



Via email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca); [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

February 15, 2013

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés 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

**Attention:**

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19th Floor, Box 55  
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité de marchés financiers  
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Montréal, Québec H4Z 1G3

Dear Sirs/Mesdames:

**Re: Proposed Amendments to NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Dispute Resolution Service**

We are writing in response to the Canadian Securities Administrators' (CSA) request for comment on proposed amendments to National Instrument *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Companion Policy 31-103CP) which would require all registered dealers and registered advisers outside of Québec to utilize the Ombudsman for Banking Services and Investments (OBSI) as the common dispute resolution service provider in respect of their obligations under section 13.16 [*dispute resolution service*]. This comment letter is being submitted on behalf of the following entities within RBC: RBC Dominion Securities Inc., RBC Direct Investing Inc., Royal Mutual Funds Inc., RBC Global Asset Management, Phillips Hager & North Investment Funds Ltd. and RBC PH&N Investment Counsel.

## General Comments

We support the CSA's stated goal of ensuring the independence of dispute resolution services and the application of consistent standards to the resolution of clients' complaints. However, we wish to express our concern that the CSA has not offered for consultation an alternative approach adopted by the federal government under the proposed *Approved External Complaints Bodies (Banks and Authorized Foreign Banks) Regulations* (the Proposed Federal Regulations). The Proposed Federal Regulations require banks to belong to their choice of federally-approved external complaints bodies which must meet criteria for maintaining approval in order to act as an external complaints body. At the minimum, we encourage the CSA to introduce similar criteria for investment matters in order to ensure the application of consistent standards.

The CSA maintain that OBSI is the appropriate choice to be the common dispute resolution service (DRS) because it is independent, not-for-profit, has extensive experience and is subject to independent third party evaluations on a regular basis. While we appreciate that OBSI is in the process of implementing a new governance framework and that the Board of Directors recently approved changes to OBSI's investment suitability and loss assessment process, we submit that a number of additional governance and other reforms are necessary to ensure that OBSI fulfills its mandate of acting as an independent and impartial arbiter of complaints.

We understand that OBSI intends to publish revised terms of reference for consultation in 2013. Given the CSA's proposal to mandate the use of OBSI, we expect that the CSA will play an active role in the development of the revised terms of reference. While the Proposed Federal Regulations would apply to banking matters, we believe it would be appropriate to consider implementing similar criteria for investment matters in order to ensure the application of consistent standards. As such, we recommend incorporating the following elements into OBSI's terms of reference:

1. Time limit to resolve complaints – According to the 2011 OBSI Annual Report, the average resolution time frame for a straightforward investment complaint was 238 days. For all other investment complaints, the average resolution time frame was 290 days. The Proposed Federal Regulations will require an approved DRS provider to resolve complaints by making a final recommendation to the parties within 120 days after the day on which it receives the complaint.
2. Time limit to notify a complainant that a complaint is outside of the DRS provider's terms of reference – The Proposed Federal Regulations would require an approved DRS provider to notify a person who has made a complaint within 30 days after the day on which it receives the complaint if all or part of the complaint is outside its terms of reference.
3. Consultation with participating firms – The Proposed Federal Regulations would require an approved DRS provider to consult at least once a year with its members and with persons who have made complaints since the previous consultation with respect to the discharge of its functions as an external complaints body.
4. Oversight – The Proposed Federal Regulations would require an approved DRS provider to submit an annual report to the Commissioner of the Financial Consumer Agency of Canada (FCAC) on the discharge of its obligations, including a summary of the results of any consultation with members. We believe that the CSA should assume an oversight role in respect of OBSI's governance and recommend that OBSI be required to submit a similar report to the CSA on an annual basis.
5. Ensuring impartiality – In the past, we have highlighted our concern that OBSI consistently fails to act as an independent and impartial arbiter of complaints. We note that the Proposed Federal Regulations would require an approved DRS provider to ensure that every person who acts on its behalf in connection with a complaint is impartial and independent of the parties to the complaint. The accompanying Regulatory Impact Analysis Statement confirms the Federal Government's view that an external complaints body is not an advocate.

6. Appeal Mechanism – We also urge OBSI to establish an appeal mechanism for Ombudsman decisions. As noted in the 2011 Independent Review Report of OBSI conducted by the Navigator Company, an appeal mechanism would “give confidence to industry and consumers that OBSI is prepared to have its decisions tested.” We also note that the FCAC’s proposed Application Guide for External Complaint Bodies would require an applicant to demonstrate how it will cooperate and resolve disputes with members.

### **Specific Comments**

1. Scope of complaints to be considered by OBSI

Proposed subsection 13.16(4)(a) would require a registered firm to make the dispute resolution services of OBSI available to a client if OBSI is willing and able to consider the complaint. OBSI’s terms of reference outlines the types of complaints that fall outside of its mandate, including complaints relating to the pricing of financial services by a participating firm and the commercial judgement of a participating firm. Thus the terms of reference clearly indicate what types of complaints OBSI would be unable to consider. We request clarification as to the complaint characteristics that would make OBSI unwilling to consider a particular complaint. For example, would it be due to a lack of sufficient resources, expertise or any other combination of factors? We recommend that OBSI incorporate this information in its terms of reference in order to enhance transparency and ensure consistency of OBSI decisions in this regard.

2. Requirement to provide the services of alternative DRS

Proposed subsection 13.16(4)(b) would require the registered firm to ensure that the services of another dispute resolution or mediation service are made available to the client if OBSI is unwilling or unable to consider a complaint. This requirement implies that a registered firm will need to retain the services of another DRS provider to address any complaints OBSI will not consider. Further, the proposed amendments to Companion Policy 31-103CP clarify that a firm is only required to make one dispute resolution service available at its expense for each complaint. Assuming that most DRS providers are likely to charge a retainer fee, this requirement will have significant implications for OBSI’s funding model. In light of this, we recommend revising the OBSI funding formula so that it is not levied based on the participating firms’ size or volume of business. We will expand on this recommendation below.

3. OBSI’s experience with institutional investors

OBSI’s current terms of reference define complainant to mean any small business or individual customer of a participating firm or its representative making a complaint to OBSI. On the basis of this definition it is unclear that OBSI has had any meaningful experience dealing with institutional investors and this may have implications for portfolio managers, some of whom deal exclusively with institutional investors. We also note that in light of the CSA’s proposal to limit registered firms’ obligations to complaints which claim no more than \$350,000, it appears that dispute resolution service for high-net worth investors is out of scope of the proposed amendments. Therefore we recommend that the CSA specifically exempt registered firms from the requirement to make OBSI’s dispute resolution services available for complaints made by institutional investors and other sophisticated clients.

4. OBSI funding model

We appreciate that the CSA is working with OBSI to develop a new fee model that will be fair to participating firms. We believe that the most equitable funding formula is one based on a pay-per-use system for a number of reasons. A pay-per-use system provides participating firms with incentive to resolve a complaint so that it is not referred to OBSI. Second, it avoids a system whereby

participating firms who have not been a subject of a complaint subsidize investigation and other costs for complaints to which they are not a party. We acknowledge the need for stable funding and that certain management and administration costs may need to be allocated to all sectors but we recommend that OBSI adopt a pay-per-use system to the greatest extent possible.

### **Issues for Comment Identified by the CSA**

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 believe that the time limit on complaints would be more appropriate if it was counted from the time when the trading or advising activity occurred. First, this is a less subjective standard than the alternative. Also, to the extent that a client receives a trade confirmation for each transaction and will receive account statements on a monthly or quarterly basis, the client will have received sufficient disclosure about the trading or advising activity. This approach will encourage investors to be more mindful of their responsibility to review trade confirmations and account statements in a timely manner and to monitor their investments so that any problems are identified and resolved quickly. Finally, given that NI 31-103 requires registered firms to keep records for 7 years from the date the record is created, a 6-year time limit on complaints beginning at the time of the trading or advising activity will ensure that relevant documents are available for an investigation.

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?*

We agree with the proposal to apply a 180-day limit.

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We appreciate the opportunity to provide comments on the proposed amendments and would be pleased to discuss our comments further with you.

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