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February 15, 2013

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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

c/o

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
jstevenson@osc.gov.on.ca

-and-

Me Anne-Marie Beaudoin
Secrétaire de l'Autorité des marchés financiers
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C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Ladies and Gentlemen,

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

Thank you for the opportunity to comment on the proposed amendments to NI 31-103 and 31-103CP (the "**Proposed Amendments**").

This letter represents the general comments of certain members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

While we are generally supportive of the Canadian Securities Administrators' ("**CSA**") goal to ensure that client complaints are handled in a consistent and uniform fashion, we have some concern with the Proposed Amendments which would require that all firms, except in Québec, use the Ombudsman for Banking Services and Investments' ("**OBSI**") dispute resolution services. We have no views on the quality of the services provided by OBSI or on the CSA's assertions that OBSI has extensive experience and is an appropriate choice to provide dispute resolution services. Our primary concern, however, is that under the Proposed Amendments, each firm would be required to pay an annual levy to OBSI based on its size or volume of business and that this fee structure has not been presented in conjunction with the Proposed Amendments. We note that this annual levy would not take into account a firm's past record of successfully dealing with complaints internally. It seems unfair to require firms to pay an annual levy to OBSI on a basis that is not fully transparent at this stage of the rule-making process and that does not take into account a firm's track record of dispute resolution.

Additionally, while it will collect a levy from each firm, OBSI may not actually handle every complaint. The Proposed Amendments make it clear that the dispute resolution services of OBSI must be made available to a client "if OBSI is willing and able to consider the complaint". The Proposed Amendments also provide that if OBSI is "unwilling or unable to consider the complaint", the firm must "ensure that the services of another dispute resolution or mediation service are made available to the client". As firms will have no choice but to automatically pay an annual levy to OBSI that is unrelated to the actual use of its services, it seems unfair to provide OBSI with the discretion to determine that it is unwilling or unable to consider a complaint. In the event that OBSI is appointed as the sole dispute resolution provider and declines to handle a complaint, we would suggest that the firm should be entitled to a credit towards its next annual levy in order to compensate it for the additional fees it would incur to engage an alternative dispute resolution service provider despite having effectively paid in advance for OBSI's services. Alternatively, we would urge the CSA to consider alternative service-based or "pay-as-you go" fee models to achieve a fairer allocation of the actual costs associated with the use of OBSI's services.

We appreciate the CSA's statement in the Notice that "work is also being done with OBSI to ensure that it will have the capacity to provide effective services for an expanded base of registered firms if the Proposed Amendments are adopted". In its own recent annual reports, however, OBSI has stated that, due to the magnitude of the increases in complaints in the past several years, it has been unable to secure sufficient resources to avoid the creation of a complaint backlog and was recently required to engage in a specially-funded project to tackle the accumulated backlog of investment complaint files.[1] Accordingly, even though OBSI would receive an annual levy from firms, we question whether OBSI will actually be in a position to provide effective services for the expanded base of registered firms. We suggest, therefore, that it may be premature to mandate OBSI as the only dispute resolution service provider when its proposed fee structure and the specific terms of access to its services have not been disclosed for comment and there are other service providers available.

Of further concern is the effect of the Proposed Amendments on firms which were registered after September 28, 2009. These firms were required to have dispute resolution procedures in place at the time of their initial registration. To the extent that such firms have already incurred the expense of engaging an alternative dispute resolution service provider, it seems unfair to require such firms to set their arrangements aside. In the event that OBSI is mandated as the sole dispute resolution service provider for all registered firms, grandfathering provisions should apply to those firms which have already entered into contractual relationships with alternative dispute resolution service providers.

With respect to the application of the Proposed Amendments to registered dealers and advisers outside Québec, we would recommend that the CSA provide guidance in 31-103CP with respect to client complaints which may trigger the application of the dispute resolution provision under both section 13.16 of NI 31-103 and sections 168.1.1 and 168.1.3 of the *Securities Act* (Québec) and which may be referred to both OBSI and the AMF for resolution.

We would also suggest that in the event that OBSI is appointed as the sole dispute resolution service provider, the CSA provide guidance in 31-103CP to clarify that, to the extent that OBSI bases its fee on the "size or volume of the business" of a registered firm the fee calculation for registered firms having their principal place of business outside of Canada should be based on the "size or volume" of the non-resident registrant's Canadian dealing and advising activities only.

With respect to the CSA's Issues for Comment, we agree that a client complaint should be brought to the dispute resolution provider within a designated time frame and that such requirement should be included in NI 31-103. However, we suggest that 90 days would be a more reasonable time frame in this respect.

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[1] See: OBSI Annual Report 2011, p. 4.
http://www.obsi.ca/images/Documents/Annual_Report/EN/obsi_ar2011_en.pdf See also: OBSI Annual Report 2010, p. 21 http://www.obsi.ca/images/Documents/Annual_Report/EN/obsi_ar2010_en.pdf

We thank the CSA for the opportunity to comment on the Proposed Amendments and would be pleased to discuss these issues further.

Submitted on behalf of members of the Securities Practice Group at Stikeman Elliott LLP by,

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