for damages suffered due to false misleading or omitted public capital market information into a single lawsuit, the “model case”. The other allows certain consumer protection entities to apply for declaratory judgment on behalf of a group of consumers.

*d) Civil enforcement actions brought by securities regulators in the public interest*

In most Participating Jurisdictions, regulators do not have the authority to file lawsuits on behalf of individual investors and have little direct involvement in investors’ legal proceedings, except that in certain jurisdictions, they may be available to provide expert witness testimony. Exceptions include **Hong Kong, Quebec, and Trinidad and Tobago**.

- In **Hong Kong**, the regulator may prosecute FSPs and their officers for offences under relevant financial services legislation in court, including unauthorized issues of advertisements, invitations or documents relating to investments; fraudulently or recklessly inducing others to invest money; the provision of false and misleading



information; and various other offences relating to dealings in securities and futures contracts.

In other Participating Jurisdictions, regulators can take action for the wider public interest. For instance,

- In **Australia**, to the extent that the regulator takes action against an FSP, it does not do so for the benefit of Australian investors, but for the wider public interest.
- In the **United States**, the SEC and CFTC may bring enforcement actions against an FSP or a commodity futures merchant, or any other market participant acting in possible violation of the relevant laws and regulations, seeking civil penalties and remedies, such as injunctions and disgorgement of ill-gotten gains. If sufficient assets can be obtained from defendants, the SEC may petition the court to establish a “Fair Fund” to compensate eligible harmed investors. Fair Funds are not able to be established in every SEC enforcement action.

*e) Sources of financial assistance (litigation funders or legal aid)*

Approximately half of the Participating Jurisdictions have mechanisms to help fund litigation costs for individuals who meet certain eligibility requirements. For example,

- In **France**, registered consumer associations may bring collective actions as a free service for investors.
- In **Gibraltar**, after-the-event insurance is used to help fund litigation costs.
- In **Saudi Arabia**, litigation is free.
- In other Participating Jurisdictions, there is limited use of third-party funding of litigation. While this is illegal in **Hong Kong**, other jurisdictions, such as **Australia, the Bahamas, Germany, Italy, Jersey, Kazakhstan, Lithuania, Quebec, Russia, and Singapore** provide different types of litigation funds or legal aid.

*f) Contingency fee arrangements with lawyers*

In some jurisdictions, contingency fee arrangements are permissible, but limited to an amount based on reasonable and ethical standards. For example,

- Contingency fee arrangements are common in U.S. class actions as well as in **Armenia, Canadian** jurisdictions, the **United Kingdom**.
- They are prohibited in **Luxembourg, Portugal, and Singapore**.

## 4. Conclusion and Sound Practices

This snapshot of existing complaint handling systems is designed to be helpful to jurisdictions interested in developing or improving their complaint handling procedures and those involved in the complaint process. Despite largely procedural differences (such as where complaints are to be filed, time limits for investors to submit complaints or for FSPs to respond, etc.), the complaint handling systems described in this Report have many similarities.

Regulators have different degrees of involvement in the complaint process. According to the survey, in many jurisdictions, civil litigation by investors to seek damages or remedies may often be a last resort for investors.

The IOSCO Methodology states, under Key Issue 10 for Principle 31 “Market Intermediaries” (in this report referred to as FSPs): “Market intermediaries should have an efficient and effective mechanism to address investor complaints.” Also, previous IOSCO reports<sup>8</sup> have emphasized the importance of fair and effective investor complaint handling mechanisms. A benefit to regulators from developing such a mechanism is that it may provide regulators with insight or evidence-based information on the issues and emerging risks faced by retail investors.

Based on survey responses from the Participating Jurisdictions, C8 has developed a set of Sound Practices (SPs) intended to assist jurisdictions in developing their complaint handling mechanisms and making them more user-friendly. These Sound Practices speak to the importance of implementing complaint handling systems in ways that optimize the benefit to investors. The Report also highlights the importance of hearing the views of investors. One of the sound practices is to gauge investor satisfaction with the complaint process. Comments from investors may not always be positive, but investor insights could enhance the effectiveness of complaint handling programs.

We recognize that IOSCO members may be at different stages of market development and subject to varying regulatory and legal frameworks, but we believe that these practices may be useful to all jurisdictions seeking to enhance their complaint handling systems. Jurisdictions may wish to consider the following Sound Practices (SPs):

**SP1: Establishing a system for handling retail investor complaints.** In most, if not all, Participating Jurisdictions, FSPs are required to establish complaint handling systems for retail investors that are fair, transparent, and efficient. Regulators in jurisdictions without such a requirement may wish to consider developing one. Based on the survey, most jurisdictions’ complaint handling systems should be reasonably designed to (a) provide notice to investors how their complaints will be handled, (b) process investor complaints within a reasonable period, and (c) inform investors of the availability of ADR or civil litigation to resolve disputes. Provided these criteria and relevant regulatory requirements are met, FSPs are able to develop their own internal procedures for handling retail investor complaints as appropriate for their organization. Complaint handling systems may benefit retail investors by helping to provide

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<sup>8</sup> See IOSCO [Report on Wholesale Market Conduct](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD563.pdf) (June 2017) available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD563.pdf>, and IOSCO [Report on Suitability Requirements with respect to the Distribution of Complex Financial Products](https://www.iosco.org/library/pubdocs/pdf/IOSCOPD400.pdf) (January 2013) available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD400.pdf>

accessible, affordable, fair, accountable, timely and efficient methods of resolving complaints that may increase investor protection and investors' confidence in the markets.

**SP2: Taking steps to raise investor awareness of various available complaint handling systems.** According to the survey, in many jurisdictions, FSPs typically inform retail investors about their complaint handling systems, including ADR, by posting information on their websites and distributing brochures and hard copy materials. The goal of providing such information is to enable investors to easily find out how to submit a complaint, how the process works, and what to expect. Information presented in clear, understandable language, with a minimum of legal jargon, helps investors navigate the process. The more investors know, the less they will be confused about how their complaints will be handled.

**SP3: Making available as many channels as possible for retail investors to submit complaints.** According to the survey, in most jurisdictions, FSPs accept complaints from retail investors through a variety of channels. Searching for new channels to communicate with investors could encourage investors to take advantage of complaint handling procedures, including the escalation process.

**SP4: Taking steps to support complaint handling systems.** According to the survey, such efforts typically include (a) ensuring the availability of adequate manpower and other resources, (b) providing adequate training of relevant staff on the complaint resolution process; and (c) ensuring that responsibilities and mandates are delegated to facilitate resolution of routine complaints and the escalation of serious, non-routine complaints.

**SP5: Encouraging FSPs to offer a wide range of resolutions to retail investor complaints.** Survey responses showed a wide variety of possible resolutions that FSPs may offer to resolve investor complaints, including, among others, an explanation/apology, refund/payment compensation, changing contract and system improvements. Many jurisdictions' laws or regulations limit the types of dispute resolution or types of civil litigation process investors can use to pursue their claims. Where possible, however, FSPs may wish to consider creative complaint resolutions that do not negatively impact a fair and efficient resolution for investors.

**SP6: Using complaint data to identify areas for new or enhanced investor education initiatives.** According to the survey, a large number of complaints may indicate various types of potential misconduct or fraud; it may also indicate a misunderstanding on the part of investors that could be addressed by investor education. Programs to help investors recognize fraud could help them avoid such problems in the future.

**SP7: Using complaint data for regulatory and supervisory purposes.** According to the survey, many jurisdictions analyse investor complaints as a possible indicator of possible misconduct or fraud to be pursued by supervisory or regulatory enforcement authorities or possible gaps in policy and regulation. Other jurisdictions may wish to do so as well.

**SP8: Seeking input from retail investors about their experience with complaint handling systems.** According to the survey, few FSPs ask investors about their satisfaction with the complaint handling process. It is true that investors dissatisfied with the outcomes they received would be unlikely to have anything positive to say. Even so, a regulator might find kernels of insight that could lead to improvements in the process. Also, in some cases, an investor's

primary goal in using a complaint handling system may be to ensure that a particular concern is communicated to an FSP or regulator as opposed to leading to a particular outcome.

**SP9: Making ADR facilities operated by or affiliated with a regulator more accessible for retail investors.** Survey responses reflect the importance of ADR in resolving retail investor complaints in many jurisdictions. In light of this, regulators with oversight over or affiliation with ADR bodies may wish to consider (a) simplifying ADR and the instructions for using it so that retail investors can understand and use ADR effectively; (b) publishing ADR statistics to promote transparency into the process and results of these proceedings, and (c) suspending firms and professionals that fail to pay awards.

## Appendix A - Literature Review

<b>Title</b>	<b>Produced by</b>	<b>Summary</b>
<i>ACPR Annual Report 2017</i>	<i>Autorité de contrôle prudentiel et de résolution</i>	This annual report reviews the activity of the <i>Autorité de contrôle prudentiel et de résolution</i> (ACPR – the Authority) and its departments. This document is supplemented by two issues of <i>Analyses et Synthèses</i> , which present information about the Financial situation of banks and insurers.
<i>AMF France Annual Report 2017</i>	<i>Autorité des marchés financiers</i>	This annual report introduces the AMF's activities in France and abroad over the course of 2017: promote the further integration of European supervision, facilitate the implementation of a secure framework for the markets and asset management, support innovation and protect the general public from offers of highly risky financial products.
<i>AMF France Ombudsman Annual Report 2013</i>	<i>Autorité des marchés financiers</i>	This annual report issues the number of cases received, opinions from investors, subjects of claims over the course of 2013.
<i>AMF France Ombudsman Annual Report 2017</i>	<i>Autorité des marchés financiers</i>	This annual report issues the number of cases received, opinions from investors, subjects of claims over the course of 2017.
<i>China Securities Regulatory Commission Annual Report (2017)</i>	China Securities Regulatory Commission	This report introduces the development of China's securities market, the work done by China Securities Regulatory Commission in the field of regulation and investor protection.
<i>Dispute Resolution Mechanism for Securities Company Customer Complaints</i>	Hu Xiaozhong, Huang Xiao, SuZhenhua, Proceedings of the China Securities Industry Association Conference, 2014, pp. 957-962	This paper introduces foreign financial dispute alternative resolution mechanism in the United Kingdom, United States and Germany and proposes advice for China's mechanism reform.
<i>Evaluation Report on Pilot Work of Diversified Solution Mechanism of</i>	China Securities Regulatory Commission	The assessment shows that the Supreme People's Court and the China Securities Regulatory Commission have fully played the role of organizational leadership and coordination. Under the efforts of all levels of courts, regulatory

<i>Securities and Futures Disputes (Abstract)</i>		authorities, industry associations, mediation organizations, etc., the pilot work has achieved remarkable results.
<i>Exploration of Innovative Mechanism in Investor Protection</i>	SIPF Special Compensation Fund Working Group, Securities Market Herald, No.3, 2015, pp. 40-44	This paper argues that the new mechanism based on special compensation fund is a reproductive and expandable model and could play an important role in the prospective securities investor protections.
<i>Introduction and Application of the Advanced Compensation System in Securities Market</i>	Chen Jie, Journal of Law Application, No.8, 2015, pp.25-31	This paper argues that China should introduce Advanced Compensation System for it is a new model for constructing civil compensation in China's capital market and an important measure to eliminate doubts in the investor market.
<i>Japan Financial Commodity Exchange Act--A law protecting investors and building a fair and transparent investment market</i>	Zhu Baoling, Law Press, 2016	By studying the legislative purposes, legislative content, revision background, and legislative effects of Japan's Financial Commodity Exchange Law, the paper discusses the impact of the law on financial practice, hoping to inspire China's future financial legislation.
<i>Promote the Development of Shanghai's Financial Industry, Safeguard the Legitimate Rights and Interests of Investors</i>	Shanghai Asset Management Association	This report introduces the coalition of suit and mediation for securities, funds and futures industry.
<i>Public and Private Enforcement of Securities Laws: Resource-Based Evidence</i>	Jackson, Howell E., and Mark J. Roe, Journal of financial economics 93, no. 2 (2009): 207-238	This paper evaluates the value of public enforcement of securities law for the development of stock markets around the world. It assesses the value of public and private enforcement has major implications both for the academic understanding of what strengthens financial markets and for the content of current development programs.
<i>Questions about financial ADR</i>	Tokyo Bar Association	This guideline introduces the operational mechanism of financial ADR.

<i>Research on ADRs of financial consumption disputes</i>	Xing Huiqiang, China financial publishing house, 2012	Based on the reality, this book studies the current situation and shortcomings of ADRs of China's financial consumption disputes, compares the financial consumption dispute handling mechanism with foreign countries, and then puts forward the theoretical and policy recommendations for the construction of financial consumption disputes handling mechanism in China.
<i>Research on the Advanced Compensation System in Securities Market</i>	Gong Haibin, Wang Xu, Law and Economy, No.6, 2018, pp.146-160	Advanced compensation system based on special fund model serves as an effective investor compensation mechanism, beneficial to both investors and intermediaries. Especially, it promotes the construction of a perfect compensation system, with practical significance of actively protecting the legitimate rights and interests of investors. As a non-litigation dispute resolution mechanism, the advance compensation system has initially shown its superiority. Meanwhile, it is imperfect and should be improved as soon as possible to make itself more standardized, scientific and reasonable.
<i>Research on the Protection of Retailed Investors in the Securities Market</i>	China Securities Investor Protection Fund Corporation Limited	Based on the special context of China's securities market, the paper analyses various possibilities how interests of investors are violated, proposes measures to effectively protect the interests of small and medium investors.
<i>The System Value of Securities Enforcement and Its Realization: A Reference Experience from America</i>	Hong Yanrong, Peking University Law Review Vol.17, No.1, 2016, pp.142-176	In addition to the functions of disciplining offenders and deterring potential offenders, securities enforcement should also be endowed the institutional value of compensation investors. In the United States, the Securities and Exchange Commission properly handles the relationship between law enforcers and market participants, establishes and maintains a orderly securities market. China's law enforcement mechanism has something in common with the United States, and should learn from the successful experience accumulated by the latter to improve the effectiveness of China's securities law enforcement.
<i>What works in securities laws?</i>	La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, The	This paper examines the effect of securities laws on stock market development in 49 countries, finds little evidence that public enforcement benefits stock markets, but strong evidence that laws

	Journal of Finance 61, no. 1 (2006): 1-32	mandating disclosure and facilitating private enforcement through liability rules benefit stock markets.
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## Appendix B - C8 Survey

### IOSCO Committee 8 Questionnaire on Investor Complaint Handling and Redress

- Contact Information:
- Name:
- Jurisdiction:
- Institution:
- Title:
- Email:
- Telephone:

The purpose of this questionnaire is two-fold. First, we wish to obtain information on how IOSCO members and the financial service firms they regulate handle complaints from retail investors. Second, we are interested in obtaining information on other avenues available to investors for redress, specifically alternative dispute resolution mechanisms (ADRs) and judicial remedies.

#### **Definitions**

1. “Complaints” refers to complaints by retail investors against financial service providers and their employees. For the section on judicial remedies, complaints against issuers of securities may be included.
2. “Financial service providers” refers to firms that provide securities products and services to retail investors, including broker-dealers, investment advisers, and banks.
3. “Regulator” refers to security’s regulatory authorities, including securities regulators, securities self-regulatory organizations, and other organizations established under the securities laws of a jurisdiction that handle investor complaints.

#### **Preliminary Question:**

Which of the authorities/entities listed below handle investor complaints against financial service providers in your jurisdiction? Add one or more “X” below.

Authorities/Entities	
Securities regulator	
Securities self-regulatory organization	
Central bank	
Other (please identify/explain)	

## Section 1. Complaint Handling by Financial Service Providers

Overview: In 1–3 paragraphs, please provide a high-level description of the process by which financial service providers in your jurisdiction handle complaints from investors.

- a) Are the complaint handling procedures of financial service providers in your jurisdiction mandated by law or by regulation? Citations to specific law or statute are not necessary.
- b) Who informs investors? How may they file a complaint with their financial service provider? How are investors informed about the process?
- c) What is the process for an investor to file a complaint with a financial service provider?
- d) How may an investor submit a complaint to a financial service provider? By mail, email, fax, phone or an online complaint form? If an online complaint form is used, does the form permit the investor to describe the complaint in his or her own words or are there boxes or categories to check for the type of allegation? Are investors required to submit supporting documentation?
- e) Is there a time period within which a complaint has to be filed with a financial service provider? If so, what is the time period?
- f) Are financial service providers required to respond to complaints within a specific time period? If so, what is the time period?
- g) What are the possible outcomes for resolving a complaint against a financial service provider? Are monetary settlements the most common resolution? What other types of resolutions are possible in your jurisdiction?
- h) Is the process different for filing a complaint against a broker-dealer, an investment adviser or a bank? Please explain.
- i) What are some of the most common reasons why complaints are not or cannot be resolved? Please give examples.
- j) Are financial service providers required to report information about the number or type of complaints received? To whom and how often? Are they required to report how complaints are resolved? Is the information made public?
- k) What are the top 5 complaint types?
- l) Is the complaint process described above available to investors outside the jurisdiction?
- m) Do the financial service providers in your jurisdiction gauge investor satisfaction with their complaint process? If so, how is it measured and what is the general level of investor satisfaction?
- n) Does the Regulator(s) in your jurisdiction have input into the resolution of a complaint?

## Section 2. Complaint Handling by Regulators

Overview: In 1–3 paragraphs, please provide a high-level description of how regulators in your jurisdiction handle complaints from investors.

- a) Are the Regulator’s complaint handling procedures mandated by law or by regulation? (No specific citation necessary).
- b) What types of complaints does the Regulator handle?
- c) What is the role of the Regulator in terms of investor complaint handling (for example, is the role on dispute resolution or investigation for supervisory purposes)? Which department of the Regulator handles investor complaints? What other functions does that department handle?
- d) How does the Regulator handle investor complaints?
- e) How do investors learn about the process of filing a complaint with the Regulator?
- f) May investors submit a complaint against both a financial service provider and the Regulator?
- g) How do investors submit complaints? Mail, email, fax, phone, online complaint form? If an online complaint form is used, does the form permit the investor to describe the complaint in his or her own words or are there boxes or categories to check based on the type of allegation?
- h) Are investors required to submit supporting documentation?
- i) Is there a time period in which a complaint must be filed with the Regulator? Is there a time period in which the Regulator must respond to a complaint? If so, what is the time period?
- j) How are complaints resolved? What are the possible outcomes? Are monetary settlements the most common resolution? What are other ways that a complaint can be resolved?
- k) What are some of the reasons why complaints cannot be resolved? Please give examples.
- l) Is the Regulator permitted to share complaint data with other departments within the Regulator or other investor protection or law enforcement agencies?
- m) Does the Regulator publicize information about complaints received and how they were resolved?
- n) What are the top 5 complaint types?

- o) Is the complaint process described above available to investors outside the jurisdiction?
- p) Does the Regulator gauge investor satisfaction with the complaint process? If so, how is it measured and what is the level of investor satisfaction?
- q) Does the Regulator regularly review the complaint handling procedures of financial service providers? Can the Regulator discipline a financial service provider regarding a specific complaint or the process as a whole?
- r) What improvements would you suggest in the area of complaint handling by financial service providers and Regulators?

### **Section 3. Alternative Dispute Resolution Mechanisms**

Overview: In a 1–3 paragraph high-level description, please describe the availability of alternative dispute mechanisms (ADR) in your jurisdiction to resolve investor complaints against financial service providers and how they operate (for example, who operates them, how investors use them and whether they are free of charge).

- a) What types of ADRs operate in your jurisdiction, such as negotiation, mediation or arbitration for complaints relating to financial service providers?
- b) What types of complaints may be handled in ADR?
- c) Is there a limit on the claim amount for complaints handled by ADRs?
- d) For investors, is resolving a complaint through an ADR voluntary or mandatory?
- e) For financial service providers, is resolving a complaint through an ADR voluntary or mandatory?
- f) What are the advantages/disadvantages of ADR for investors?
- g) Are the decisions rendered by ADRs legally enforceable? Is there recourse if one party is not satisfied with the decision through the ADR?
- h) Are the decisions made by ADRs published?
- i) Please provide any publicly available statistics maintained by your jurisdiction regarding the use of ADRs by investors that are relevant to this questionnaire.

### **Section 4. Judicial Remedies**

Overview: In 1–3 paragraphs, please provide a high-level description of the types of judicial remedies available to investors to resolve complaints.

- a) May a retail investor file legal action against a financial service provider? What requirements apply?
- b) Does your jurisdiction provide for collective actions or class actions to be brought by investors? Are there contingency fee arrangements available in your jurisdiction? Are there other mechanisms to help fund litigation costs for investors—e.g., litigation funders, legal aid? Can the Regulator commence a civil action on behalf of investors to seek compensation?
- c) Can compensatory or punitive damages be awarded to a successful party in your jurisdiction?
- d) Does the Regulator have any involvement in private lawsuits?

### **Section 5. Miscellaneous**

- a) For 2018, how many complaints were received by financial service providers in your jurisdiction? How many were received by the Regulator(s)?
- b) How does your jurisdiction make use of complaint data?
- c) Within the past five years, have you conducted any research or other work on complaint handling and redress practices for retail investors? If so, please provide relevant documents.

## Appendix C - Participating Jurisdictions

Argentina	National Securities Commission (NSC)
Armenia	Central Bank of Armenia
Australia	Australian Securities and Investments Commission (ASIC)
Bahamas	The Securities Commission of The Bahamas
Bahrain	Central Bank of Bahrain (CBB)
Bangladesh	Securities and Exchange Commission
Belgium	Financial Services and Markets Authority (Belgium FSMA)
British Columbia	Canada – British Columbia Securities Commission (BCSC)
Chile	Financial Market Commission
China	China Securities Regulatory Commission (CSRC)
Cyprus	Securities and Exchange Commission (Cusecs)
France	Authorities marches financiers (AMF France)
Germany	BaFin (Germany BaFin)
Gibraltar	Gibraltar Financial Services Commission
Greece	Hellenic Capital Market Commission (HCMC)
Hong Kong	Investor and Financial Education Council (IFEC)
India	Securities and Exchange Board of India (SEBI)
Israel	Israel Securities Authority
Italy	Consob
Japan	Financial Services Agency (FSA)
Jersey	Jersey Financial Services Commission (JFSC)
Jordan	Jordan Securities Commission
Kazakhstan	National Bank of Kazakhstan
Korea	Financial Supervisory Service
Lithuania	Bank of Lithuania
Luxembourg	Commission de Surveillance du Secteur Financier (CSSF)
Malaysia	Securities Commission (Malaysia SC)
Morocco	Capital Market Authority (AMMC)
Nigeria	Securities and Exchange Commission (Nigeria SEC)
Ontario	Canada – Ontario Securities Commission (OSC)
Perú	Superintendencia of the Securities Market (SMV)
Poland	KNF–Polish Financial Supervision Authority
Portugal	Comissão do Mercado de Valores Mobiliários (CMVM)
Quebec	Canada – Autorité des marchés financiers (AMF Quebec)
Russia	Bank of Russia
Saudi Arabia	Capital Markets Authority (CMA)
Singapore	Monetary Authority of Singapore (MAS)
South Africa	Financial Sector Conduct Authority
Spain	Comisión Nacional del Mercado de Valores (CNMV)
Sri Lanka	Securities and Exchange Commission of Sri Lanka
Sweden	Finansinspektionen (FI)

Thailand	Securities and Exchange Commission
Trinidad and Tobago	Securities and Exchange Commission
Tunisia	Conseil du Marche Financier
United Arab Emirates	Securities and Commodities Authority
United Kingdom	Financial Conduct Authority (UK FCA)
United States	Commodity Futures Trading Commission (US CFTC)
United States	Financial Industry Regulatory Authority (US FINRA)
United States	Securities and Exchange Commission (US SEC)