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We appreciate the opportunity to comment on the proposed amendments.

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*

Advocis, The Financial Advisors Association of Canada, appreciates the opportunity to provide comments on amendments to National Instrument 31-103 *Registration Requirements, Exemptions And Ongoing Registrant Obligations* and the related Companion Policy (collectively, the Proposed Amendments).

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EXECUTIVE SUMMARY

Adovics is pleased to endorse the Canadian Securities Administrator's (CSA's) proposal that would require registered dealers and advisers outside Québec to make the services of the Ombudsman for Banking Services and Investments (OBSI) available to clients to satisfy their obligations regarding offering independent dispute resolution or mediation services. Advocis believes that a single point of entry to a mandatory dispute resolution service is in the best interests of financial consumers, and that OBSI is the best candidate for that role.

Under the Proposed Amendments, a complaint to OBSI would relate specifically to trading or advising activity of a registered firm or representative. Where OBSI was unwilling or unable to consider a complaint, a registered firm would have to ensure that the services of another dispute resolution or mediation service was made available to the client

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With reference to the proposed CSA requirements that complaints be limited to those that are raised within six years of the date when the client knew or reasonably ought to have known of the trading or advising activity and which claim no more than $350,000, Advocis provides its qualified support. The CSA proposals reflect the current limitations period of six years which operates in most Canadian provinces and preserves the reasonableness standard with regard to the client's knowledge of the harm incurred. Advocis suggests that the figure be adjusted to $500,000—the maximum award available through IIROC arbitration—and that a process be put in place to periodically adjust the ceiling for inflation. Advocis also suggests that the CSA further study the issue of whether the ceiling cap on complaints should be in excess of $500,000, or even retained at all.

In terms of the two specific issues on which the CSA has requested comment, Advocis recommends that:

1. the time limit on complaints be counted from the time when the client knew or reasonably ought to have known of the trading or advising activity. This standard makes possible the application of an objective standard when evidence supporting it exists—such as the client's acknowledged receipt of a trade confirmation—and, when non-disputed objective evidence is lacking, allows for the application of a constructed reasonableness standard. Advocis believes that such a standard could, when appropriate, take into consideration the complainant individual's own circumstances. Under this standard, Advocis believes that complainants are protected by the "reasonably ought to have know" standard, as in a case of fraud, where a client is not and cannot be aware of the activity because it was hidden from him or her, and its impact only manifests itself to the client through the passage of time.

   Advocis would like the CSA, if the Proposed Amendments are adopted, to issue guidance on whether the "discoverability principle" will be applied to regulatory interpretation of the limitation period, and on whether the "reasonably ought to have known" clause is a straightforward construction of the reasonable person standard, or if it will take into account the particular circumstances of the individual client's situation, including the historical nature of the client's relationship with the registrant;

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2. Advocis also recommends that OBSI's current terms of reference, which require a complaint to be made to the ombudsman within 180 days of the client's notice of the firm's rejection of their complaint or recommended resolution of the complaint, be extended to National Instrument 31-103 and its Companion Policy. This would ensure a uniformity of application across the securities sector as a whole, thereby "levelling the playing field" and enhancing certainty for all participants to OBSI-handled complaints.

Advocis is pleased that the Proposed Amendments mandate that registrants outside of the MFDA and IIROC must use OBSI as their DRS. However, Advocis would like to take this opportunity to submit that a full and fair system of consumer redress for investors and registrants is one that eschews a blanket levy on all registrants in favour of a fee-for-service model, and includes meaningful representation from the non-SRO registrants which the Proposed Amendments seek to "bring into the fold,"— i.e., exempt market dealers, portfolio managers, and the scholarship plan dealers.

PART I: BACKGROUND AND CONTEXT

a). Advocis: Who we are

Advocis, The Financial Advisors Association of Canada, is the oldest and largest voluntary professional membership association of financial advisors in Canada. Through its predecessor associations, Advocis proudly represents over a century of uninterrupted history of serving Canadian financial advisors, their clients, and the nation. With over 11,000 members organized in 40 chapters across Canada, Advocis serves the financial interests of millions of Canadians.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to an established professional *Code of Conduct*, uphold standards of best practice, participate in ongoing continuing education programs, maintain appropriate levels of professional liability insurance, and put their clients' interests first.

Across Canada, no organization's members spend more time working one-on-one on financial matters with individual Canadians than us. Advocis advisors are committed to educating clients about those financial issues which are directly relevant to them, their families and their future.

Since the members of the Canadian Securities Administrators (CSA) constitute a key regulatory body for securities intermediaries and dealers, and since in many provinces

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they oversee various powers delegated to the recognized self-regulatory organizations, the CSA's priorities and activities directly affect Advocis members. Our following comments on the CSA's proposals reflect the priorities of Advocis' members and their clients.

b). Overview of the current situation

On November 15, 2012, the CSA published for comment Proposed Amendments to National Instrument 31-103 *Registrant Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and to the related Companion Policy, which call for the adoption of a mandatory dispute resolution procedure through the Ombudsman for Banking Services and Investments (OBSI).

In specific, the Proposed Amendments would require all registered dealers and registered advisers, outside of Québec, to use the OBSI as the common dispute resolution service (DRS) for the discharge of their obligations under section 13.16 *Dispute Resolution Services* of National Instrument 31-103, in regard to a client complaint. For the purposes of the Proposed Amendment, a complaint is defined as one that is raised within six years of the date when the client knew or reasonably ought to have known of the trading or advising activity that it relates to, and involves a claim of no more than $350,000.

The CSA's position is that a common DRS for the securities industry is in the best interest of both investors and firms and, further, that OBSI is the appropriate DSR provider. Currently, OBSI handles dispute resolution for about 600 investment dealers who are part of the industry's two major self-regulatory organizations (SROs), the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA). However, OBSI reports that over 500 non-SRO advisers and dealers currently do not voluntarily utilize it as a DRS.[1] Thus, if the CSA's proposal is adopted, the number of firms participating in OBSI would almost double, to over 1,100 participant firms.

At present, the Canadian investor has a limited set of options through which to seek restitution. Apart from Québec (where an investor has recourse to the free mediation process of the Autorité des marchés financiers [AMF] which is purely voluntary both for the firm and complainant[2]), the main options he or she may pursue are:

[1] Grant Robertson, "Securities regulators propose bank ombudsman resolve disputes," *The Globe and Mail*, November 15, 2012. At: http://m.theglobeandmail.com/report-on-business/securities-regulators-propose-bank-ombudsman-resolve-disputes/article5333382/?service=mobile.

[2] In Québec the mediation regime administered by the Autorité des marchés financiers or AMF would continue to apply. As for banking, while Canada's banks must use OBSI to oversee complaints about their investment dealer arms, they may choose their own dispute resolution firm for those retail banking issues which cannot be resolved directly with the financial institutions themselves. However, Canada's two largest consumer banks, the Royal Bank of Canada and the Toronto-Dominion Bank, recently pulled out of OBSI after disagreements over costs and delays

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- civil litigation, which is an uncertain, expensive and time-intensive process;
- an potentially expensive arbitration process, if the registrant firm is IIROC-regulated and the investor desires a binding decision; or
- OBSI's free, non-binding dispute resolution service, provided that the registrant firm is either a member of the MFDA or IIROC and so is required to fully cooperate and participate with OBSI, or has otherwise volunteered to use OBSI's services.

c). The CSA's proposed DRS scheme pursuant to section 13.16 of National Policy 31-103

Advocis supports the DRS scheme of the Proposed Amendments (as set out below), which is a slightly modified version of the current MFDA and IIROC DRS scheme.

(i). The consumer's complaint

A complaint is defined as one that relates to the trading or advising activity of a registrant, raised within six years of the date when the client knew or reasonably ought to have known of the trading or advising activity, and involves a maximum claim of $350,000. Advocis has some concerns regarding the definition—in particular, the maximum claim amount—which will be discussed below.

(ii). The registrant's internal review

All client complaints are expected to be addressed under a registered firm's internal complaint-handling policy. In circumstances where the firm's complaint-handling policy does not produce an outcome satisfactory to the client, he or she may then use an independent dispute resolution or mediation service.

(iii). When OBSI's DRS becomes available

Registered firms would be required to make the services of OBSI available to their clients for any complaint that falls within OBSI's mandate, as set out in OBSI's terms of reference. If OBSI is willing and able to consider the complaint, the firm is not required to make any other dispute resolution or mediation service available to the client. If OBSI is not willing or able to consider the complaint, the registered firm must instead make available to the client the services of another dispute resolution or mediation service provider of the firm's choice.

Advocis is pleased that the CSA has retained the requirement that if OBSI is unwilling or unable to consider the complaint, then the services of another dispute resolution or mediation service must be made available *at no cost to the client* by the registrant, provided that the registrant's selected resolution service meets the CSA's standards for

associated with case resolution, and elected to use the services of a Toronto mediation firm for its consumer complaints.

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dispute resolvers. Advocis is also in agreement with the clarification that a registrant is only required to make available at its expense one dispute resolution or mediation service for each complaint.

(iv). Other options available to the consumer

A firm that has satisfied its obligations to a client under section 13.16 may, in its discretion, offer the client other options to attempt to resolve the complaint if it remains unresolved. Nothing in section 13.16 affects a client's right to choose to seek other recourse, including through the courts.

As well, if the registrant is an IIROC-regulated firm, and if the complainant or the registrant decide not to accept OBSI's recommendation, either party may elect to use the IIROC arbitration program or take legal action. However, IIROC's arbitration process can prove costly, since the arbitration fees (administrative fees, disbursements of the arbitration organization and the arbitrator's fees) are divided equally between the parties, unless the arbitrator chooses to reallocate those amounts.

Lastly, Advocis is also pleased that the Proposed Amendments are subject to OBSI's authority to receive and investigate a complaint in other circumstances if the ombudsman considers it fair to do so.

PART TWO: SHOULD THE CSA ADOPT OBSI AS A MANDATORY DISPUTE RESOLUTION SERVICE?

Advocis strongly urges the CSA should adopt the OBSI model for non-IIROC or non-MFDA advisors and dealers. A single point of entry to a DRS is in the best interests of both registrants and complainants. We believe that the anticipated impact and expected benefits of the Proposed Amendments provide sufficient justification for the adoption by the CSA of OBSI as the mandatory DRS. The impact and benefits of such an adoption are reviewed below. Nonetheless, Advocis would prefer to see the publication of a proper cost-benefit analysis of implementing the Proposed Amendments before any further steps are taken. The cost-benefit analysis that appears in the relevant CSA Notice is simply too vague to be of use. Advocis is curious, if not yet concerned, about the effect on other DRS providers of OBSI receiving mandatory DRS status.

a). The case for OBSI

The case that OBSI is the appropriate choice to be the mandatory DRS provider for all registered dealers and advisors is based primarily on the following organizational characteristics of OBSI:

- organizational form: OBSI is an independent and not-for-profit organization, free from the perception that registered firms might

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influence its recommendations (as can be the case with for-profit dispute resolution service providers);

- experience: OBSI has extensive experience in this capacity over the past decade, has worked with all manner of registrant individuals and firms, and has effectively resolved thousands of investor complaints; and

- standards: OBSI adheres to standards established by the Joint Forum of Financial Market Regulators, which require that OBSI be subject to independent third party evaluations on a regular basis.

Advocis is in large part in agreement with the forgoing elements, which have been advanced as reasons providing justification for the selection of OBSI and the CSA's mandatory DRS provider.

b). Primary impact: Capturing portfolio managers and exempt market dealers

Currently firms that do not yet participate in OBSI have the option to refer disputes to arbitrators, many of which charge for their services. However, as noted above, the Proposed Amendments would result in a slightly modified version of the current MFDA and IIROC DRS scheme and have the following impact on actors in the system:

(i). Impact on advisors and dealers

Members of the MFDA and IIROC won't be captured by the CSA's proposals, as they are already mandated to use OBSI.

Therefore, the actors who would be most directly affected by the Proposed Amendments are dealers and advisors who don't belong to the industry's major SROS, namely IIROC and the MFDA, both of which already require their members to use OBSI. These registered dealers and advisors may be described as non-SRO registrants and are directly regulated by provincial securities commissions.

It should be noted that many registrants firms operating outside the ambit of IIROC or the MFDA, chiefly portfolio managers, exempt market dealers and scholarship plan dealers, voluntarily use OBSI for DRS. However, there has been at times significance consumer-focused compliance problems associated with some non-SRO registrant advisers and dealers, including the asset-backed commercial paper debacle, and ongoing issues with certain scholarship plan dealers. Mandating that these registrants operate in the same redress system as member firms of IIROC and the MFDA is a positive improvement for Canadian financial consumers.

(ii). Impact on consumers

From the perspective of the retail investor, Advocis believes that an "equal playing field" is desirable. Despite significant differences between the typical clients of a non-SRO registered exempt market dealer when compared to a registered mutual fund dealer, we

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believe that issues of fairness dictate that clients of both dealers should be permitted to access OBSI. The Proposed Amendments would make OBSI the mandatory DRS for independent resolution of consumer complaints between the non-SRO dealers and advisors and their clients.

Adovics is in strong agreement with the statement of Bill Rice, the Chair of the CSA and Chair and CEO of the Alberta Securities Commission, that "[m]andating all registered dealers and advisors to offer dispute resolution services through OBSI will establish a level playing field in terms of expectations and costs, and will provide investors with a common, independent and consistent service standard."[3] With regard to consumers, it is important to note that other forms of redress would be unaffected: the Proposed Amendments do not restrict a client's ability to take a complaint to a dispute resolution service of their own choosing at their own expense, or to bring an action in court.

c). The benefits of the CSA's Proposed Amendments

The main benefit of the CSA proposals is that investors will benefit from common, non-disputed standards for securities industry dispute resolution, and advisors and dealers will benefit from the removal of uncertainty in the DRS process. More specifically, the following three areas would be significantly enhanced:

- public trust: elimination of perceptions that competition for business from registered firms might influence the recommendations of for-profit dispute resolution service providers and a concomitant fostering of public and advisor/dealer trust in the independence of OBSI's dispute resolution services;

- fairness and consistency in client expectations and outcomes: all complaints would be handled according to uniform standards and processes, with a resulting reduction in the widely differing (if not erratic) decisions made on costs and awards; and

- procedural transparency: there will be reduction in the levels of confusion on the faced by members of the public, as well as by dealers and advisors, as OBSI replaces the current and often opaque dispute resolution mechanisms. In particular, investor confusion as to who to contact when complaints are not resolved at the registrant level should all but disappear.

d) Some issues with the OBSI recommendation

Advocis would ask the CSA to consider whether the $350,000 ceiling on client complaints is appropriate, and whether clients unfamiliar with the consumer redress process may need assistance in understanding their rights with regard to blended securities and insurance issues.

[3] James Langton, "CSA proposes making OBSI dispute resolution mandatory," Investment Executive, November 15, 2012.

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(i). Is the $350,000 ceiling on client complaints appropriate?

The Proposed Amendments would require that OBSI act as *the* service provider in respect of adviser-dealer DRS obligations. However, the limitation on claims being seeking no more than $350,000 is problematic.

As noted earlier, in cases when OBSI declines to provide its services if it is "unwilling or unable to consider the complaint," the registrant firm is still obligated to make another DRS provider available to the client But by making OBSI the mandatory DRS, there is likely to be a decline in the availability and expertise of other DRS providers. Those service providers who remain in the marketplace will suffer an erosion of their client lists and hence their experience and expertise. The paradoxical result could be that individuals seeking redress in amounts greater than $350,000 ceiling receive less competent dispute resolution services than those complainants below the ceiling. Accordingly, Advocis would suggest that the CSA immediately adjust the ceiling to the maximum level of IIROC arbitration awards, which is $500,000 (exclusive of interest), and ensure that this ceiling is subject to periodical review, so that it is appropriately adjusted for inflation. In addition, Advocis suggests the CSA consider eliminating the ceiling altogether.

(ii). Blended accounts: dealing with insurance products

Advocis believes that there is an issue of consumer protection relating to blended accounts containing both securities such as mutual funds and insurance-based asset accumulation vehicles such as segregated funds. The Canadian Council of Insurance Regulators (CCIR) regulate individual variable insurance contracts (IVICs) and the segregated funds which determine the value of an IVIC. An unsophisticated complainant may not realize that OBSI does not consider disputes involving insurance products. For cases (admittedly rare) in which an investor is concurrently seeking ombudsman service for both segregated funds and mutual funds sold by the same registrant, Advocis would submit that OBSI and the national OmbudService for Life & Health Insurance (OLHI) have an established protocol for assisting the complainant in dealing with both any OBSI and the OLHI processes. Ensuring that the complainant understand the differences between OBSI and the OLHI and their procedures seems an appropriate ombudsman service.

PART THREE: THE CSA'S PROPOSED LIMITATION PERIODS

a.) The time limit on complaints

In addition to the general issue on whether it should adopt OBSI as a mandatory DRS, the CSA has also sought comment on two specific issues relating to notice and limitation periods:

1. *Would the time limit on complaints be more appropriate if it was counted from the time when the trading or advising activity that it*

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relates to occurred, rather than from the time when the client knew or reasonably ought to have known of the trading or advising activity?

i). Advocis' recommendation: The limitation period starts when the client knew or reasonably ought to have known of the trading or advising event

Advocis recommends that the limitation period on complaints commence from the time when the client knew or reasonably ought to have known of the trading or advising activity.

In the cases of disputed trades, most registrants are obligated after every trade or purchase of a security to provide the investor with a confirmation document which details the transaction. Such confirmations are delivered daily. The ongoing generation of this sort of objective evidence means most registrants and complainants will be certain of the date when the trading or advising activity occurred. However, when indisputable objective evidence is lacking, the proposed standard allows for the application of a reasonableness standard. In specific, Advocis would suggest that complainants are protected by the "reasonably ought to have know" standard, as in a case of mis-selling or fraud, where a client is not and cannot be aware of the activity because it was hidden from him or her, and its impact only manifests itself to the client through the passage of time. In such cases the activity to be detected is the impugned behaviour—i.e., the limitation period starts not with the client's awareness of the advising activity *per se*, but when the client knew or ought reasonably to have known of the impugned behaviour of the advisor.

Advocis would like guidance from the CSA, if the Proposed Amendments are adopted, if this "reasonably ought to have known" standard will include consideration of complainant individual's own circumstances. More specifically, Advocis would like the CSA to issue guidance on whether the "discoverability principle" will be applied to the limitation period, and on whether the "reasonably ought to have known" clause is a straightforward construction of a "reasonable person" standard, or whether it must take into account, to some degree, the particular circumstances of the individual client's situation, including the historical nature of the client's relationship with the registrant. Advocis would argue that the discoverability principle does not apply to the limitation period for DRS proceedings conducted through OBSI pursuant to the Proposed Amendments.

(ii). Should the limitation period commence when the trading or advising activity *actually* occurred?

Advocis sees several problems in commencing the time limit on complaints from time when the trading or advising activity actually occurred. We recognize that establishing an objective standard which begins counting the limitation period from the time the trading or advising activity occurred as *a matter of fact* would minimize debate and eliminate confusion for both the individual complainant and the registrant. But such a standard could be unfair to certain vulnerable individual investors—particularly those

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with a high degree of dependency on their advisors—for example, in the case of a client whose adviser judges that the client needs to be "walked through" an agreed-upon activity after its completion, to ensure the client's full understanding of the outcome of the activity on both *pre* and *post hoc* bases.

In many cases, the standard which starts the clock at the time the client knew of the trading or advising activity will be nearly identical to the standard that starts the clock at the time the trading or advising activity occurred. Mutual fund investors, for example, receive a detailed trade confirmation after each transaction. The client's receipt of such a document lets both registrants and potential complainants be reasonably certain of the date when the complainant knew or reasonably ought to have known when the trading or advising activity occurred. However, in other cases, such as discretionary accounts, there can be a significant gap between when the trading activity occurred and when the registered adviser or dealer reports the activity to the client. In such cases, the standard of when the client knew or reasonably ought to have known of the trading activity is certainly fairer to the consumer.

(iii). Should the limitation period commence when the *harm* is discovered by the complainant?

Some industry experts have in the past suggested that the appropriate standard is one which "starts the clock" on the limitation period from the point when the client became aware of having suffered a *harm* arising from the trading or advising activity itself. Such a standard, in the absence of objective proof of when the complainant became aware of the harm, then operates on the basis of trying to construct the subjective awareness on the part of the complainant of when the harm was detected in order to start the clock. This is problematic. By relying on such a client-focused standard—on when the complainant became aware of the harm occurring, or "reasonably ought to have become aware"—registrants would as a matter of daily business practice face ongoing exposure for alleged misbehaviours of which they are wholly unaware. Such a standard could effectively enable complainants to start the clock years or even decades after the impugned trading or advising activity.

Yet advisers move on to other firms or retire, records believed to be safely stored turn out to be lost (impeding the ability to arrive at accurate calculations of compensation), books of businesses are passed on, professional liability insurance is renegotiated, witnesses move or die and become unavailable for interviews, *et cetera*. The passage of time jeopardizes the ability to arrive at a full understanding of the facts and a fair and just resolution. Registrant firms are entitled to a degree of certainty with regard to the limitation periods on client files. Surely the six-year limitation period proposed by OBSI for after the client knew or ought to have known of the impugned activity is sufficient.

The principles of natural justice require procedural fairness be afforded to all parties in a dispute. Complainants must be encouraged to initiate proceedings within a clearly understood limitation period. In contrast, the absence of a firm limitation period would

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perversely commit registrants to the indefinite retention and maintenance of records, even as the ability to locate and access reliable documentary evidence, as well as conduct witness interviews, becomes more and more difficult.

It should be noted that the standard recommended by Advocis—of starting the limitation period from when the client "knew or reasonably ought to have known"—potentially could include a wide array of subjective elements particular to the individual client at issue. Indeed, the phrase "or reasonably ought to have known" could include examination of the nature of the client's relationship with the registrant, the degree of reliance the client placed on the registrant, as well as the client's investment acumen in general and ability to understand account statements and identify suitability issues in particular. Age and issues of cognitive decline may also inform such a standard. If such elements are to be considered by OBSI, the need for a standard based on subjective discovery of the harm arising from the impugned trading or advising activity is further undermined.

(iv). Should there be an exemption from the standard for certain vulnerable groups?

The legal literature on limitation periods is vast and need not be canvassed here. However, Advocis would like to caution OBSI from any consideration of carving out a categorical exemption from the limitation period. Such exemptions are typically based on the complainant belonging to a group characterized by vulnerability. While the elderly and financially unsophisticated account for a large portion of the group of vulnerable investors who seek redress from OBSI, it does not seem to Advocis that creating, for example, a special category exempting persons over 65 years of age from the standard limitation period is workable or fair. It simply introduces a somewhat arbitrary "bright line" standard with the attendant problems such a standard brings. To grant a longer extension period to someone who is 66 years old and deny it to someone seeking the same form of redress for the same sort of problem who is 64 years of age would strike investors as capricious. We believe that each case should be reviewed by OBSI on its own merit; in the absence of clear evidence that the client did in *fact* know of the harm arising from the trading or advising activity, the subjective elements in the alternative standard—"reasonably ought to have know of the harm arising from the trading or advising activity—should ensure that a full review of the individual's particular circumstances will be conducted.

(v). Should OBSI's limitation period mirror those of provincial jurisdictions?

Finally, we note that in Ontario the statutory limitation period for civil litigation has been reduced to two years, while many other provinces still retain the six-year limitation period, which OBSI contemplates in the Proposed Amendments. Regardless of the policy motives behind Ontario's decision to reduce the long-used six year period to two years, Advocis believes that an investor's right of redress under OBSI should in no way be related to a province's statutory limitation period. Notions of basic fairness dictate that

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all persons bringing a complaint to OBSI should be entitled to the same limitation period, regardless of their province of residence.

b.) The time limit on bringing complaints to OBSI

The second issue on which the CSA sought specific comment is as follows:

> 2. *OBSI's current terms of reference require a complaint to be made to the ombudsman within 180 days of the client's notice of the firm's rejection of their complaint or recommended 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?*

(i). Advocis' recommendation: extend OBSI's 180 days period to National Instrument 31-103

Advocis recommends that OBSI's current terms of reference, which require a complaint to be made to the ombudsman within 180 days of the client's notice of the firm's rejection of their complaint or recommended resolution of the complaint, be extended to National Instrument 31-103. This would ensure a uniformity of application across the securities sector as a whole, thereby "levelling the playing field" and enhancing certainty. We believe that from the perspectives of both the registrant and the complainant, 180 days is a suitable period for the client to review and if necessary escalate the complaint to OBSI.

(ii). Enhancing consumer awareness of limitation periods

To ensure commonality of standards across as much of the industry as possible, Advocis would suggest that the CSA amend National Instrument 31-103 to include the complaint handling standards introduced by the MFDA and IIROC. These requirements mandate that the MFDA and IIROC require their members to inform their clients of their ability to make a complaint to OBSI, provided the complaint meets the necessary conditions, upon the client opening an account and upon the client filing a written complaint with the SRO.

Advocis would also emphasize that registrants should ensure that clients are provided with documentation identifying and explaining the various notice and limitation periods and are instructed in how to access the forms required to bring a complaint to OBSI. It is crucial that consumers are made aware of the various options available to them for complaint handling. Of particular importance are: (1) the 90-day period that a registrant firm is permitted before issuing its response to the client's written complaint; (2) the 180-day period that complainants are allowed in which to take their complaint to OBSI; and (3) the limitation period in the relevant province on starting civil litigation. To this

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end, Advocis suggests that the CSA create a model form containing all the necessary information about OBSI DRS and require registrants to distribute its contents to clients.

PART FOUR: ADDITIONAL COMMENTS ON THE CSA'S PROPOSED AMENDMENTS

Advocis wishes to comment on several additional issues connected to the use of OBSI as a DRS, given that both IIROC and the MFDA have stated that they are also re-considering their oversight role, and are working with OBSI to ensure that it will have the capacity to provide effective services for an expanded base of registered individuals and firms.

a). Revisiting the fee model

The CSA's Proposed Amendments do not change the requirement that registered firms must pay for dispute resolution services. Under the current funding model, all participating firms pay a levy to OBSI based on their size or volume of business. Advocis understands that the CSA has been working with OBSI to develop a fee model that will be fair to all registrants required to use OBSI's services for dispute resolution.

Advocis would suggest that the CSA consider dropping the levy based on size of assets in favour of a levy based on the services provided—in effect, a fee-for-service model. This would reward those registrants who are able to resolved disputes with their clients in a manner satisfactory to the investor. This model also would be in the consumer interest. At present, the regulatory and compliance costs borne by mutual funds are disproportionately large in comparison to many other investment vehicles. By moving to a fee-for-service model, observant and compliant MFDA members would face a reduced OBSI fee, and, in theory at least, be able to pass the savings on to the consumer.

b.) Improving oversight of OBSI

OBSI currently has an independent board whose composition is meant, in part, to reflect the concerns and needs of investors. To ensure that all parties—including those registrants and complainants who rely on OBSI as a DRS—have sufficient confidence in OBSI's governance and that OBSI's findings and recommendations are fully informed and fair, the CSA should study the feasibility of developing an amended framework for the oversight of OBSI.

In Advocis' view, such a framework should require, among other things, certain board requirements. One idea would be to mandate that a predetermined number of board directors be appointed from lists proposed by membership associations and SROs, to help ensure that the OSBI board has representation from individuals with comprehensive industry knowledge, including from the non-SRO registrants who the Proposed Amendments seek to "bring into the fold,"—i.e., the exempt market dealer, the portfolio manager, and the scholarship plan dealer. Such representation should help convince all

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stakeholders that OBSI's dispute resolution system is a fair, effective and efficient one for everyone.

Looking ahead

Advocis would be pleased to assist the CSA in furthering its review of the use of OBSI as a mandatory DRS system. To discuss any of the issues that we have raised, please contact the undersigned, or email Ed Skwarek at eskwarek@advocis.ca.

Sincerely,

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