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February 15, 2013

VIA E-MAIL

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
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

Attention:
The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

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
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Notice (the "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*: Dispute Resolution Service (collectively, the "Proposed Amendments")

We are writing in respect of the Request for Comment dated November 15, 2012 regarding the Proposed Amendments. We appreciate the opportunity to comment on these important matters.

Invesco Canada Ltd. is a wholly-owned subsidiary of Invesco, Ltd. Invesco is a leading independent global investment management company, dedicated to helping people worldwide build their financial security. As of January 31, 2013, Invesco and its operating subsidiaries had assets under management of approximately US$713 billion. Invesco operates in 20 countries in North America, Europe and Asia.

Invesco Canada is registered as an Investment Fund Manager, an Adviser and a Dealer, but not subject to the jurisdiction of any self-regulatory organizations. As such, we are directly impacted by the Proposed Amendments.

Invesco Canada supports the concept of a mandatory dispute resolution service provider; however, we are unable to support the Proposed Amendments because we do not believe that the Ombudsman for Banking Services and Investments ("OBSI") is an appropriate service provider. We make this argument for the following reasons, which are further detailed below will elaborate further in this letter:

1. The effect of the Proposed Amendments would be to ensure that almost all constituents served by OBSI (investors, banks, MFDA regulated dealers and IIROC regulated dealers) are represented on OBSI's board of directors and, therefore, can influence OBSI's policies, but excludes mutual fund managers from that benefit, which is inherently unfair;

2. The Proposed Amendments are virtually silent as to the costs of being an OBSI participant and leave the issue of fees to be agreed between OBSI and the CSA, without the ability of mutual fund managers to engage in that discussion; and

3. We lack confidence in the neutrality of OBSI.

Following our comments on these topics, we comment on the anticipated costs and benefits of the Proposed Amendments as well as the alternative considered to the Proposed Amendments. Finally, we address the specific issues for comment set forth in the Notice.

1. Board Representation

The Board of Directors of OBSI (the "OBSI Board") currently includes representation from investors, banks and dealers regulated by the MFDA and IIROC. It does not currently include representation from mutual fund managers. Historically, OBSI has rejected providing mutual fund managers representation on the OBSI Board, which one might presume relates to mutual fund managers' general reluctance to use OBSI to resolve disputes. The effect of the Proposed Amendments is for the Canadian Securities Administrators (the "CSA") to effectively side with OBSI in this dispute. While that is the CSA's prerogative, it is inherently unfair to mutual fund managers (and portfolio managers generally and dealers not regulated by MFDA or IIROC). We do not understand why the CSA would consider it to be appropriate for some constituents to be represented on the OBSI Board but not others. In our view, if the CSA is prepared to grant to OBSI the authority set forth in the Proposed Amendments, then it ought to be able negotiate these matters with OBSI (in the manner it would if OBSI's appointment were subject to a recognition order). By failing to do so, the CSA effectively has approved what we would view as a deficient corporate governance model.

While we recognize that banks and MFDA and IIROC-regulated dealers constitute part of the investment industry, we reject the notion that they adequately represent our interests in these matters. The simple fact is that while we are part of the same industry, our interests are often quite different. We would not expect that dealers would be satisfied with representation solely by mutual fund managers and, similarly, we are dissatisfied with the reverse prospect.

Over time, OBSI will have to negotiate fee structures, changes to its terms of references and other procedural items with the CSA and all of these changes will directly impact mutual fund managers. While one would expect mutual fund managers and other impacted constituents to be granted a right to comment, we believe such right is illusory and meaningless in this context as the CSA can simply ignore those comments and may be inclined to do so following a lengthy negotiation with the OBSI Board. Therefore, without providing mutual fund managers with representation on the OBSI Board, the Proposed Amendments are unacceptable.

The first place the lack of representation on the OBSI Board manifests itself is in regards to the issue of fees. The Notice states that the CSA has been working with OBSI to develop a fair fee model. However, as noted above, there are no mutual fund managers represented on the OBSI Board and, therefore, the interests of mutual fund managers will not be adequately represented in those discussions, which is particularly problematic since the OBSI Board has a clear and direct interest in minimizing the cost burden for investors, banks and MFDA and IIROC regulated dealers.

2. Cost Transparency

We believe that cost transparency is a significant issue that must be addressed in order for the Proposed Amendments to be fair and reasonable. Historically, OBSI's funding model has been based on asset-based fees. We note the following statistics from OBSI's 2011 Annual Report:

Sector	**Case Files Opened**	**Percentage of total**
Banking Services	397	49.5%
Investments – IIROC dealers	255	31.8%
Investments – MFDA dealers	130	16.2%
Investments – RESP dealers	17	2.1%
Investments – Other	3	0.4%
Total	802	

The "Investments-Other" category would include mutual fund managers. While the 0.4% of cases involving mutual fund managers is likely low due to the fact that most mutual fund managers do not attorn to OBSI's jurisdiction, we believe such number is largely accurate based on our own litigation and complaint history generally.

Our expectation is that if the Proposed Amendments are brought into force, OBSI's workload should not increase materially due to complaints made against mutual fund managers (we make no comment on EMDs, although we believe the same is true for portfolio managers) and would still represent less than 1% of OBSI's workload. In our case, virtually all litigation brought against us by investors follows a similar pattern: the investor

has lost money as a result of the fraudulent actions of a rogue broker or a rogue co-account holder and the fraud was perpetrated by redeeming mutual funds. In all cases, the dealer, the dealer representative and the mutual fund manager are sued. In all cases, the case against the mutual fund manager is dismissed, as it is well-established in case law that the independent mutual fund manager is not liable for the actions of a dealer. As such, if the applicable legal principles are applied when considering whether to open cases against mutual fund managers, OBSI's workload should barely increase. That is, if OBSI acted reasonably, knowing that at law mutual fund managers would have no liability in these cases, the case files against mutual fund managers would not be open. As such an asset-based fee, rather than an activity-based fee, is nonsensical. Notwithstanding the foregoing, we are concerned that the fee model imposed on mutual fund managers as a result of the Proposed Amendments will be asset-based, since such a model would be simple to calculate and administer. Given the amount of time and effort OBSI would be required to use for mutual fund managers, using this fee model would be unfair.

According to statistics compiled by IFIC, the mutual fund industry has assets under management of $850 billion. According to the MFDA, its members have assets under administration of $300 billion. We use the MFDA in this comparison solely due to availability of data but also because MFDA regulated firms can only sell mutual funds. An asset based fee would result, therefore, in mutual fund managers paying to OBSI, in the aggregate, three times the amount of fees that would be paid by MFDA members collectively, notwithstanding that the latter group constituted 16.2% of OBSI's open files and the former group would be expected to constitute approximately 1% of open files. Assets, therefore, are a very poor proxy for OBSI workload and leads to unfair results. For this reason, anything other than an activity-based fee is unacceptable.

3. Lack of Confidence in OBSI

As stated in the Notice, OBSI has been operating as a dispute resolution service for 10 years, covering the banking industry and the investment industry through MFDA and IIROC requirements. Participation in OBSI has also been voluntary for the mutual fund industry during that time. On occasion, Invesco Canada has participated in OBSI's dispute resolution.

Invesco Canada's experience with OBSI has not been positive. Above we outlined the typical fact situation in a complaint that we receive and our experiences with OBSI (with respect to complaints) followed that pattern. We explained the case law to OBSI in those cases and, regardless, OBSI still requested a compensatory payment. In response to our objections, OBSI acknowledged the legal correctness of our position yet felt it was necessary for the investor to "get something". Such a result is appalling and unjust. We understand that our experience is typical among mutual fund managers. It is for this reason, we believe, that mutual fund managers have been reluctant to become OBSI participants. We see nothing in the Proposed Amendments that remedies this situation.

We also see nothing from OBSI that gives us any hope that this situation would be remedied going forward. It is possible that OBSI could adopt a policy in this regard; however, without mutual fund manager board representation, we have zero confidence that such will occur.

It is a foundation of our legal system that those subject to its jurisdiction have confidence in the system. Those who participate in the legal system are well aware of

numerous cases where the courts are concerned about bringing "the administration of justice into disrepute". We believe the Proposed Amendments must be consistent with these ideals. When a dispute resolution service provider has accumulated a history consistent with the experience discussed above, mandating its use is inconsistent with those ideals.

This is not to say that the CSA is not authorized to mandate a service provider. We believe the CSA does have that authority. The issue in these circumstances is that it has chosen a provider with a history and it must, therefore, address that history.

We are also concerned that OBSI recently changed its approach and employs "name and shame" as a means to get registrants to act upon their recommendations. We are astonished by this development. OBSI is a quasi-judicial body but one that does not follow the normal rules of civil procedure and evidence. That may be appropriate for private arbitration, but once OBSI decides to take matters public, it has a much greater obligation to each of the parties involved to not only treat them fairly but to be seen to treat them fairly. The name and shame tactic really consists of OBSI drafting an extremely one-sided statement of allegations, calling them facts, and forcing the shamed to publicly defend themselves on a private matter. We do not believe that those who are subject to OBSI were asked for their views on this change of procedure nor has it been discussed publicly. For example, how did the OBSI Board vote on this matter? How did the industry participants on the Board vote? These are things that the CSA knows or ought to know and in bringing forth a proposal of this nature, this is information that the CSA ought to share.

4. Other issues

Anticipated Costs and Benefits

In many of our previous comment letters, we have commented on the deficiency of this section and how the true costs of regulation have not been considered. Clause 143.2(2)7 of the *Securities* Act (Ontario) requires that any notice of a rule be accompanied by "a description of the anticipated costs and benefits of the proposed rule." We note that failing to do so may impair the ability of the Ontario Securities Commission ("OSC") to pass the rule in question. We are concerned that, in respect of the Proposed Amendment, the description is so deficient as to lead a reasonable person to conclude that the legislative requirement has not been met.

Our concern in this regard is simple. The Notice states that "…the Proposed Amendments would only be to specify a dispute resolution service provider…" and, therefore, there are no costs. This is flawed reasoning. In choosing a service provider, one of the factors in that selection would be cost. By removing the ability for registrants to choose their service provider, the ability to control cost is similarly removed. By definition, therefore, there is a real and direct costs to registrants imposed as a result of the Proposed Amendments. We operate in a regulatory environment where we are generally prohibited from increasing price to offset additional costs (which is in sharp contrast to the banks and the dealers) and where we just faced a substantial increase in Capital Markets Participation Fees and Activity Fees in Ontario. We accept that new costs will be required, but we believe everyone has an interest in minimizing the costs. Handing a mandate to OBSI without so much as a "Request for Proposal" ("RFP") process displays an utter disregard for this issue. We find that disheartening.

Alternatives Considered

The Notice states that one of the alternatives considered to the Proposed Amendments was maintaining the requirement as originally written, with the registrant choosing the provider. We also note that one of the alternatives considered was specifying more than one service provider. We are unclear whether this means other specific providers were considered or whether the CSA considered whether to specify more than one without giving thought to who the other providers would be. We request that the CSA provide this information along with a summary of why other specific providers were rejected. Of prime interest in that regard is ADR Chambers. We note that two banks withdrew from participation in OBSI and instead chose ADR Chambers as its dispute resolution service provider. We think this ought to be of interest to the CSA and should be fully explored ahead of imposing OBSI on registrants.

5. Responses to Issues for Comment

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

We note that under Ontario law, there is a two year statutory limit to pursue claims of the type that the Proposed Amendments address. The Proposed Amendments define "complaint" as having a 6 year time frame. While OBSI only has the power to make recommendations and not enforceable judgments, we believe the overall effect of the Proposed Amendments combined with OBSI practices is to extend the statutory limit in Ontario on these types of actions from 2 years (subject to discoverability) to 6 years. (Given that "complaints" will generally, but not always, be discoverable as at the next client statement issued by a dealer, we would expect that the 2 year statutory limit is effectively 3 years in most cases.) With all due respect, extension of a statutory limit is beyond the scope of the *Securities Act* (Ontario) and, therefore, neither the OSC nor the CSA has the jurisdiction to make that change.

We note that alternative dispute resolution, when non-binding, is effectively mediation. To the extent mediation works, it works because both parties have something to lose, i.e. going to court to litigate a dispute carries with it a tremendous amount of uncertainty. However, if a complaint is brought after 3 years, the registrant has nothing to lose and, therefore, has no incentive to come to a resolution. In that case, assuming OBSI makes a recommendation for compensation, the registrant may decide to ignore the recommendation, in which case OBSI will likely resort to its "name and shame" tactic. If that tactic is effective, then OBSI effectively is a final decision-maker and the statutory limit on proceedings is effectively neutered. If the tactic is ineffective, then there is a great incentive on the registrant to reject the recommendation. As this occurs with greater frequency, the effect of the Proposed Amendments is to simply add on a cost burden with no benefit to anyone and may ultimately erode investor confidence further in the regulatory regime.

One might read the foregoing and decide that OBSI should be a final decision-maker. While we are not certain that such is within the jurisdiction of any members of the CSA, we note that such a "remedy" would further strengthen our statutory limit argument above.

In the event that you dismiss the foregoing comment, given that the six year period far exceeds the applicable statutory limits, we would suggest that the time begin to run either from (a) the date of the trading or advising activity or (b) the date of the first client account statement following the trading or advising activity. We believe that (b) is generally consistent with "when the client knew or reasonably ought to have known about the activity but such phrase is ambiguous and simply leads to unnecessary and expensive litigation. We believe that (a) above is more appropriate, however, given the purported extension of the limitation period as noted above. Since the activity is discoverable to the investor by virtue of the client account statement which, by definition, would certainly be issued within a year of the activity, if not within three months, and the statutory limit is 2 years, if the time to bring a complaint is 6 years from the date of the activity the investor has more than enough time. We do not understand in any way the logic of 6 years.

Issue 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?

As currently drafted, the Proposed Amendments give clients a longer period of time in which to bring a complaint than is currently permitted by statute. We believe a limit on this right is both necessary and appropriate. We believe that 180 days following rejection by the registrant is ample time for a client to consider going to OBSI. It is not remotely clear to us why more time would be necessary nor what purpose would be served by having this matter "hang over the head" of the registrant for an indeterminate period.

Conclusion

Invesco Canada believes that mandatory dispute resolution is a laudable and appropriate regulatory initiative. However, for the reasons set out above, we believe that the Proposed Amendments are inherently flawed. We would prefer that Section 13.16 of NI 31-103 not be amended or, alternatively, that a proper RFP process be undertaken to choose a mandatory service provider.

Thank you for providing us with the opportunity to comment on this important initiative. We would be pleased to discuss our comments further should you so desire.

Yours very truly,

Invesco Canada Ltd.

Eric Adelson
Senior Vice President and Head of Legal - Canada