CSA/ACVM 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. In Ontario, this information is contained in Annex E of this Notice.

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

E. Local matters, where applicable

Questions

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ANNEX A

Summary of Changes to the Instrument

This Annex describes the key changes we made to the Instrument and the 2012 Proposal.

Section 13.16 of NI 31-103 provides in very general terms that a registered dealer or registered adviser must ensure that independent dispute resolution or mediation services are made available, at the firm's expense, to resolve clients' complaints about trading or advising activity of the firm or its registered representatives.

We are amending section 13.16 to specify which complaints will be eligible for independent dispute resolution or mediation services paid for by a registered dealer or adviser:

- a complaint must be brought within 6 years from the time when the client first knew or reasonably ought to have known of an act or omission that is a cause of the complaint
- a client may refer a complaint to the independent service provider if the firm has not responded with its decision in respect of the complaint within 90 days of receiving the complaint
- a client has up to 180 days after the firm has responded with its decision in which to refer the complaint to the independent service provider

A client must agree that, for the purpose of the independent service's consideration of an eligible complaint, the amount claimed (if any) will be no greater than $350,000. Clients retain the option of pursuing claims for amounts exceeding this limit through other means, such as civil litigation.

The Amendments substantially align the complaints that are eligible for dispute resolution or mediation services paid for by the registered firm under section 13.16 with the complaints that OBSI will consider under its terms of reference. The Amendments specify that, outside of Québec, firms must take reasonable steps to ensure that OBSI will be the independent resolution and mediation service that is made available to a client at the firm's expense.

The Amendments provide that section 13.16 does not apply in respect of a permitted client that is not an individual.

Among other things, the Amendments to the Companion Policy 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 is intended to be provided 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.

- In order to comply with the requirement to take reasonable steps to ensure that OBSI will be the independent dispute resolution and mediation service that is made available to any client with a complaint eligible under section 13.16, we will expect a registered firm 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.

- A registered firm is only required to make one dispute resolution or mediation service available at its expense for each complaint.

We have made conforming changes to the requirement in paragraph 14.2(2)(j) of NI 31-103 to provide clients with relationship disclosure information about the availability of dispute resolution services.

The Amendments are generally consistent with the 2012 Proposal. A 90 day trigger for escalation of a complaint was added to section 13.16 to align with our stated purpose of creating a common standard for dispute resolution services. This is consistent with requirements for OBSI Participating Firms and SRO members. The $350,000 limit has been changed from a limit on the amount of the claim, to a limit on the amount that may be claimed for the purpose of the independent service's consideration of the complaint. This was done because when a complaint is first brought by a client to a firm's internal complaint handling system, it might include a claim for a higher amount.

ANNEX B

Summary of Comments on the 2012 Proposal and CSA Responses

This Annex summarizes the public comments we received on the 2012 Proposal and our responses to those comments.

In this document, we have consolidated and summarized the comments and our responses by the general theme of the comments. In general, we have not included drafting comments.

Time limit to bring complaint

The 2012 Proposal included a provision that complaints must be brought within 6 years from the time when the client knew or reasonably ought to have known of the trading or advising activity giving rise to the complaint. The notice of publication of the 2012 Proposal asked "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?"

Investor advocates supported counting the time limit on raising complaints from the time when the client knew or reasonably ought to have known of the trading or advising activity. There were also proposals for a subjective standard or special provisions for elderly clients.

Industry commenters generally supported counting from the time when the trading or advising activity actually occurred. Some industry commenters advocated for a shorter time limit. This included suggestions that a 6 year period would be objectionable on the basis that it is longer than the 2 year statutory limitation periods in some jurisdictions.

We acknowledge that counting from the time when the activity occurred has the merit of providing greater certainty. However, we have concluded that this advantage is outweighed by the investor protection benefits of counting from the time when the client should have discovered the problem giving rise to the complaint. In many cases, this will be the same as the time when the trading or advising activity that the complaint relates to occurred. In other cases, it may take longer before it would be fair to say that a client should have discovered the problem.

We have revised the drafting of this provision to more closely conform with the drafting used in limitation period statutes, but we do not agree that the time limit for seeking a recommendation from an informal dispute resolution service should be the same as the statutory limitation periods for a civil action in court that leads to an enforceable remedy.

We also do not think that a subjective standard would be workable or fair in all cases. Whether an elderly investor was vulnerable and exploited is a matter for factual determination during the consideration of their complaint and should not be assumed without investigation.

Escalating a complaint to an independent dispute resolution or mediation service

The notice of publication of the 2012 Proposal also included a second issue for comment: "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?"

Most commenters were in favour of specifying that a complaint must be made within 180 days of the client's receipt of notice of the firm's rejection of their claim or recommended resolution of the complaint. There were some comments for and against the qualification that the 180 day limit could be extended if the ombudservice considers it fair to do so. We believe the 180 day time frame is reasonable and understand that it has worked well in practice for OBSI and SRO member firms. We think that it may sometimes be appropriate for OBSI (or an alternative service provider where OBSI is unwilling to consider an eligible complaint) and the firm and client involved in a complaint to agree to a longer notice period as a matter of fairness. However, we believe it is desirable to provide a specific and unambiguous time limit in the Rule. The same is true with respect to the 90 days that a firm is allowed to inform a client of its decision before the client can escalate the complaint.

General support

There were expressions of general support for mandating OBSI as the common service provider for all registered dealers and advisers. This support came in the letters from investor advocates and some industry associations.

Criticism of OBSI and calls for CSA oversight

Several commenters that are registered firms or industry associations expressed a lack of confidence in OBSI. Some investor advocates, while supporting the proposal to mandate OBSI in the Rule, expressed concerns about the timeliness of its process for making recommendations. Linked to these comments were calls for the CSA to exercise oversight of OBSI.

As stated in the notice of publication of the 2012 Proposal, 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 has adhered to standards established by the Joint Forum of Financial Market Regulators. Under that oversight framework, OBSI has been 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.

This notice discusses the CSA oversight regime that will be implemented with the MOU, and also discusses the introduction of the JRC which will also play an important role in ensuring OBSI's effectiveness. We have considered OBSI's capacity both to resolve its backlog of unresolved cases and to assume its expanded mandate under the Amendments and will monitor its performance going forward.

We also note that OBSI has implemented corporate governance changes and amended its terms of reference since the publication of the 2012 Proposal. We support these changes.

OBSI fees

Industry commenters expressed concerns that OBSI's fees for non-SRO dealers and advisers that would be required to become Participating Firms under the 2012 proposal had not been made public at the time it was published for comment. These concerns focused on the possibility that fees might be excessive, and that firms in a category of registrant which might place few demands on OBSI's services might subsidize firms in categories of registrant that make relatively greater use of OBSI.

OBSI has finalized its fee model for non-SRO members after consulting with the CSA jurisdictions outside of Québec. The existing fee models for SRO members will remain in place. This notice refers to the MOU provision that OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership, and notes that OBSI's model for setting fees for its Participating Firms will be reviewed after OBSI has developed some practical experience with its expanded mandate under the Amendments. We have stated our intention to ensure that fees are set fairly across categories of registered dealer and registered adviser.

Recommendations should be replaced with binding decisions

Some investor advocates took the position that OBSI's current 'name and shame' sanction is not sufficient and that the recommendations contemplated in the proposed amendments should become binding decisions. On the other side there were industry comments that 'name and shame' is too powerful a sanction, in that firms might agree to recommendations simply to avoid it.

Implementing the Amendments and ongoing CSA oversight of OBSI will put us in a better position to assess over time whether its recommendations should be made binding.

Not appropriate for PMs and EMDs; alternative service providers

Portfolio managers (PMs) and exempt market dealers (EMDs) took the position that mandating OBSI is not appropriate for their client base. Among other things, they say that

- they have relatively small numbers of clients who are generally of higher net worth and sophistication, so firms will seek to resolve their complaints without the need to turn to a third party service provider
- in the few cases where dispute resolution is required, their clients are of a kind that prefers to be able to choose service providers, and they do not need protection in the form of a choice prescribed by regulators
- OBSI lacks expertise in regard to managed accounts and the exempt market

We do not think that OBSI lacks the expertise to consider complaints relating to managed accounts or exempt market investments. OBSI has experience of managed accounts because some IIROC member firms provide discretionary trading services. It has experience with the exempt market because all IIROC member firms are authorized to trade in exempt market securities and many MFDA members are registered as EMDs, as well as being mutual fund dealers. We also note that the Amendments provide that section 13.16 does not apply in respect of a permitted client that is not an individual.

$350,000 limit

Some commenters suggested that the $350,000 limit should be raised or eliminated. We have changed the limit so that it applies only to the amount that can be recommended, recognizing that a complaint might begin as a claim for a larger amount. However, we do not think it is necessary to change the amount at this time. OBSI's experience is that the large majority of recommendations are for amounts well below $350,000. We believe that if a client wishes to seek an award larger than $350,000 in a complaint that is escalated from the firm's internal complaint handling process, that complaint would be more appropriately handled by another forum, such as the courts or arbitration agreed to by the parties. Again, implementing the Amendments and ongoing CSA oversight of OBSI will put us in a better position to assess whether a change to the limit may be appropriate in the future.

OBSI corporate governance and terms of reference

We received comments recommending changes to OBSI's corporate governance or terms of reference.

OBSI remains an independent agency and the oversight model adopted by the CSA jurisdictions outside of Québec does not contemplate a role for us that would extend to determining the structure of OBSI's board of directors. As noted above, since the publication of the 2012 Proposal, OBSI has implemented corporate governance changes which we support.

With respect to OBSI's terms of reference, we observe that OBSI has a separate process to receive public comments on the content of its terms of reference. Also, the MOU contemplates that OBSI will at an early stage

- consult with designated CSA jurisdictions on issues that might have significant implications for the dispute resolution system and for OSBI's members
- share with designated CSA jurisdictions any draft documents that are proposed to be published for stakeholder feedback, including any proposed changes to its terms of reference.

List of commenters

We received submissions from the following 24 commenters:

1. Advocis
2. Alternative Investment Management Association
3. Association of Canadian Compliance Professionals
4. Borden Ladner Gervais LLP
5. Brandes Investment Partners & Co.
6. Canadian Foundation for Advancement of Investor Rights
7. CI Financial Corp.
8. Exempt Market Dealers Association of Canada
9. Fidelity Investments Canada ULC
10. Invesco Canada Ltd.
11. Investment Industry Association of Canada
12. Kenmar Associates
13. National Exempt Market Association
14. Portfolio Management Association of Canada
15. RBC Dominion Securities Inc., RBC Direct Investing Inc., Royal Mutual Funds Inc., RBC Global Asset Management, Phillips Hager & North Investment Funds Ltd. and RBC PH&N Investment
16. RESP Dealers Association of Canada
17. Robertson-Devir
18. Scotia Asset Management L.P.
19. Small Investor Protection Association
20. Stikeman Elliott LLP
21. The Canadian Advocacy Council for Canadian CFA Institute Societies
22. The Investment Funds Institute of Canada

23. The Investor Advisory Panel

24. Walton Capital Management Inc.

ANNEX C

THE MANITOBA SECURITIES COMMISSION
MSC Rule No. 2013-38

(Section 149.1, *The Securities Act*)

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:

Dispute resolution service
13.16(1) In this section,

"**complaint**" means a complaint that

(a) relates to trading or advising activity of a registered firm or a representative of the firm, and

(b) is received by the firm within 6 years of the day when the client first knew or reasonably ought to have known of an act or omission that is a cause of or contributed to the complaint;

"**OBSI**" means the Ombudsman for Banking Services and Investments.

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 this section;

(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 (4);

(c) the name of the independent dispute resolution or mediation service that will be made available to the client under subsection (4) and contact information for the service.

13.16(3) 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 and include the information referred to in subsection (2).

13.16(4) A registered firm must as soon as possible 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 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 under subsection (3), and the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service;

(b) within 180 days of the client's receipt of written notice of the firm's decision under subsection (3), the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service.

13.16(5) Subsection (4) does not apply unless the client agrees that any amount the client will claim for the purpose of the independent dispute resolution or mediation service's consideration of the complaint will be no greater than $350,000.

13.16(6) For the purposes of the requirement to make available an independent dispute resolution or mediation service under subsection (4), a registered firm must take reasonable steps to ensure that OBSI will be the service that is made available to the client.

13.16(7) Subsection (6) does not apply in Québec.

13.16(8) This section does not apply in respect of a complaint made by a permitted client that is not an individual.

3. Paragraph 14.2(2)(j) is replaced with the following:

(j) disclosure of the firm's obligations if a client has a complaint contemplated under section 13.16 [*dispute resolution service*] 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;

4. Transition – firms that registered before September 29, 2009

Except in Québec, section 13.16 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as amended by this instrument, does not apply to a registered dealer or registered adviser if

(a) the dealer or adviser first registered in a jurisdiction of Canada before September 29, 2009, and

(b) the complaint was received by the firm on or before August 1, 2014.

5. Transition – firms that registered between September 28, 2009 and April 30, 2014

Section 13.16 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as amended by this instrument, does not apply to a registered dealer or registered adviser if

(a) the dealer or adviser first registered in a jurisdiction of Canada during the period commencing on September 28, 2009 and ending on April 30, 2014,

(b) the complaint was received by the firm on or before August 1, 2014, and

(c) the firm complies with section 13.16 of that National Instrument as that provision was in force on April 30, 2014.

6. Coming into force

This Instrument comes into force on May 1, 2014.

7. This Instrument may be cited as MSC Rule 2013-38.

ANNEX D

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. These changes come into effect when the corresponding changes to the Rule are implemented. This Annex shows the amendments to the Companion Policy against the relevant portions of the unofficial consolidation of NI 31-103 published on July 15, 2013.

Division 5 Complaints

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.

~~Registered firms in Québec must comply~~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 ~~has provided~~provides a substantially similar regime ~~since 2002.~~ for complaint handling.

The guidance in Division 5 of this Companion Policy 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 NI 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.

13.15 Handling complaints

General duty to document and respond to complaints

Section 13.15 requires registered firms to document complaints, and to effectively and fairly respond to them. We are of the view that registered firms should document and respond to all complaints received from a client, a former client or a prospective client who has dealt with the registered firm (complainant).

Firms are reminded that they are required to maintain records which demonstrate compliance with complaint handling requirements under paragraph 11.5(2)(m).

Complaint handling policies

An effective complaint system should deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve the objective of handling complaints fairly, the firm's complaint system should include standards allowing for objective factual investigation and analysis of the matters specific to the complaint.

We take the view that registered firms should take a balanced approach to the gathering of facts that objectively considers the interests of

- the complainant
- the registered representative, and
- the firm

Registered firms should not limit their consideration and handling of complaints to those relating to possible violations of securities legislation.

Complaint monitoring

The firm's complaint handling policy should provide for specific procedures for reporting the complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. Firms should take appropriate measures to deal with such problems as they arise.

Responding to complaints

Types of complaints

All complaints relating to one of the following matters should be responded to by the firm by providing an initial and substantive response, both in writing and within a reasonable time:

- a trading or advising activity
- a breach of client confidentiality
- theft, fraud, misappropriation or forgery
- misrepresentation
- an undisclosed or prohibited conflict of interest, or
- personal financial dealings with a client

Firms may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded to in the manner described below. This determination should be made, in all cases, by considering if an investor, acting reasonably, would expect a written response to their complaint.

When complaints are not made in writing

We would not expect that complaints relating to matters other than those listed above, when made verbally and when not otherwise considered serious based on an investor's reasonable expectation, would need to be responded to in writing. However, we do expect that verbal complaints be given as much attention as written complaints. If a complaint is made verbally and is not clearly expressed, the firm may request the complainant to put the complaint in writing and we expect firms to offer reasonable assistance to do so.

Firms are entitled to expect the complainant to put unclear verbal issues into written format in order to try to resolve confusion about the nature of the issue. If the verbal complaint is clearly frivolous, we do not expect firms to offer assistance to put the complaint in writing. The firm may nonetheless ask the complainant to put the complaint in writing on his or her own.

Timeline for responding to complaints

Firms should

- promptly send an initial written response to a complainant: we consider that an initial response should be provided to the complainant within five business days of receipt of the complaint

- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the firm's decision on the complaint

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.

We encourage firms to resolve complaints relating to the matters listed above within 90 days.

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 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.

~~A registered firm must ensure that the complainant is aware of the dispute resolution or mediation services that are available to them and that the firm will pay for the services. Registered firms should know all applicable mechanisms and processes for dealing with different types of complaints, including those prescribed by the applicable SRO.~~

~~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.~~

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.

ANNEX E

LOCAL MATTERS

Notice of Commission Approval

On December 3, 2013, the Ontario Securities Commission (the Commission) approved the amending instrument to NI 31-103 (the Amending Instrument) pursuant to section 143 of the Securities Act (Ontario) (the Act). Also on that day, the Commission adopted the changes to 31-103CP.

Delivery to the Minister

The Materials were delivered to the Minister of Finance on December 3, 2013. The Minister may approve or reject the Amending Instrument or return it for further consideration. If the Minister approves the Amending Instrument or does not take any further action by February 3, 2014 the Amending Instrument will come into force on May 1, 2014. The changes to 31-103CP will also take effect on May 1, 2014.