

Chapter 6

Request for Comments

6.1.1 Proposed Amendments to NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

NOTICE AND REQUEST FOR COMMENT ON PROPOSED 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*

November 15, 2012

Dispute Resolution Service

Introduction

The Canadian Securities Administrators (CSA or we) are publishing for a 90 day comment period proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103 or the Rule), and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the Companion Policy).

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 NI 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 Proposed Amendments).

The text of the Proposed Amendments to the Rule is in Annex A to this Notice. A blacklined extract of the Rule, incorporating the Proposed Amendments, is in Annex B to this Notice. A blacklined extract of the Companion Policy, incorporating the Proposed Amendments, is in Annex C to this Notice. The Proposed Amendments are 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 Proposed Amendments

The Proposed 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 NI 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.

Request for Comments

The firms that would be most directly affected by the Proposed 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 NI 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 Proposed 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 Proposed 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 NI 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 NI 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 NI 31-103 would thus create a common standard. The Proposed 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 NI 31-103 include a deadline for clients to bring complaints to it? If so, is 180 days the appropriate period?

The Proposed 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 NI 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 NI 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 NI 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 NI 31-103 which came into force on July 11, 2011. In contemplation of these Proposed 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 Proposed 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 Proposed 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 Proposed 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 proposed 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 Proposed 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 Proposed 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 D to this Notice published in that particular jurisdiction.

Alternatives considered

The CSA examined various alternatives to the Proposed 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 Proposed Amendments.

Anticipated costs and benefits

The anticipated benefits of the Proposed Amendments, including the impact on investors, are set out under the discussion of the

Request for Comments

substance, purpose and summary of the Proposed Amendments. We note that section 13.16 of NI 31-103 requires registered firms to bear the costs of an independent dispute resolution or mediation service and so, the effect of the Proposed 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 Proposed Amendments.

Request for comments

We welcome your feedback on the Proposed 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.

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

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

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:

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

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

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@nbsc-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

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

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

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

November 15, 2012

ANNEX A

PROPOSED AMENDMENTS TO

**NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS,
EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS**

1. ***National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.***
2. ***Section 13.16 is replaced with the following:***
 - (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 or company makes a complaint to a registered firm, the registered firm must as soon as possible inform the person or company 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.
3. ***This Instrument comes into force on [date].***

ANNEX B

BLACKLINE OF PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

This Annex shows the proposed amendments to NI 31-103 against the relevant portions of the unofficial consolidation of NI 31-103 published on February 28, 2012.

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.

(12) A registered firm must ensure that an independent dispute resolution or mediation services ~~are~~ service is made available to a client, at the firm’s expense, with respect ~~to a client to resolve a complaint made by the client about any trading or advising activity of the firm or one of its representatives.~~

(23) If a person or company makes a complaint to a registered firm about ~~any trading or advising activity of the firm or one of its representatives~~, the registered firm must as soon as possible inform the person or company of how to contact and use the dispute resolution or mediation services ~~which are provided to the firm’s clients~~ 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.

ANNEX C

PROPOSED AMENDMENTS TO
COMPANION POLICY 31-103 CP
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

The Canadian Securities Administrators are publishing changes to the Companion Policy for comment. The changes would come into effect on the implementation of the corresponding changes to the Rule.

This Annex shows the proposed amendments to the Companion Policy against the relevant portions of the unofficial consolidation of NI 31-103 published on February 28, 2012.

13.16 Dispute resolution service

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.

ANNEX D

**ONTARIO RULE-MAKING AUTHORITY
AUTHORITY FOR THE PROPOSED AMENDMENTS**

In Ontario, the rule making authority for the proposed amendments is in paragraph 2 of subsection 143(1) of the *Securities Act*.