

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

1. *Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* is amended by replacing the paragraph under Division 5 of Part 13 with the following section:

### **“13.14. Application of this Division**

Investment fund managers are only subject to Division 5 if they also operate under a dealer or adviser registration, in which case the requirements in this Division apply in respect of the activities conducted under their dealer or adviser registration.

In Québec, a registered firm is deemed to comply with this Division if it complies with sections 168.1.1 to 168.1.3 of the Québec *Securities Act*, which provides a substantially similar regime for complaint handling.

The guidance in Division 5 of this Policy Statement applies to firms registered in any jurisdiction, including Québec.

However, section 168.1.3 of the Québec *Securities Act*, includes requirements with respect to dispute resolution or mediation services that are different than those set out in section 13.16 of Regulation 31-103. 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.”.

2. The Policy Statement is amended by inserting, before the last paragraph of section 13.15 under the title “*Timeline for responding to complaints*”, the following paragraphs:

“A firm may also wish to use its initial response to seek clarification or additional information from the client.

Requirements for providing information about the availability of dispute resolution or mediation services paid for by the firm are discussed below.”.

3. The Policy Statement is amended by replacing section 13.16 with the following:

### **“13.16. Dispute resolution service**

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 provides for recourse to an independent dispute resolution or mediation service at a registered firm’s expense for specified complaints where the firm’s internal complaint handling process has not produced a timely decision that is satisfactory to the client.

Registered firms may be required to make an independent dispute resolution or mediation service paid for by the firm available to a client in respect of a complaint that

- relates to a trading or advising activity of the firm or its representatives, and

- is raised within six years of the date when the client knew or reasonably ought to have known of the act or omission that is a cause of or contributed to the complaint.

As soon as possible after a client makes a complaint (for example, when sending its acknowledgment or initial response to the complaint), and again when the firm informs the client of its decision in respect of the complaint, a registered firm must provide a client with information about

- the firm's obligations under section 13.16,
- the steps the client must take for an independent dispute resolution or mediation service to be made available to the client at the firm's expense, and
- the name of the independent service that will be made available to the client (outside of Québec, this will normally be the Ombudsman for Banking Services and Investments (OBSI), as discussed below) and how to contact it

A client may escalate an eligible complaint to the independent dispute resolution or mediation service made available by the registered firm in two circumstances:

- If the firm fails to give the client notice of its decision within 90 days of receiving the complaint (telling the client that the firm plans to take more than 90 days to make its decision does not 'stop the clock'). The client is then entitled to escalate the complaint to the independent service immediately or at any later date until the firm has notified the client of its decision.

- If the firm has given the client notice of its decision about the complaint (whether it does so within 90 days or after a longer period) and the client is not satisfied with the decision, the client then has 180 days in which to escalate the complaint to the independent service.

In either instance, the client may escalate the complaint by directly contacting the independent service.

We think that it may sometimes be appropriate for the independent service, the firm and the client involved in a complaint to agree to longer notice periods than the prescribed 90 and 180 day periods as a matter of fairness. We recognize that where a client does not cooperate with reasonable requests for information relating to a complaint, a firm may have difficulty making a timely decision in respect of the complaint. We expect that this would be relevant to any subsequent determination or recommendation made by an independent service about that complaint.

The client must agree that the amount of any recommendation by the independent service for monetary compensation will not exceed \$350,000. This limit applies only to the amount that can be recommended. Until it is escalated to the independent service, a complaint made to a registered firm may include a claim for a larger amount.

Except in Québec, a registered firm must take reasonable steps to ensure that the dispute resolution and mediation service that is made available to its clients for these purposes will be OBSI. The reasonable steps we expect a firm to take include maintaining ongoing membership in OBSI as a "Participating Firm" and, with respect to each complaint, participating in the dispute resolution process in a manner consistent with the firm's obligation to deal fairly, honestly and in good faith with its client. This would include entering into consent agreements with clients contemplated under OBSI's procedures.

Since section 13.16 does not apply in respect of a complaint made by a permitted client that is not an individual, we would not expect a firm that only has clients of that kind to maintain membership in OBSI.

A registered firm should not make an alternative independent dispute resolution or mediation service available to a client at the same time as it makes OBSI available. Such a parallel offering would not be consistent with the requirement to take reasonable steps to ensure that OBSI will be the independent service that is made available to the client. Except in Québec, we expect that alternative service providers will only be used for purposes of section 13.16 in exceptional circumstances.

We would regard it as a serious compliance issue if a firm misrepresented OBSI's services or exerted pressure on a client to refuse OBSI's services.

If a client declines to make use of OBSI in respect of a complaint, or if a client abandons a complaint that is under consideration by OBSI, the registered firm is not obligated to provide another service at the firm's expense. A firm is only required to make one dispute resolution or mediation service available at its expense for each complaint.

Nothing in section 13.16 affects a client's right to choose to seek other recourse, including through the courts.

Registrants that are members of an SRO, including those that are registered in Québec, must also comply with their SRO's requirements with respect to the provision of independent dispute resolution or mediation services.

#### **Registrants who do business in other sectors**

Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint mechanisms for each sector in which they do business and how to use them.”.