

January 30, 2013

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Box 1903
Toronto, ON M5H 3S8

Dear Mr. Stevenson,

RE: Notice and Request for Comments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP

The Investor Advisory Panel (IAP or Panel) is an independent body that was appointed by the Ontario Securities Commission in August, 2010. Our mandate is to represent the views of investors and enable investor concerns and voices to be represented to the OSC in its rule and policy making process. Our mandate centers upon our written submissions to the OSC and CSA regarding various regulatory initiatives including proposed rules and policy statements.

As members of the Ontario Securities Commission's (OSC) Investor Advisory Panel (IAP), we enclose in this letter our submission regarding the Canadian Securities Administrators (CSA) request for comment on proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and to Companion Policy 31-103CP.

The Investor Advisory Panel is pleased to submit this comment letter regarding the request.

Executive Summary:

The Panel fully supports proposed amendments to require all registered dealers and registered advisers outside of Quebec to use the Ombudsman for Banking Services and Investments (OBSI) as a service provider in respect of their dispute resolution or mediation services for 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. We recommend that the CSA set complaint resolution timelines and investor communications requirements for firms, establish an Accountability Framework and strengthen OBSI's ability to enforce its recommendations. We emphasize that time is of the essence and so we encourage the CSA to require immediate implementation following their swift approval of the proposed amendments.

All Canadian investors should have access to restitution that is provided by independent, fair, informed, timely and consistent dispute resolution services.

A single dispute resolution services provider:

Independent, fair, informed, timely and consistent dispute resolution services can best be provided by a single, non-profit service provider.

- A single service provider can provide a consistent and uniform standard for complaint resolution.
- A single service provider can develop expertise and current knowledge about the complex and constantly evolving financial services sector. Multiple providers would have a less robust and less current knowledge base (dealing with fewer complaints) and lack the industry-wide perspective which allows the Ombudsman to detect and address systemic issues.
- A single service provider will reduce client confusion as to who to contact when complaints are not resolved at the registrant level.

We agree that this dispute resolution services provider should be OBSI. OBSI is independent, non-profit (funded by the industry) and has ten years of experience resolving disputes in the financial services sector, with specific expertise and knowledge of the securities sector, having served in this capacity for SRO member firms.

Timely dispute resolution:

The six year time limit for taking complaints to OBSI, based on when the client became aware of the trading or advising activity in question, is appropriate.

Current provincial statutes of limitation make it imperative that both firms and OBSI conduct and complete their client complaint handling and dispute resolution processes promptly. Delays can harm the investor.

OBSI's current terms of reference require that the client take his/her complaint to the Ombudsman within 180 days of the client's receipt of the firm's rejection of the complaint. NI 31-103 should adopt this 180 day deadline.

NI 31-103 should also include the complaint handling standards adopted two years ago by the SROs (MFDA and IIROC) to ensure that there are consistent standards for investors and firms across the industry. These standards set complaint response times and require specific communications with investors.

Prompt complaint resolution by the firm is essential.

- As we have already noted, some very short provincial statutes of limitation potentially jeopardize investors' ability to seek restitution within the prescribed timeframes.
- Seniors and individuals suffering financial distress should not face lengthy delays in their search for restitution.
- OBSI will not accept client complaints until the firm has completed its review and the client and firm have terminated their discussions/negotiations.

The SRO standards set clear and reasonable timelines for the firm's resolution of complaints. Firms must provide clients with their response to the client's written complaint within 90 days of receipt. If the firm fails to respond within 90 days or if the client rejects the firm's offer, then the client may take his/her complaint to OBSI immediately.

We also recommend amendments that require firms to make clients aware of their ability to access OBSI. The SRO complaint handling standards require firms to inform clients of their right to take a complaint to OBSI on two occasions: first, when the account is opened and secondly, when the client files a written complaint. It should not be up to the clients to figure out what their rights are. Firms should be required to communicate this information to them.

Accountability, transparency and oversight:

OBSI currently is subject to independent third party review every three years. We commend OBSI for this practice and recommend that it continue. We would also encourage the use of annual complainant satisfaction surveys whose findings should be made public.

OBSI should set clear performance standards, particularly with regard to timeliness of its proceedings. These standards should be made public, through timely and regular reporting. We also recommend increased and more regular reporting, at a minimum on a quarterly basis, of OBSI case statistics, both on the web site and in other public reports.

Both industry and investors have expressed concerns about the current accountability framework at OBSI. OBSI has an independent Board whose composition and operations have recently changed to better reflect and ensure investor input. That said, industry participants have also expressed concerns about more robust and transparent accountability structures and processes. It is essential that all parties to the dispute resolution process have confidence in OBSI and believe that its findings are fair and informed. We agree that more can and should be done in this regard.

We recommend that the CSA develop an accountability framework for oversight of OBSI. It should include representation from the SROs, which currently have individual protocols and agreements with the ombudsman. The CSA may wish to consider its current oversight framework for the SROs and modify it appropriately. This framework includes audits which are required to be conducted on a regular basis and whose findings are made public. We would urge

the CSA to ensure that an oversight audit process for OBSI is efficient and timely, avoiding duplication, bureaucratic and jurisdictional issues. A five member Oversight Panel consisting of representatives of the three Recognizing Regulators and the two SROs, supported by a small permanent staff so as to build familiarity with the issues, may best serve this process.

Enforcing OBSI decisions:

OBSI does not have the power to enforce its decisions. While IIROC and MFDA regulated firms are required to participate and cooperate in the ombudsman's complaint reviews, they are not required to accept its findings and recommendations. In those cases where a firm refuses to accept OBSI's recommendations, OBSI's process calls for public communication of the firm's refusal.

In the absence of enforcement powers, OBSI has therefore relied on a "name and shame" process whose effectiveness depends entirely upon firms' fear of reputational damage. Until recently, this process appeared to be working. However, the foundation of this voluntary restitution process is now under attack as more firms appear emboldened to challenge and reject the ombudsman's recommendations. The regulators must immediately address the issue of OBSI's ability to enforce its findings and recommendations.

The addition of enforcement powers would require fundamental changes to OBSI's mandate and operations, including the addition of a formal appeal process. We believe that strengthening OBSI's ability to compel acceptance of its recommendations/findings can most easily and effectively be handled through a new CSA Oversight Framework rather than by altering OBSI's mandate and operations.

The new accountability framework should therefore include an automatic regulatory review when a firm refuses to accept the OBSI recommendation. Unlike OBSI, the regulatory organizations have investigation and enforcement capacity and jurisdiction over the firms. The relevant CSA Member or SRO should immediately conduct a review of the OBSI recommendation and promptly publish its findings. Although OBSI does not have the power to make its recommendations binding and to enforce its recommendations, the regulators do, can and should.

Canadian investors have very limited opportunities to seek restitution. They can seek legal redress, a time consuming and costly process. If their firm is regulated by IIROC, they can use a binding and potentially costly arbitration process. In Quebec, they can also turn to the AMF's free but voluntary (for the firm and investor) mediation process. Only OBSI offers free, non-binding dispute resolution where the firm is required to fully cooperate and participate. However, effective enforcement of its recommendations must be ensured.

The CSA needs to move quickly to support and strengthen OBSI. Too frequently, the CSA consultation process proceeds at what can charitably be described as a glacial pace. We urge the

CSA to move quickly to approve and implement the proposed amendments and to take these additional steps to ensure that OBSI can continue to provide free, independent, timely, informed and fair dispute resolution services for Canadian investors and industry.

Finally we note that we have not specifically addressed dispute resolution mechanisms employed by the Portfolio Management Association of Canada (PMAC).

We thank you for considering our comments.

Sincerely,

The Investor Advisory Panel

Nancy Averill, Paul Bates, Stan Buell, Connie Craddock, Alan Goldhar, Ken Kivenko, Cary List