



Susan Copland, B.Comm, LLB.  
Director

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto ON M5H 3S8  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorite de marches financiers  
800 square Victoria, 22 etage  
CP 246 tour del la Bourse  
Montreal, Quebec H4Z 1G3  
[Consultation-en-cours@lautorite.gc.ca](mailto:Consultation-en-cours@lautorite.gc.ca)

Dear Sir/Madam:

**Re: *Proposed Amendments to NI 31-103 Re: Dispute Resolution Service (the “Proposed Amendments”)***

Thank you for the opportunity to comment on the above noted Proposed Amendments. As a general concept, the Association supports the concept of requiring all registered dealers and advisers outside of Quebec to utilize one common external dispute resolution provider for client disputes.

Having one external provider handle client disputes for the financial services industry would help to ensure that clients of financial services firms are treated fairly and consistently and provide a measure of predictability and consistency in outcomes, regardless of the channel through which clients obtained these services. This consistency would result in increased investor confidence. The establishment of one dispute resolution body also ensures that financial service firms are subject to the similar obligations and oversight in respect of their dealings with clients when a problem arises.

However, our support for the compulsory membership requirement to a specific dispute resolution provider is predicated on the provider having strong accountability, transparency, responsiveness to stakeholder concerns, and other safeguards that ensure that it is accountable to, and retains the confidence of all stakeholders. This applies not only to the proposed expansion of OBSI's jurisdiction, but to the current mandatory membership in OBSI by IIROC members.

The IIAC continues to work with OBSI to articulate and attempt to resolve on-going concerns relating to OBSI's operations, costs, and loss calculation mechanisms. Although our continuing discussions have resulted in an increase in transparency and improvements in some areas of concern, a number of outstanding issues remain. We hope that the outstanding concerns can be addressed through further discussion with OBSI and the relevant industry regulators to ensure all stakeholders have confidence in this important service.

### **Specific Questions for Comment**

In respect of the specific questions for comment as set out in the Notice:

1. Would the time limit on complaints be more appropriate if it were counted from the time when 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?

*The time limit on complaints should more closely track the statute of limitations in most provinces, which is two years. We believe it should include the proviso that it should be **the earlier of** when the client knew or reasonably ought to have known of the trading or advising activity.*

2. 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 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?

*The 180 day period is appropriate and should be included in NI 31-103. However, OBSI should not have discretion to waive this period except in very rare circumstances. Such circumstances should be clearly articulated in the regulation. This is particularly important in light of the tolling agreement which members sign and which suspends the limitation periods while OBSI investigates the complaint.*

### **Other Comments on the Proposed Amendments**

In addition to the questions posed above, we have the following comments:

#### **OBSI's Funding Formula**

The Proposed Amendments, if implemented will greatly expand OBSI's stakeholder base. We believe that it is critical that an appropriate funding and fee model be developed that accommodates the new users and is fair to current members. The funding model should reflect the use of OBSI resources by the category of registrant (ie: IIROC registrants vs. Exempt Market Dealers vs. Mutual Fund Dealers).

It should also be designed to ensure that particular groups of registrants pay for the resources they are using, and are not subsidizing or being subsidized by other registrant categories. In particular, IIROC members are concerned that certain new registrant groups, which are not subject to similar stringent regulation or vigorous IIROC oversight, may generate a proportionally higher level of client complaints, disproportionately increasing OBSI's budget and the fees levied on current members.

### **Applicable Clients**

We seek confirmation that the scope of OBSI's mandate be confined to retail clients, and not be expanded to include institutional clients.

### **OBSI Resources**

OBSI must have appropriate staffing and resources in place to deal with any expansion of its current mandate. Stakeholders, and in particular current members, should not suffer undue delays, and the costs of any increased staffing should be allocated appropriately to reflect the types of firms generating the complaints. In our view, before this proposal can move forward OBSI must first satisfy the CSA and current members that it is appropriately resourced so that current members are in no way prejudiced by this proposal. Moreover, OBSI and the CSA must ensure that current members experience no undue disruptions as a result of any modifications OBSI would need to make to its staffing and processes to accommodate an expansion of its mandate.

### **Wording of the Proposed Amendments**

Amendments must be made to the current wording of the Proposed Amendments to remove section 2(4)(b), and related text in the CP, that state that if OBSI is not willing or able to consider a complaint, the registered firm must instead make the services of another dispute resolution or mediation service provider of the firm's choice available to the client.

This wording is confusing and suggests that registered dealers and advisers must make more than one external dispute resolution provider available to clients. In particular, it appears to require registered firms to offer clients another dispute resolution service for all complaints that are found to fall outside of OBSI's mandate. This could include complaints that are outside of the six year limitation period or the \$350,000 limit as prescribed in the Proposed Amendments, frivolous or vexatious complaints, or complaints related to pricing, risk management decisions, or otherwise outside of OBSI's mandate.

This is extremely confusing, burdensome and not consistent with current requirements for investment dealers, who are subject to IIROC complaint handling procedures. Where such procedures have been followed, and a complaint is found to fall outside OBSI's jurisdiction, the client has access to arbitration or civil litigation. The scope of OBSI's terms of reference was developed to address credible client complaints that are being pursued reasonably, and weed out those that are frivolous, vexatious or otherwise unreasonable. Requiring firms to be responsible for the costs of providing a forum to deal with complaints that are outside of OBSI's mandate does not advance investor protection and imposes an unreasonable burden on the industry.

Registered dealers and advisers should only be required to offer their clients one external dispute resolution service. Further, we question under what circumstances OBSI would be "unwilling to

consider” a complaint that falls within its mandate. If this relates to issues relating to workload, it should not be left to firms to provide additional capacity at their own expense. Requiring firms to provide alternative dispute resolution services for matters that the OBSI is “unwilling to consider” or complaints that fall outside of OBSI’s mandate is contrary to the stated objectives of the Proposed Amendments and creates confusion, uncertainty, possible inconsistencies and unnecessary and undue costs to the industry.

The existence of a single dispute resolution body for all registered dealers and advisers outside of Quebec would provide the most appropriate structure in terms of efficiency, consistency and fairness for the investor and the industry. However, it is critical that this body is properly structured to properly serve and retain the confidence of all of its stakeholders.

We look forward to reviewing the proposal and providing our feedback

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland