

February 21, 2024

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Dear Sirs/Mesdames

RE: CSA Notice and Request for Comment Regarding

Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service; and

Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*; and

Proposed Changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to Enhance Protection of Older and Vulnerable Clients.

The Association of Canadian Compliance Professionals (“ACCP”) is a national organization whose members are compliance professionals working with mutual fund dealers, exempt market dealers, mutual fund companies, insurance companies and MGAs, as well as industry service providers including legal, technology and independent consultants.

The ACCP welcomes the opportunity to provide both general comments with respect to the Notice and Request for Comments dated November 30, 2024, and specific comments to the questions contained therein.

Our general comments are as follows:

We note that there are no questions regarding the appropriateness of applying a fairness standard principle to recommendations and the appropriateness of binding decisions.

The Notice proposes that an independent Dispute Resolution Service (“IDRS”) will apply an undefined fairness standard when making recommendations. The ACCP believes that the rules of law are the only sensible standard to guide the IDRS when making recommendations as an undefined fairness standard does not provide sufficient and substantive legal principles for binding decisions.

Furthermore, the ACCP has not seen any compelling argument for the necessity of binding decisions that preclude a statutory right of appeal to an external body, such as a securities tribunal or to a court. The ACCP is not convinced that a judicial review process will ensure accountability in a scenario where OBSI is granted binding authority. Only a right of appeal will provide sufficient and substantive safeguards if the IDRS has the authority to make binding decisions.

Notwithstanding the above, our responses to the questions posed by the CSA in the Notice are as follows:

1. The CSA contemplates that under the proposed framework, an IDRS would be authorized to issue binding decisions in circumstances where it is designated or recognized in a jurisdiction as the identified ombudservice. It is possible that some CSA jurisdictions may not designate or recognize OBSI as the identified ombudservice at the same time, resulting in the status quo (e.g., OBSI making non-binding recommendations only) applying in those jurisdictions until OBSI were designated or recognized as the identified ombudservice. If jurisdictions designate or recognize OBSI as the identified ombudservice at different times, what operational impacts, if any, would you anticipate from an IDRS being designated or recognized in some but not all jurisdictions? How can these impacts best be managed?

The ACCP does not foresee any material operational impacts if jurisdictions designate or recognize OBSI as the identified ombudservice at different times.

2. The proposed rule amendments include a new provision requiring compliance with a final decision of the identified ombudservice. Under the proposed framework, we contemplate that both a recommendation or decision of the identified ombudservice could become a final decision that will be binding on the firm under certain circumstances. Specifically:

*a. With respect to a recommendation made by the identified ombudservice following the investigation and the recommendation stage, we contemplate the recommendation becoming a final decision where (i) a specified period of time has passed since the date of the recommendation, (ii) neither the firm nor the complainant has objected to the recommendation, and (iii) the complainant has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice (the **deeming provision**). What are your general thoughts about the deeming provisions and the circumstances that trigger it? Please also comment on whether 30, 60, 90 days would be an appropriate length of time to be specified for a recommendation to be deemed a final decision under the deeming provision.*

The ACCP believes that the circumstances triggering the deeming provision are both clear and reasonable. The ACCP also believe that 90 days is an appropriate specified length of time for a recommendation to be deemed a final decision under the deeming provision. Anything less than 90 days does not provide either party with sufficient time to reasonably review the recommendation, discuss the recommendation with other parties including insurers, and then decide whether to accept it or object to it.

If the complainant and the firm both acknowledge their acceptance of the recommendation in less than 90 days, the recommendation should become a final decision then.

b. *With respect to the decision made by the identified ombudservice following the review and decision stage, we contemplate the decision becoming final where (i) a specified period of time has passed since the date of the decision (the **post-decision period**), and if the complainant did not trigger the review and decision stage, (ii) the complainant has not rejected the decision and has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice. Please comment on the provision of this post-decision period and whether 30, 60 or 90 days would be the appropriate length for the post-decision period.*

The ACCP believes that the provision of a post-decision period is reasonable and clearly described. The ACCP also believes that 90 days is an appropriate specified length of time for the post-decision period. Anything less than 90 days does not provide the complainant with sufficient time to reasonably review the recommendation and then decide whether to accept it or withdraw from the process.

3. *The proposed framework contemplates that complainants could not reject a decision of the identified ombudservice if they initiated the second-stage review of the recommendation by objecting to it. What are your views on this approach?*

The ACCP believes that this is both fair and reasonable since the complainant is the party that chose the ombudservice to make a final decision.

4. *Please provide any comments on maintaining the compensation limit amount of \$350,000.*

The ACCP notes that in Table 1 only 9 (less than 2%) of the 546 cases settled during the period 2018 - 2022 were in excess of \$199,000. The ACCP believes that this statistic strongly supports our position that a compensation limit amount of \$350,000 is more than adequate and should remain unchanged. Anything above \$350,000 is a very substantial figure for any firm and even potentially fatal for many smaller firms. The courts are the more appropriate forum for amounts greater than \$350,000.

5. *The proposed framework does not contemplate an appeal of a final decision to either a securities tribunal, or a statutory right of appeal to the courts (although parties could still seek judicial review of a final decision). What impact, if any, do you think the absence of an appeal mechanism will have on the fairness and effectiveness of the framework for parties to a dispute?*

The ACCP believes that the final framework must include a process for either appealing a final decision to a securities tribunal or a statutory right of appeal to the courts in certain circumstances. While The ACCP acknowledges that an appeal process may negatively impact the expedient resolution of some files, fairness is not possible without an appeal process.

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The ACCP notes that in Table 1. 497 (91%) of the 546 cases settled during the period 2018 - 2022 were settled for \$49,999 or less. This suggests that materiality should be a major consideration in any proposal to incorporate an appeal process into the framework. A \$50,000 minimum recommendation threshold for appealing a final decision would possibly strike a reasonable balance between fairness and effectiveness.

6. Should the proposed framework include a statutory right of appeal to the courts or another alternative independent third-party procedure for disputes involving amounts above a certain monetary threshold (for example, above \$100,000)? If so, please explain why.

The ACCP believes that \$100,000 is too high a monetary threshold as only a little more than 4% of the cases settled during the period 2018 - 2022 were settled for \$100,000 or more. The ACCP believe that a \$50,000 monetary threshold is more appropriate.

7. Are there elements of oversight, whether mentioned in this Notice or not, that you consider to be of particular importance in ensuring the objectives of the proposed framework are met? If so, please explain your rationale.

All the elements of oversight identified by the CSA are important for there to be an appropriate oversight regime for the identified ombudservice. The ACCP strongly believe that co-ordinated compliance examinations and monitoring of the identified ombudservice's reporting by the CSA will be extremely important elements in determining that the identified ombudservice fairly and effectively.

The ACCP also believes that the identified ombudservice undergo an independent evaluation at least once every three years rather than the five years mentioned in the Notice.

8. Do you consider oversight, together with the other aspects of the proposed framework discussed in this Notice, to be sufficient to ensure that the identified ombudservice remains accountable?

While the ACCP believes that the oversight discussed in the Notice appears to be sufficient, we will need to see the final framework to provide a more definitive response.

9. Please provide your views on the anticipated effectiveness of prohibiting the use of certain terminology for internal or affiliated complaint-handling services that implies independence, such as "ombudsman" or "ombudservice", to mitigate investor confusion.

The ACCP supports the proposed prohibition and agree that it will be an effective tool in mitigating investor confusion.

Thank you for the opportunity to provide our comments.

Please contact me with any questions you may have.

Regards,

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Chair, Association of Canadian
Compliance Professionals

Gary Legault
Vice Chair, Association of Canadian
Compliance Professionals