**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.

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The Secretary
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20 Queen Street West
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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:

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**November 15, 2012**