



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

**CSA Notice of Amendments to National Instrument 31-103
Registration Requirements, Exemptions and Ongoing Registrant Obligations
and to Companion Policy 31-103CP
*Registration Requirements, Exemptions and Ongoing Registrant Obligations***

Dispute Resolution Services

December 19, 2013

Introduction

The Canadian Securities Administrators (the CSA or we) are implementing amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103 or the Rule) as well as Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (31-103CP or the Companion Policy) relating to the provision of dispute resolution services to clients of all registered dealers and registered advisers (collectively, the Amendments). We refer to the Rule and Companion Policy as the “Instrument”.

The Amendments have been or are expected to be adopted by each member of the CSA.

In Québec, the Autorité des marchés financiers (the AMF) already provides a mediation service to clients of all registered dealers and registered advisers (the Québec regime). Although Québec is participating in the making of the Amendments, the Québec regime will remain unchanged. Québec is not expressing any views on the dispute resolution regime which applies in other CSA jurisdictions. In this Notice, all references to outcomes sought by the CSA, or responses to comments, concerning the 2012 Proposal (defined below), are made by CSA members excluding Québec.

In some jurisdictions, ministerial approvals are required for the implementation of the Amendments. Subject to obtaining all necessary approvals, the Amendments will come into force on **May 1, 2014**.

The text of the Amendments to the Rule is in Annex C to this Notice. A black-lined extract of the Companion Policy, incorporating the Amendments is in Annex D to this Notice. The Amendments are available on websites of CSA jurisdictions, including the following:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca

Purpose

The CSA consider effective dispute resolution or mediation through an independent service provider to be an important component of a well functioning investor protection framework. Our purpose in making the Amendments is to ensure the independence of dispute resolution and mediation services, and consistency in expectations and outcomes for those services, while also setting reasonable limits on the complaints that will be eligible to be considered by an independent service paid for by a registered dealer or adviser.

Complaints considered by a common dispute resolution service will be handled to a uniform standard. It will also be clear to investors whom they should contact when complaints are not resolved at the registrant level. There should be no perception that competition for business from registered firms might influence the recommendations of the common service provider.

We believe that designating the Ombudsman for Banking Services and Investments (OBSI) as the common service provider for these purposes will be in the best interests of both investors and registrants. OBSI is independent, not-for-profit and has extensive experience, having served SRO members and other registrants for more than 10 years.

Substance

Section 13.16 [*dispute resolution service*] of NI 31-103 requires a registered dealer or registered adviser to ensure that an independent dispute resolution or mediation service is made available at the firm's expense to any of its clients that has a complaint about any trading or advising activity of the firm or one of its representatives. The Amendments provide that, outside Québec, a firm must take reasonable steps to ensure that OBSI will be the independent dispute resolution and mediation service that is made available to a client that has an eligible complaint. The eligibility of a complaint is determined by reference to specified deadlines. A client must agree to a specified limit on the amount that will be claimed for the purpose of the independent service's consideration of an eligible complaint.

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. 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 offered to the client. It is our expectation that alternative service providers will only be used in exceptional circumstances.

The Amendments to the Rule also include requirements for communicating with clients about the dispute resolution or mediation services that are available to them. The Amendments provide that section 13.16 does not apply in respect of a permitted client that is not an individual.

The Amendments to the Companion Policy provide guidance on the application of the amended Rule requirements.

The Amendments do 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.

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

Background

The Amendments have been approved further to a proposal (the 2012 Proposal) which was published for comment on November 15, 2012 (see below regarding the public comments).

The CSA have created a framework intended to ensure that OBSI will have the capacity to effectively discharge its mandate under the Amendments. A Memorandum of Understanding (the MOU) provides an oversight framework for the participating CSA members and OBSI to cooperate and communicate constructively. The purpose of the oversight framework is to ensure that OBSI continues to meet the standards set by the participating CSA members with respect to the following matters:

- governance
- independence and standard of fairness
- processes to perform functions on a timely and fair basis
- fees and costs
- resources
- accessibility
- systems and controls
- core methodologies for dispute resolution
- transparency in respect of material changes to OBSI's operations or services, including material changes to its terms of reference or by-laws
- information sharing with the CSA

The MOU includes provision for an independent evaluation of OBSI's operations and practices within two years of the Amendments coming into force. The MOU will replace the oversight framework contemplated in the Joint Forum of Financial Market Regulators' *The Financial Services OmbudsNetwork – A Framework for Collaboration*, which was endorsed and adopted by the CSA in August 2007.

The MOU is not intended to be used to share information that relates to individual complaints made to OBSI, including the identity of any complainant, registered firm or registered individual against whom a complaint has been made.

The MOU provides that OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership. The CSA intend to review OBSI's model for setting fees for its Participating Firms after OBSI has developed some practical experience with its expanded mandate under the Amendments. We intend to ensure that fees are set fairly across categories of registered dealer and registered adviser.

The Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) (together referred to as the self-regulatory organizations or SROs) already mandate the use of OBSI as the dispute resolution service provider for their member firms. SRO members will continue to be subject to their SRO's rules concerning complaint handling after the Amendments come into effect.

The CSA jurisdictions and OBSI have agreed with the SROs to form the OBSI Joint Regulators Committee (JRC) to

- facilitate a holistic approach to information sharing and monitoring of the dispute resolution process with an overall view to promoting investor protection and confidence in the external dispute resolution system
- support fairness, accessibility and effectiveness of the dispute resolution process

- facilitate regular communication and consultation among the regulators and OBSI

The Québec regime, which is unaffected by the Amendments, is set out in sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec) and in sections 74 and 75 of the *Derivatives Act* (Québec). Under that regime, all registered dealers and registered advisers must first provide equitable resolution of complaints filed and establish a policy dealing with the examination of complaints and claims and the resolution of disputes. Registered dealers and registered advisers must also inform complainants in writing that if they are dissatisfied with the complaint examination procedure or its outcome, they may require that a copy of their file be forwarded to the AMF. The AMF examines the forwarded complainants' files and may, if it considers it appropriate, act as a mediator if the parties agree.

Information about OBSI is available at www.obsi.ca.

Summary of Written Comments Received by the CSA on the 2012 Proposal

We received submissions on the 2012 Proposal from 24 commenters. We have considered the comments received and thank all of the commenters for their input. A summary of the comments together with our responses and a list of the commenters is contained in Annex B to this Notice.

Copies of the comment letters are posted on the following websites:

www.lautorite.qc.ca

www.osc.gov.on.ca

Summary of Changes to the Instrument

After considering the comments, we have made some changes to certain of the proposed amendments which were in the 2012 Proposal. As these changes are not material, we are not republishing the Amendments for a further comment period. A description of the key changes we made to the Instrument and the 2012 Proposal is contained in Annex A of this Notice.

Transition

The amending instrument provides for a transition period of 3 months after the Amendments come into effect. If they come into effect as anticipated on May 1, 2014 the transition period will end on August 1, 2014. We believe the total of more than 7 months from the publication of this Notice to that date is adequate time for registered dealers and registered advisers outside of Québec, that are not already Participating Firms of OBSI, to become so in order that they can comply with the Amendments.

In contemplation of the 2012 Proposal, on July 5, 2012 CSA jurisdictions published parallel orders extending temporary relief from the application of section 13.16 for firms that were registered on September 28, 2009, the date when NI 31-103 came into effect, until the earlier of (i) the coming into force of amendments to section 13.16 and (ii) September 28, 2014. The temporary relief under the orders will therefore expire on May 1, 2014 if the Amendments come into force on that day. The transition provisions in the amending instrument preserve the temporary relief until August 1, 2014. The temporary relief does not apply in Québec by reason of the existing regime in that jurisdiction.

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation.

Annexes

- A. Summary of Changes to the Instrument
- B. Summary of Comments on the 2012 Proposal and CSA Responses
- C. Amending Instrument to NI 31-103
- D. Amendments to the Companion Policy

Questions

Please refer your questions to any of the following:

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