

CSA Staff Notice 31-338 Guidance on Dispute Resolution Services Client Disclosure for Registered Dealers and Advisers that are not members of a Self-Regulatory Organization

May 1, 2014

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) as well as Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (31-103CP) relating to the provision of independent dispute resolution or mediation services to clients of all registered dealers and registered advisers (collectively, the Amendments). The Amendments provide that, outside Québec, a firm must take reasonable steps to ensure that the Ombudsman for Banking Services and Investments (OBSI) will be the independent dispute resolution or mediation service that is made available to a client that has an eligible complaint. The Amendments also include the requirement to inform clients in writing about the firm's obligation and to set out the steps a client must take in order to be able to make use of OBSI's services.

In Québec, the Autorité des marchés financiers (the AMF) already provides a mediation service to clients residing in Québec of all registered dealers and registered advisers. The Québec regime will remain unchanged and firms registered in Québec should continue to inform clients residing in Québec of the availability of the AMF mediation services. In this Notice, all references to OBSI are made by CSA members excluding the AMF.

Purpose

Our purpose in requiring the use of OBSI as the dispute resolution service is to provide investors with the following benefits:

- access to a free, independent, consistent dispute resolution service,
- uniform handling of investor complaints, and
- clarity on who investors should contact if complaints are not resolved.

Registered firms that are members of a self-regulatory organization (SRO), including those that are registered in Québec, should continue to comply with their SRO's requirements with respect to the provision of independent dispute resolution or mediation services.

For the purposes of this notice, a registered firm refers to registered dealers and registered advisers that are not members of an SRO and does not include a registered investment fund manager.

Substance

At three points in time, a registered firm must provide its clients with information about the availability of independent dispute resolution or mediation services and the steps the client must take in order to make use of those services at account opening, as soon as possible after a client makes a complaint (for example, when a firm sends its acknowledgement), and again when the registered firm informs the client of its decision in respect of the complaint.

This staff notice is intended to provide guidance to registered firms in preparing and delivering client disclosure that meets their obligations under section 13.16 and paragraph 14.2(2)(j) of NI 31-103. To assist registered firms with establishing clear and meaningful client disclosure, we have provided a sample client disclosure in Appendix A. While the sample client disclosure document is intended to serve as an example of an acceptable method for registered firms to meet their disclosure obligations, it is not the only acceptable method. Registered firms may use alternative methods, provided those methods adequately demonstrate that the firm has met its disclosure obligations. We encourage registered firms to use this Notice to improve their understanding of, and compliance with, their client disclosure obligations.

This staff notice also provides sample text and best practices for how a firm might meet their requirement regarding internal complaint handling procedures.

When do you have to provide client disclosure?

(1) At Account Opening

Under paragraph 14.2(2)(j) of NI 31-103, registered firms must disclose to their client the firm's obligations if a client has a complaint contemplated under section 13.16 and the steps that the client must take in order for an independent dispute resolution or mediation service to be made available to the client at the firm's expense. A registered firm may provide this information in a single document (together with other required relationship disclosure information) or in a separate document. This disclosure must be provided in writing to the client and should be communicated in a manner consistent with the guidance on client communications under section 1.1 of 31-103CP. We encourage registered firms to avoid the use of technical terms and acronyms when communicating with clients.

The sample client disclosure in Appendix A is designed to provide an example of clear and meaningful disclosure to a client about the firm's obligations with respect to independent dispute resolution services, including the requirement that a client must first file their complaint with the registered firm. While many registered firms already have in place a method of communicating to a client about their internal complaint handling processes, the sample client disclosure provides additional guidance and best practices in this area.

(2) At the time of the Complaint

Under subsection 13.16(2), if a registered firm receives a complaint from a client, the firm must, as soon as possible, provide the client with a written acknowledgement of the complaint that includes the following:

- (a) a description of the firm's obligations under section 13.16;
- (b) the steps that the client must take in order for an independent dispute resolution or mediation service to be made available to the client under subsection 13.16(4);
- (c) the name of the independent dispute resolution or mediation service that will be made available to the client under subsection 13.16(4) and contact information for the service.

The registered firm must send a written acknowledgement letter to the client as soon as possible, typically within 5 business days of receipt of a complaint. The following is a list of the types of information the firm should include in the acknowledgement letter:

- information about the firm's complaint process, including timelines for responding to client complaints,
- when and how to take their complaint to an independent dispute resolution or mediation service,
- contact information for the independent dispute resolution or mediation service, and
- any other options available to the client to resolve their complaint.

Registered firms may refer to the sample client disclosure to assist with the content of the acknowledgment letter.

Registered firms may also want to consider including a request for any information reasonably required to investigate the complaint, if such information can be identified within the 5 business days of receipt of the complaint. Where possible, such as with less complex complaints, it may be possible to also provide the firm's decision at the same time as acknowledging the complaint.

(3) At the time of the Decision

If a registered firm decides to reject a complaint or to make an offer to resolve a complaint, the firm must, as soon as possible, provide the client with written notice of the decision including:

- the decision on the complaint, and
- information about dispute resolution services, including the timelines applicable for use of the dispute resolution services, the monetary limits associated with the dispute resolution services and the contact information for those services.

As a best practice, a firm may consider including the following in their written notice to the client:

- a summary of the complaint, and
- the reasons for the firm's decision.

A registered firm is expected to provide a decision to the client complaint within 90 days of receipt of the complaint. At the time of the decision, a registered firm may opt to provide information about independent dispute resolution services to clients in a separate document, or insert the information in the firm's written decision to the client.

We recommend including the disclosure in the body of the firm's decision letter, or referencing that it is being included, as this would:

- assist with providing evidence that the client received the required information, and
- may protect the registered firm in the event a client later claims they did not receive information about independent dispute resolution services.

When do you need to offer OBSI?

Subsection 13.16(4) requires a registered firm to ensure that independent dispute resolution or mediation service is available to a client if either of the following apply:

- (a) after 90 days of the firm's receipt of the complaint, the firm has not given the client written notice of a decision, and the client has notified the independent dispute resolution or mediation service that it wants to use the service;
- (b) within 180 days of the client's receipt of written notice of the firm's decision, the client has notified the independent dispute resolution or mediation services that it wants to use the service.

Subsection 13.16(6) requires the firm to take reasonable steps to ensure that OBSI will be the independent dispute resolution and mediation service made available to clients.

When do you need to update Relationship Disclosure Information?

Under subsection 14.2(4) of NI 31-103 registered firms are required to take reasonable steps to notify clients, in a timely manner, of significant changes in respect of the relationship disclosure information delivered to a client. The Amendments include an amendment to paragraph 14.2(2) (j) with respect to the availability of independent dispute resolution services. As the amendment to paragraph 14.2(2) (j) is considered a significant change to the relationship disclosure information, registered firms will be expected to take reasonable steps to notify clients, in a timely manner, of the change to the relationship disclosure information. Sending it separately or including it with an upcoming client communication, such as their next monthly or quarterly statement, or before doing a transaction, would satisfy this obligation.

Membership in OBSI

We expect firms to maintain ongoing membership in OBSI as a “Participating Firm” and participate in OBSI’s services in a manner consistent with the firm’s obligation to deal fairly, honestly and in good faith with its clients.

Coming into force and transition

The Amendments subject to necessary approvals in each CSA jurisdiction come into force May 1, 2014. The Amendments provide for a transition period for firms registered by May 1, 2014 of 3 months after the Amendments come into effect with the exception of Québec, by reason of the existing regime in that jurisdiction. The transition period will end on August 1, 2014. Please refer to the Amendments for specific terms associated with the transition period.

For more information on how to register as a Participating Firm, visit www.obsi.ca.

Questions

Please refer your questions to any of the following:

Denise Morris
Legal Counsel
Compliance and Registrant Regulation
Ontario Securities Commission
Tel: 416-595-8785
dmorris@osc.gov.on.ca

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

Gérard Chagnon
Analyste expert en réglementation
Direction des pratiques de distribution et des OAR
Autorité des marchés financiers
418-525-0337, ext 4815 and
1-877-525-0337 (Toll-free)
gerard.chagnon@lautorite.qc.ca

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

Martha Kane
Senior Advisor, Capital Markets Regulation
British Columbia Securities Commission
Tel: 604-899-6563
mkane@bcsc.bc.ca

Jason Alcorn
Legal Counsel, Securities
Financial and Consumer Services Commission
(NB)
Tel: 506-643-7857
jason.alcorn@fcnb.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

Liz Kutarna
Deputy Director, Capital Markets
Financial and Consumer Affairs Authority of
Saskatchewan
Tel: 306-787-5871
liz.kutarna@gov.sk.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

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

Gary MacDougall
Superintendent of Securities
Office of the Superintendent of Securities
Government of the Northwest Territories
Tel: 867-873-7490
Gary_macdougall@gov.nt.ca

Rhonda Horte
Deputy Superintendent
Office of the Yukon Superintendent
of Securities
867-667-5466
rhonda.horte@gov.yk.ca