

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorite des marches financiers
New Brunswick Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

February 15, 2013

RE: Request for Comments on Proposed Amendments to National Instrument 31-103 ("NI 31-103") Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations – Dispute Resolution Service

Dear Sirs/Madams,

Thank you for your invitation to provide comments with respect to proposed amendments to NI 31-103 and specifically, the proposal to mandate use of the Ombudsman for Banking Services and Investments ("OBSI") as a dispute resolution service.

The following are our comments with respect to the proposal:

- **Time limit for the filing of a complaint with OBSI.** We support the establishment of a time limit for the filing of a complaint with the OBSI where the time period starts from the day that the related trade is executed. This approach seems to be more practical and objective than to offer a time period that starts at a point in time where the client *knew or reasonably ought to have known* of the trading or advising activity.
- **Inclusion of time limit for filing a complaint with OBSI within NI 31-103.** We support inclusion of a 180-day limitation period for the client to lodge a complaint with the OBSI, following written notice to the client of the firm's rejection of their complaint or recommended resolution of the complaint. The OBSI would continue to have authority to receive and investigate a complaint in other circumstances if the OBSI considers it fair to do so.

- **Equal playing field for market participants.** The proposed amendments would require all securities registrants to submit to the authority of the OBSI as a dispute resolution service of last resort. There continues to be concern that while banks and securities registrants occupy a similar consumer space in terms of product/service offerings, banks may choose an alternate dispute resolution service, whereas securities registrants will no longer have this choice under the proposal. Two banks have chosen to withdraw from the OBSI and seek an alternative dispute resolution service. Should we now mandate use of the OBSI at a time where two of the big five banks have chosen a different dispute resolution provider? There is also a concern that by mandating that registrants support a single entity that this may contribute to a less competitive atmosphere and, specifically, higher fees. We recommend the CSA consider a number of approved dispute resolution service providers to provide registrants with a choice so we are on an equal playing field with the banks with respect to this process. Is the goal the selection of a single entity through which disputes are resolved or the resolution of disputes through an entity that meets the requirements of the CSA? Might other approved providers include such entities as the ADR Institute of Canada and/or ADR Chambers Canada?
- **Fair funding model.** We support the CSA's initiative to develop a fee model that will be fair to all registrants who would be required to use OBSI's service for dispute resolution. We favour a model that takes into account the number/complexity of complaints lodged through the OBSI against an entity (or entity class). Entities with fewer complaints should have a fee rate that is lower than those with more complaints based on an objective measure (e.g., size of business/volumes). This funding approach should also further encourage firms to resolve a client complaint before it is escalated to the OBSI. Irrespective of the fee model selected, the amount charged to an entity should reflect the services used arising from complaints lodged against the entity. This approach is consistent with how insurance companies and some government-mandated insurance programs operate.
- **Loss calculation methodology.** We have concern with respect to the means of loss calculation methodology chosen by the OBSI. In calculating a loss, the OBSI utilizes a fee assumption that deducts notional fees in respect of a notional portfolio at the end of the loss period. However, this fee assumption tends to overstate losses by allowing the notional portfolio to grow during the loss period without accounting for fees charged at regular intervals. This fee assumption results in the growth of the notional portfolio being compounded and generally overstates the loss. In reality, fees are charged at regular intervals and in our experience the OBSI's fee assumption sometimes fails to account for this, resulting in an overstated loss calculation.
- **Evidence testing and discount of loss findings.** We recommend an approach to the calculation of losses that includes the introduction of a discount factor that correlates to the strength/validity of evidence. For example, where there is a recommendation to compensate the client, the OBSI would then review the case again to assess credibility issues and the appropriate weight that ought to be given to evidence upon which the OBSI has relied to reach its conclusions. Where the evidence appears strong, the discount rate applied to the proposed settlement amount would be low. Conversely, where the evidence obtained appears weak; the discount factor would be higher. The inclusion of a discount factor in the calculation of compensation to the aggrieved party is consistent with the approach taken by mediators that assess claims without the benefit of a dispute resolution method that permits adverse parties to test the evidence of other parties. We support this approach, irrespective of the choice of alternate dispute resolution provider.

We thank you for the opportunity to provide the above comments. We are happy to discuss these comments with you, if you wish. You may contact the undersigned at 416-681-1731.

Thank you again for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheila Murray".

Sheila Murray
Executive Vice-President, General Counsel and Secretary
CI Financial Corp.