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February 6, 2013

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 Territory  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3

Dear Sirs/Mesdames:

**RE: Proposed Amendments to National Instrument 31-103: Dispute Resolution Service**

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Thank you for the opportunity to provide comments to the Canadian Securities Administrators (“CSA”) on the proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“NI 31-103”) and to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the “CP”) relating to the use the Ombudsman for Banking Services and Investments (“OBSI”) (collectively, the “Proposed Amendments”).

Fidelity Investments Canada ULC (“Fidelity”) is the 7<sup>th</sup> largest fund management company in Canada and part of the Fidelity Investments organization in Boston, one of the world’s largest financial services providers. Fidelity manages over \$70 billion in mutual funds and institutional assets and offers approximately 200 mutual funds and pooled funds to Canadian investors.

## **GENERAL COMMENTS**

### **A. OBSI FUNDING MODEL**

We also acknowledge CSA efforts in 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 for dispute resolution services.

Under OBSI’s current funding model, participating firms pay a fee based on their size or volume of business. As a mutual fund manager, we believe that OBSI’s funding model should not be based on size of assets, but rather based on services provided (e.g. a fee-for-service model). Mutual funds already bear a very high burden of regulatory and tax costs. Complaints involving mutual fund managers currently represent a very small portion of OBSI’s overall complaints.

Therefore, we urge the CSA to advocate for the development of a fee-for-service funding model, which would be based on use by a particular member as opposed to the size of a particular member.

### **B. OBSI BOARD OF DIRECTORS – FUND MANAGER REPRESENTATION**

We acknowledge OBSI’s current corporate governance standards (i.e. majority independent board, nomination process, etc.), and that a minority of its directors are appointed from lists proposed by industry bodies. As fund managers currently do and would represent, if the Proposed Amendments are implemented, a significant portion of OBSI’s membership, we believe that membership must be reflected in appropriate fund manager representation on OBSI’s board of directors.

We believe that having a board made up of individuals with comprehensive industry knowledge, including fund managers, will lead to a more effective, balanced and fair resolution process. To date, OBSI has been unwilling to consider fund manager representation on its board.

## **SPECIFIC COMMENTS**

- 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?***

We believe that the appropriate time limit for investors to raise complaints should run from the time when the trading or advising activity occurred. Establishing an objective standard would minimize debate over when an investor knew or ought to have known of the trading or advising activity.

For example, mutual fund investors receive a trade confirmation after each transaction, which sets out details of the transaction, including the date the transaction was made. By having this information readily available, registrants and investors would be certain of the date when the trading or advising activity took place rather than trying to determine when the investor knew or ought to have known when the trading or advising activity occurred.

In addition, we are of the view that the proposed six-year limitation period is unreasonable. In the absence of a policy rationale, we believe that the appropriate limitation period should coincide with the statutory limitation period in the jurisdiction where the investor resides (e.g. two years in Ontario). If the legislators saw fit to establish a limitation period for actions, we do not believe that the CSA or OBSI should be entitled to override the authority of the legislature. As such, we believe that the statutory limitation periods applicable to the investor are eminently fair and reasonable.

Accordingly, section 13.16 of NI 31-103 and the CP should be revised to reflect that the time limit on complaints would run from the date when the trading or advising activity occurred, and are raised within the statutory limitation period applicable to the investor.

**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?***

Yes. We are of the view that NI 31-103 should require a deadline for clients to bring complaints to OBSI. The proposed 180-day time limitation from when the client received notice of the registrant's complaint rejection or recommended resolution is appropriate and consistent with OBSI's current terms of reference.

We thank you for the opportunity to comment on the Proposed Amendments. As always, we are more than willing to meet with you to discuss any of our comments.

Yours truly,

***"W. Sian Burgess"***

W. Sian Burgess  
Senior Vice-President, Head of Legal and Compliance, Canada

c.c. Rob Strickland, President  
Rob Sklar, Legal Counsel