February 15th 2013

By Electronic Mail: comments@osc.gov.on.ca consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs / Mesdames:

RE: Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* November 15, 2012 Dispute Resolution Service

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The Association of Canadian Compliance Professionals ("ACCP") is an organization representing over 100 compliance professionals through its chapters operating across the country.

We wish to express our appreciation for having the opportunity to provide comment with regard to the proposed amendments to National Instrument 31-103 (the "Instrument") and its Companion Policy (the "CP") which if enacted as proposed would mandate the use of a single dispute resolution service by most if not all registered dealers and portfolio advisers. For purposes of providing comment we have restated the two "Issues for comment" as noted in the captioned notice and a few additional comments under the title "General Comments".

Would the time limit on complaints be appropriate if it was counted from the time the trading or advising activity that it relates to occurred, rather than from the time when the client knew or reasonably ought to have known of the trading or advising activity?

Contingent upon the acceptance of the view that the time limit that should apply should be equal to or less than the general statutory limitation periods found in the general law of each of the CSA jurisdictions (other than Quebec), we are of the view that the time limit "clock" should start running when a client knew or reasonably ought to have known of the trading or advising activity that is the subject of the complaint. The key advantage of this approach is the ability to rely on case law to assist in the determination of *when a client knew or reasonably ought to have known.*

If the aforementioned contingency is not met, then a six year limitation period, as proposed, as opposed to statutory limitation periods, the "clock" should start running as of the date on which the trading or advising activity in question occurred. It is our view that registered firms should have the ability to determine with a significant degree of certainty whether a client is able, in terms of a time limit, to raise a complaint which may result in the payment of an amount in the form of compensation or otherwise as a matter or liability or expediency.

Certainty it is of great importance in determining both the time period and amount of liability insurance or other risk mitigation product to purchase and/or maintain (including imposing penalties and charges on individuals within the registered firm). Given that such a payment can be equal to the sum of $350,000, the inability to properly mitigate

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may in many cases impose a significant financial strain on registrants causing their failure to maintain required amounts of regulatory capital. Please see additional comments under "General Comments" below.

OBSI's current terms of reference require a complaint to be made to the Ombudsman within 180 days of the client's receipt of notice of the firm's rejection of their complaint or recommend resolution of the complaint, subject to the Ombudsman's authority to receive and investigate a complaint in other circumstances if the Ombudsman considers it fair to do so. Should NI 31-103 include a deadline for clients to bring complaints to it? If so, is 180 days the appropriate period?

A hard deadline for filing a complaint with a dispute resolution service (whether OBSI or another service) is appropriate. It is difficult for us to accept that a 180 day period is not fundamentally "fair" and as such a deadline of reasonable length should only be extended in extenuating circumstances. A period of 180 days provides a complainant more than adequate time period to consider a rejection or proposed settlement of a complaint received from a registered firm in terms of pursuing a remedy with OBSI, another dispute resolution service, the courts or some other avenue. Again, registrants should be entitled to know with a level of certainty that a complaint has been addressed in a manner that excludes consideration by OBSI or another dispute resolution service of the complaint. Such an approach would not preclude a complainant from pursuing a remedy through a different means.

General Comments

As noted above we are of the view that public policy as currently reflected in statutory limitation periods should not be effectively overridden by the availability of an alternative avenue to seek a remedy of a complaint, particularly if OBSI obtains the power to enforce its recommendations. If the legislatures determined that parties seeking a remedy should be required to advance their case within a specific time period or be statute barred, we can think of no legitimate basis for members of the CSA to take the position that investors should not be subject to the same limitation periods.

Given that the Federal government as noted in the Notice has contemplated the designation of more than one acceptable dispute resolution service, and given two

banks in the face of public criticism continue to use a dispute resolution service other than OBSI, we question why the CSA has not concluded that an alternative to OBSI may be appropriate or necessary in the future, should OBSI's mandate, attitude, disposition or performance cease to be appropriate. While OBSI may not be profit driven, this alone does not ensure an unbiased approach.

Many within the industry believe that OBSI has in many instances taken on the role of advocate for consumers or is perceived to have a pro-investor bias. Is it not possible that another not-for-profit dispute resolution service could be equally or better qualified to deal with specific complaints or complaints of specific types and therefore should be able to be designated as an approved dispute resolution service? Concerns expressed regarding the possibility of a for profit organization favouring registrants can be monitored effectively through analysis of simple statistics. Further, reliance on a single provider of dispute resolution services limits the CSA's ability to dictate and enforce appropriate standards as no alternative exists in the event of OBSI's failure to comply.

We are disappointed that the CSA has not offered any analysis or discussion in mandating OBSI as the exclusive dispute resolution provider in many cases, but simply has set out its conclusions, such as "We believe the benefits of mandating a common dispute resolution service provider outweighs the potential for any incrementally higher costs to registrants". Such bald statements do little to explain the decision making process of the CSA.

We are puzzled by the assertion of the CSA in the Notice that "a common dispute resolution service provider would reduce investor confusion as to who (sic) to contact" with regard to a complaint given the language of section 13.16 (2) of the Instrument that requires, upon receipt of a complaint that **"the firm must as soon as possible inform the person or company [making the complaint] of how to contact and use the dispute resolution or mediation services which are provided to the firm's clients."** This contemporaneous disclosure is in addition to the disclosure of the availability of a dispute resolution or mediation service pursuant to Section 14(2)(j) of the Instrument as part of the so-called Client Relationship Model at the initial stages of the establishment of the relationship between a registered firm and a client. We respectfully suggest that if these two disclosures are not sufficient to ensure that a client knows whom to contact,

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nothing more can be reasonably done for the client. The assertion that a common dispute resolution service provider will reduce investor confusion simply has no merit.

We appreciate the opportunity to provide comments and hope that the various commissions will consider our comments prior to finalizing these amendments.

Regards,

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