

Draft Regulation

Securities Act
(R.S.Q. c. V-1.1, s. 331.1, pars. (3), (26) and (34), and s. 331.2)

Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations

Dispute Resolution Service

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 331.2 of the *Securities Act*, R.S.Q. c. V-1.1, the following Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 92 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

Draft amendments to the *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* are also published hereunder.

Request for comment

Comments regarding the above may be made in writing by **February 15, 2013**, to the following:

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Further information

Further information is available from:

Sophie Jean
Senior Policy Advisor
Autorité des marchés financiers
Tel: 514-395-0337, ext. 4786
Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

February 15, 2013

**NOTICE AND REQUEST FOR COMMENT ON
DRAFT AMENDMENTS TO**

**REGULATION 31-103 RESPECTING
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS**

AND TO

**POLICY STATEMENT TO REGULATION 31-103 RESPECTING
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS**

November 15, 2012

Dispute Resolution Service

Introduction

The Canadian Securities Administrators (CSA or we) are publishing for a 90 day comment period draft amendments to *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Regulation 31-103), and to *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the Policy Statement).

We are proposing amendments which, if adopted, would require all registered dealers and registered advisers outside of Québec to utilize the Ombudsman for Banking Services and Investments (OBSI) as a service provider in respect of their dispute resolution or mediation services obligations under section 13.16 [*dispute resolution service*] of Regulation 31-103, and limit those obligations to complaints that are raised within six years of the date when the client knew or reasonably ought to have known of the trading or advising activity and which claim no more than \$350,000 (the Draft Amendments).

The text of the Draft Amendments is published with this notice and is also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.msc.gov.mb.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca

The comment period ends on **February 15, 2013**.

Substance, purpose and summary of the Draft Amendments

The Draft Amendments, if adopted, would require all registered dealers and advisers outside of Québec to utilize the services of OBSI as the common dispute resolution service for the discharge of their obligations under section 13.16 of Regulation 31-103. A complaint for these purposes would be defined as one that is raised within six years of the date when the client knew or reasonably ought to have known of the trading or advising activity that it relates to, and involves a claim of no more than \$350,000. Dealers and advisers would be required to make the services of OBSI available to their clients in respect of any such complaint that OBSI is willing and able to consider. The complaints that OBSI is willing to consider are normally those that fall within OBSI's mandate. OBSI's current mandate is discussed below. If OBSI was unwilling or unable to consider the complaint, the firm would have to make another service provider available to the client.

The firms that would be most directly affected by the Draft Amendments are dealers and advisers registered outside of Québec that are not members of either the Investment Industry Regulatory Organization of Canada (IIROC) or the Mutual Fund Dealers Association of Canada (the MFDA) (we refer to IIROC and the MFDA together as the SROs).

The SROs already mandate the use of OBSI as the dispute resolution service provider for their member firms, and section 13.14 of Regulation 31-103 [*application of this Division*] limits the application of section 13.16 in respect of investment fund managers and in respect of firms registered in Québec. Investment fund managers are only subject to section 13.16 to the extent they also operate under a dealer or adviser registration.

In Québec, a registered firm is deemed to comply with section 13.16 if it complies with sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec). These provisions set out a complaint handling regime whereby the Autorité des marchés financiers (the AMF) may act as a mediator (the Québec regime). Although Québec is participating in the consultation on the Draft Amendments, we are not proposing amendments to, and are therefore not soliciting comments on, the Québec regime which will remain unchanged following the consultation. Québec is not expressing any views on the dispute resolution regime which would apply in the other CSA jurisdictions. In this notice, all references to outcomes sought or discussions with OBSI are made by the CSA outside Québec.

We are publishing the Draft Amendments for comment because we believe that mandating OBSI as the common service provider for all registered dealers and advisers in respect of their dispute resolution obligations under Regulation 31-103 will be in the best interests of both investors and registrants. Our goal is to ensure the independence of dispute resolution services and consistency in expectations and outcomes. Client complaints considered by the common dispute resolution service would be handled to a uniform standard. A common dispute resolution service provider would reduce investor confusion as to who to contact when complaints are not resolved at the registrant level. There would be no perception that competition for business from registered firms might influence the recommendations of for-profit dispute resolution service providers.

We believe OBSI is the appropriate choice to be the common dispute resolution service provider for all registered dealers and registered advisers. OBSI is independent and not-for-profit. It has extensive experience, having served in that capacity for SRO members and other registrants for the past 10 years. During that time it has resolved thousands of complaints from investors. OBSI adheres to standards established by the Joint Forum of Financial Market Regulators, as set out in a Framework for Collaboration published in August 2007. Under that Framework, OBSI is subject to independent third party evaluations on a regular basis, the most recent of which was conducted in 2011. OBSI was found to substantially meet the Joint Forum's standards. OBSI has established an effective system to respond to investors with a call centre and infrastructure to respond to public enquiries in over 170 languages. It also has the ability to redirect callers to the appropriate organization if a matter is outside its mandate.

We are proposing to limit complaints that would trigger a registered dealer or advisers' obligations under section 13.16 of Regulation 31-103 to those that are raised within six years of the date when the client knew or reasonably ought to have known of the trading or advising activity that they relate to and involve a claim that the client agrees is for an amount of no more than \$350,000 because we believe these are reasonable limitations that will provide certainty for both registrants and investors. This is the same monetary limit as in OBSI's current mandate and OBSI is adopting a similar six year time limit. Having the same limits in Regulation 31-103 would thus create a common standard. The Draft Amendments would not restrict a client's ability to take a complaint to a dispute resolution service of their own choosing at their own expense, or to bring an action in court.

Issues for comment

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?
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 Regulation 31-103 include a deadline for clients to bring complaints to it? If so, is 180 days the appropriate period?

The Draft Amendments would also clarify that:

- We expect that all client complaints will be addressed under a registered firm's internal complaint handling policy under section 13.15 of Regulation 31-103. Recourse to an independent dispute resolution or mediation service should be in circumstances where the firm's complaint handling policy did not produce an outcome satisfactory to the client, or the client has reason to believe the procedures under the firm's complaint handling policy were not followed by the firm in a proper or timely manner.
- A registered firm is only required to make one dispute resolution or mediation service available at its expense for each complaint.

Background

Section 13.16

Section 13.16 [*dispute resolution service*] of Regulation 31-103 requires registered firms to ensure that independent dispute resolution or mediation services are made available, at the registered firm's expense, to a client to resolve a complaint made by the client about any trading or advising activity of the registered firm or one of its representatives. When Regulation 31-103 came into force on September 28, 2009, section 16.16 [*complaint handling*] provided temporary relief – until September 28, 2011 – from the requirements of section 13.16. This temporary relief was extended for a further year – until September 28, 2012 – as part of amendments to Regulation 31-103 which came into force on July 11, 2011. In contemplation of these Draft Amendments each of the CSA jurisdictions published on July 5, 2012 parallel orders further extending the temporary relief until the earlier of (i) the coming into force of amendments to section 13.16 and (ii) September 28, 2014. The temporary relief does not apply in Québec, by reason of the existing regime in that jurisdiction.

OBSI

OBSI is a not-for-profit organization that provides dispute resolution services to the banking sector and investment industry. It is an independent agency headed by an ombudsman and governed by a board of directors, the majority of whom are independent, and have not been part of industry or government for at least two years. A minority of the directors are appointed from lists proposed by industry bodies. The board has majority and quorum voting procedures designed to ensure independence. The board controls the hiring and firing of the ombudsman, the budget process, the organization's terms of reference and the nomination of independent directors. OBSI also has a Consumer and Investor Advisory Council that provides a strong consumer voice. OBSI is a member of the International Network of Financial Services Ombudsman Schemes.

OBSI has more than 600 participating firms consisting of

- registered investment dealers that are members of IIROC
- registered mutual fund dealers that are members of the MFDA
- registered scholarship plan dealers that are members of the RESP Dealers Association of Canada
- some registrants in other categories
- some mutual fund issuers that are not registrants but are members of the Investment Funds Institute of Canada
- chartered banks
- some credit unions
- federal trust and loan companies and other deposit taking organizations

OBSI does not charge any fees to clients of its participating firms. Under its current funding model, all participating firms pay a levy based on their size or volume of business. The CSA has been working with OBSI to develop a fee model that will be fair to all registrants who will, if the Draft Amendments are implemented, be required to use OBSI's services for dispute resolution.

The CSA has also been working with OBSI to review its processes and how it meets the standards established under the Framework for Collaboration. OBSI has published a consultation paper outlining proposed enhancements and clarifications to its suitability and loss assessment process. It has also published a framework for amendments to its governance structure. We are considering the role we should play in overseeing OBSI with respect to its terms of reference. 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 Draft Amendments are adopted.

OBSI's Mandate

OBSI makes recommendations for the resolution of disputes between participating firms and their clients about banking or investment products and services. It is not an arbitrator that makes binding decisions for the parties to a dispute. OBSI conducts its dispute resolution activities in an informal, non-legalistic manner.

OBSI considers investor complaints where a participating firm's internal complaint handling system has not produced a result acceptable to its client, or at least 90 days have passed since the client first complained to their firm and the complaint remains unresolved. As indicated above, the monetary limit on OBSI's capacity to make a recommendation is \$350,000. OBSI's board of directors has passed a resolution to adopt a six year time limit similar to the one in the Draft Amendments.

OBSI will not consider disputes where

- the complaint involves an insurance company
- the complaint concerns a general commercial decision of the firm, such as an interest rate or a credit decision
- the client or the participating firm has started a court action or arbitration process, unless they agree to suspend legal action pending OBSI's review
- the firm responded to a client's complaint, and the client did not bring it to OBSI on a timely basis
- the client has already settled the complaint by accepting an offer from the firm

Further information about OBSI is available at www.obsi.ca.

OBSI and the banking sector – recent developments

OBSI was created by the federally regulated banks in 1996 and expanded to include investment related complaints beginning in 2002. Banks participate in OBSI on a voluntary basis. Two banks have stopped using OBSI, one in 2008 and the other in 2011. The federal government has adopted legislation and draft regulations under which banks must belong to their choice of federally-approved external complaints bodies, but not necessarily OBSI. We will monitor developments in respect of this federal initiative.

Research and consultations

To assist us in considering the Draft Amendments, OBSI's fee model and related issues, we reviewed models for external dispute resolution in other jurisdictions, particularly the United Kingdom and Australia. We have also sought feedback from the industry associations for the two registration categories that would be most affected by the Draft Amendments. These were the Portfolio Management Association of Canada and the Exempt Market Dealers Association of Canada. We also consulted with OBSI's Consumer and Investor Advisory Council and the Ontario Securities Commission's Investor Advisory Panel and sought input from IIROC and the MFDA. We thank everyone who provided feedback during the research and consultation process.

Local jurisdiction publication requirements

Information required to be published in a particular jurisdiction is in an annex to this Notice published in that particular jurisdiction.

Alternatives considered

The CSA examined various alternatives to the Draft Amendments, including

- maintaining the current regime, whereby no dispute resolution or mediation service provider is specified except in Québec
- specifying more than one dispute resolution or mediation service provider outside of Québec

We decided to propose OBSI as the mandated dispute resolution service provider outside of Québec for the reasons set out under the discussion of the substance, purpose and summary of the Draft Amendments.

Anticipated costs and benefits

The anticipated benefits of the Draft Amendments, including the impact on investors, are set out under the discussion of the substance, purpose and summary of the Draft Amendments. We note that section 13.16 of Regulation 31-103 requires registered firms to bear the costs of an independent dispute resolution or mediation service and so, the effect of the Draft Amendments would only be to specify a dispute resolution service provider outside of Québec. We believe the benefits of mandating a common dispute resolution service provider outweigh the potential for any incrementally higher costs to registrants.

Unpublished materials

We have not relied on any significant unpublished study, report or other written materials in preparing the Draft Amendments.

Request for comments

We welcome your feedback on the Draft Amendments.

Please submit your comments in writing on or before February 15, 2013. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Address your submissions to all of the CSA as follows:

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

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

Me Anne-Marie Beaudoin
 Corporate Secretary
 Autorité de marchés financiers
 800, square Victoria, 22^e étage
 C.P. 246, tour de la Bourse
 Montréal, Québec H4Z 1G3
 Fax: 514-864-6381
 E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
 Ontario Securities Commission
 20 Queen Street West
 19th Floor, Box 55
 Toronto, ON M5H 3S8
 Fax: 416-593-2318
 E-mail: comments@osc.gov.on.ca

All comments will be posted on the Ontario Securities Commission website at www.osc.gov.on.ca and on the AMF website at www.lautorite.qc.ca.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. Some of your personal information, such as your e-mail and residential or business address, may appear on the websites. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Questions

Please refer your questions to any of the following:

Sophie Jean
 Senior Policy Advisor
 Autorité des marchés financiers
 Tel : 514-395-0337, ext. 4786
 Toll-free: 1-877-525-0337
sophie.jean@lautorite.qc.ca

Christopher Jepson
 Senior Legal Counsel
 Compliance and Registrant Regulation
 Ontario Securities Commission
 Tel: 416-593-2379
cjepson@osc.gov.on.ca

Chris Besko
 Legal Counsel, Deputy Director
 The Manitoba Securities Commission
 Tel: 204-945-2561
 Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Brian W. Murphy
 Deputy Director, Capital Markets
 Nova Scotia Securities Commission
 Tel: 902-424-4592
murphybw@gov.ns.ca

Lindy Bremner
 Senior Legal Counsel, Capital Markets Regulation
 British Columbia Securities Commission
 Tel: 604-899-6678
 Fax: 1-800-373-6393
lbremner@bcsc.bc.ca

Ella-Jane Loomis
 Legal Counsel
 New Brunswick Securities Commission
 Tel: 506-643-7202
ella-jane.loomis@nbosc-cvmnb.ca

Navdeep Gill
 Manager, Registration
 Alberta Securities Commission
 Tel: 403-355-9043
navdeep.gill@asc.ca

Katharine Tummon
 Superintendent of Securities
 Prince Edward Island Securities Office
 Tel: 902-368-4542
kptummon@gov.pe.ca

Dean Murrison
Director, Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
Tel: 306-787-5842
dean.murrison@gov.sk.ca

Louis Arki
Director, Legal Registries
Department of Justice, Government of Nunavut
Tel: 867-975-6587
larki@gov.nu.ca

Helena Hrubesova
Securities Officer
Securities Office, Corporate Affairs (C-6)
Government of Yukon
Tel: 867-667-5466
helena.hrubesova@gov.yk.ca

Craig Whalen
Manager of Licensing, Registration and Compliance
Office of the Superintendent of Securities
Newfoundland and Labrador
Tel: 709-729-5661
cwhalen@gov.nl.ca

Donn MacDougall
Deputy Superintendent, Legal & Enforcement
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-920-8984
Donald_macdougall@gov.nt.ca

November 15, 2012

**REGULATION TO AMEND REGULATION 31-103 RESPECTING
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING
REGISTRANT OBLIGATIONS**

Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (3), (26) and (34))

1. Section 13.16 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations is replaced with the following:

“13.16. Dispute resolution service

- (1) In this section, “complaint” means a complaint that
 - (a) relates to trading or advising activity of a registered firm or one of its representatives;
 - (b) is raised within 6 years of the date when the client knew or reasonably ought to have known of the trading or advising activity; and
 - (c) involves a claim for monetary compensation that the client agrees is for an amount no greater than \$350,000.
- (2) A registered firm must ensure that an independent dispute resolution or mediation service is made available to a client, at the firm’s expense, with respect to a complaint made by the client.
- (3) If a person makes a complaint to a registered firm, the registered firm must as soon as possible inform the person of how to contact and use the dispute resolution or mediation service which it will make available to the client.
- (4) Except in Québec, for the purposes of subsection (2), a registered firm must
 - (a) ensure that the dispute resolution services of the Ombudsman for Banking Services and Investments are made available to the client if the Ombudsman for Banking Services and Investments is willing and able to consider the complaint, or
 - (b) if the Ombudsman for Banking Services and Investments is unwilling or unable to consider the complaint, ensure that the services of another dispute resolution or mediation service are made available to the client.”.

2. This Regulation comes into force on (*insert the date of coming into force of this Regulation*).

AMENDMENT TO *POLICY STATEMENT TO REGULATION 31-103 RESPECTING REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

1. Section 13.16 of *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* is amended by replacing the first two paragraphs with the following:

“We expect that all client complaints will be responded to under a registered firm’s internal complaint handling policy under section 13.15. Recourse to an appropriate dispute resolution or mediation service should be in circumstances where the firm’s complaint handling policy did not produce an outcome satisfactory to the client, or the client has reason to believe the procedures under the firm’s complaint handling policy were not followed by the firm in a proper or timely manner.

Section 13.15 requires a registered firm to document and respond to each complaint made to it about *any* product or service that is offered by the firm or one of its representatives. Section 13.16 requires a firm to make an independent dispute resolution or mediation service available to a client, at the firm’s expense, in respect of complaints that

- relate to a trading or advising activity of the firm or its representatives;
- are raised within six years of the date when the client knew or reasonably ought to have known of the trading or advising activity;
- involve a claim for monetary compensation that the client agrees is for an amount of no more than \$350,000.

A registered firm must ensure that the complainant is aware of the dispute resolution or mediation services that are the firm makes available to them and that the firm will pay for that the services. A firm is only required to make one dispute resolution or mediation service available at its expense for each complaint. Registered firms should know all applicable mechanisms and processes for dealing with different types of complaints, including those prescribed by the applicable SRO referring complaints to an appropriate dispute resolution or mediation service.

Except in Québec, registered firms are required to make the services of the Ombudsman for Banking Services and Investments (OBSI) available to clients for complaints that OBSI is willing and able to consider. Normally, the types of complaints that OBSI will be willing to consider will be set out in OBSI’s mandate under its terms of reference. If OBSI is willing and able to consider a complaint, the firm is not required to make any other dispute resolution or mediation service available to the client. 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. A firm’s records for compliance purposes should include any reasons provided by OBSI as to why it would not be willing or able to consider a complaint that was referred to another service provider.

A firm that has satisfied its obligations to a client under section 13.16 may, in its discretion, offer the client other options to attempt to resolve the complaint if it remains unresolved. Nothing in section 13.16 affects a client’s right to choose to seek other recourse, including through the courts. In Québec, registrants must inform each complainant, in writing and without delay, that if the complainant is dissatisfied with how the complaint is handled or with the outcome, they may request the registrant to forward a copy of the complaint file to the *Autorité des marchés financiers*. The registrant must forward a copy of the complaint file to the *Autorité des marchés financiers*, which will examine the complaint. The *Autorité des marchés financiers* may act as a mediator if it considers it appropriate to do so and the parties agree.”.