Re: CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service – 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

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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Cher Me Lebel,

I appreciate the opportunity to provide my perspectives on the proposed amendments outlined in the CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service.

Establishing a binding authority for OBSI is a policy that independent reviewers, consumer advocates and even the JRC have endorsed for many years. The breadth and persistence of this support reflects an appreciation of the pivotal role that a final binding decision would play in creating a more fair, effective, and functional dispute resolution process within the financial services sector. Without the assurance of enforceable decisions, consumers are often either discouraged from pursuing or prompted to abandon complaints, not wanting to face the expense and delays associated with resorting to the court system. This undermines the accessibility and effectiveness of the dispute resolution process, perpetuating a sense of distrust and dissatisfaction among consumers.

For these reasons, I strongly support the introduction of a binding framework for OBSI that will provide consumers with a robust and enforceable mechanism for resolving disputes with financial service providers. While fully endorsing the principle of binding authority, I do wish to raise some issues regarding the proposed amendments.

Definition of Complaint:

The proposed framework will amend the definition of a complaint "to clarify that a complaint concerns an "expression of dissatisfaction" that relates to a trading or advising activity." This amended definition is much more limited than OBSI's current operating definition of a complaint as "an expression of dissatisfaction made by a Customer about the Provision of a Financial Service in Canada by a Participating Firm, or Representative of a Participating Firm…." If adopted the proposed amendment appears to limit the scope of the independent dispute resolution service to registerable activities thereby excluding complaints related to tax advice, fee charging, service quality, and financial plans. Was this the intent of the amended definition and, if so, why was this limitation considered appropriate?

Two-Stage Process:

As proposed, a binding decision will require a two-stage recommendation and (potential) review process. The transition to this two-stage process will inevitably create some confusion and/or apprehension for complainants. In particular, retail investors may find the proposed system overly legalistic and confrontational. This could discourage individuals from seeking resolution, impacting their financial well-being. Consequently, clear communication, in plain language,

about the new process will be essential to achieve informed decision making and take-up by consumers.

This two-stage process has the potential to aggravate the already long dispute resolution cycle times that disadvantage consumers, particularly the most vulnerable. A complaint resolution process that becomes a test of consumer endurance is not a fair or accessible process. It will be important, therefore, for the CSA to set and enforce stringent timelines for all phases of the proposed process.

The review stage of the proposed process, if not appropriately managed, can create an environment ripe for low ball settlements. Confronted with the prospect/threat of a dealer-initiated review, complainants whose energy and resources have, by then, been depleted will be very tempted to accept a settlement, even if it is below the OBSI recommendation. The CSA will have to establish rules that guard against this outcome.

Loss Calculation Methodology:

I am concerned that, left unaddressed, the ongoing debate between Industry (particularly exempt market dealers) and OBSI on what constitutes an appropriate loss calculation methodology, will lead to a large number of dealer-initiated reviews of OBSI's initial recommendations. Consequently, I encourage the CSA, in conjunction with the implementation of this proposal, to provide specific guidance on loss calculation methodology to forestall judicial review becoming the forum for addressing this issue.

Compensation Cap:

I am disappointed that the proposal does not raise the $350,000 compensation cap now in place. At the same time, insisting on an increase in this cap at the expense of potentially jeopardizing this binding proposal is not appropriate. Therefore, I only suggest that consideration be given to initiating a separate review of the compensation cap once this proposal is closer to implementation.

Regulatory and Agency Buy-in

As written, the proposal provides little indication that it has been informed by meaningful dialogue with either FCAC or OBSI. Given the shared oversight of OBSI by the CSA and FCAC and given that OBSI will be responsible for implementing the framework that the CSA adopts, it is important that the CSA engage with these organizations on this proposal. At a minimum, the interactions and division of responsibilities among these three organizations needs to be

formalized to ensure that consumers can easily identify a clear and consistent approach to complaint handling.

Adequacy of OBSI's Current Funding Model:

I believe that the projections in Annex E of the incremental costs that OBSI will need to incur to implement the proposed framework are significantly understated. In my view, the calculations make inadequate allowance for the investments in technology, the increased caseload and the more labor-intensive investigation/review process that are implicit in the proposal. I am, therefore, concerned that OBSI's current funding model will not be adequate to support the increased workload and responsibilities associated with the CSA's proposed transition to a two-stage binding framework. Presently, OBSI derives most of its revenues from fees levied on its member firms, a constituency that regularly petitions OBSI to keep these fees as low as possible. These fees amounted to approximately $12 million in fiscal 2022. I do not share the OSC's confidence that this funding model will allow OBSI to make the investments and hire the people necessary to take on the added responsibilities inherent in the CSA proposal. If OBSI's technology and talent are not adequate to accommodate the proposed changes, it will compromise the effectiveness and efficiency of the entire proposal.

I appreciate the opportunity to set out in this letter my comments about the binding proposal. In addition, I have also attached an appendix that provides responses to the questions posed in the consultation.

I grant permission for public posting of this letter and appendix.

Sincerely,

Harvey Naglie

Harvey Naglie

Appendix – Response to questions posed in CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service

1. **Operational Impacts of Different Designation Timelines for OBSI:**

The potential for OBSI to be designated or recognized as the identified ombudsservice in jurisdictions at various times would undermine the benefits of cross-province harmonization. Piecemeal adoption could lead to confusion and uncertainty for both investors and industry participants. It is therefore desirable for regulatory authorities to try to achieve synchronized implementation across jurisdictions. Given the possibility that this may not be achieved, it will be important for CSA jurisdictions to coordinate their efforts to the extent possible and implement transitional measures that will promote a consistent and effective framework for investor protection and dispute resolution. This type of coordinated effort will contribute to the clarity and stability necessary for the successful operation of the proposed framework.

2. **Deeming Provisions and Time Period Considerations:**

a. Deeming Provision for Recommendations:

To discourage lowballing and expedite the resolution process, the review stage will need to be closely monitored. I do not see a reason dealers cannot be required to file a request for a review within two business days of receiving a recommendation. Complainants could then be advised of the dealer's decision and be required to decide about requesting a review within thirty business days. Any settlement agreed between the parties from the time a recommendation is delivered until the review (if any) is completed for an amount below the recommended amount should be made public and identified as a lowball settlement. This combination of a short timeline and settlement transparency will in my view discourage unfair practices and promote accountability.

b. Post-Decision Period for Final Decision:

Considering the need for efficiency, the post-decision period for a final decision should be limited to fourteen business days. This timeframe allows for a thorough review (given that the issue has been examined for a protracted period already) while ensuring a swift resolution, aligning with the objective of an expeditious and fair dispute resolution process.

3. **Complainants' Ability to Reject a Decision:**

The proposed framework, in contrast to the practice in other jurisdictions, contemplates that complainants cannot reject a decision if they initiated the second-stage review. The CSA justifies this approach on the grounds that it promotes "finality, efficiency and fairness to both parties" and as a result constitutes "an appropriate and balanced outcome and provides both parties to the dispute with a fair and final resolution of the matter." I understand the rationale and it is consistent with the CSA's intent is to develop a fair and robust complaint resolution process that consumers will have confidence in and come to appreciate as a cheaper, better, and more accessible alternative than the courts. However, I do not understand why it is necessary to foreclose the judicial avenue to complainants who initiate an unsuccessful review. Given that this prohibition does not exist in other jurisdictions and given that the fairness and efficacy of the proposed review process has yet to establish a track record, it is unclear to me why the CSA feels compelled to incorporate this prohibition at this time.

4. **Maintaining the Compensation Limit of $350,000:**

As previously noted, numerous reviewers and consumer advocates have regularly argued for an increase in OBSI's compensation limit. At the same time, the bulk of OBSI complainants are concentrated at compensation levels well below the $350,000 limit. While this may be the product of a chicken and egg situation, there can be little argument that introducing binding decisions is more consequential to a larger number of consumers than raising the compensation limit. Consequently, I would not want any controversy over an 'appropriate' compensation limit to derail this binding proposal. Instead, I propose that the CSA commit to prioritize a review of the compensation limit once the current proposal is implemented.

5. **Absence of an Appeal Mechanism:**

I understand the reluctance of the CSA to overburden the proposed complaint resolution process with complex and costly legal or quasi-legal structure. However, the absence of an appeal mechanism for a final decision to either a securities tribunal, or a statutory right of appeal to the courts may undermine the fairness and effectiveness of the framework for parties to a dispute.

I anticipate, particularly initially, that absent an appeal mechanism dealers will automatically pursue a judicial review whenever they disagree with OBSI's final decision. This likely outcome offers no upside to consumers. It prolongs an already overly protracted process; it is a drain on OBSI resources, and the courts may decide in favour of the dealer. By interposing the opportunity to appeal to a securities tribunal (distinct from a statutory appeal to the courts), I

believe that fewer cases will reach the judicial review stage and those that do will enjoy a degree of deference that is unlikely to prevail if a securities tribunal review were not part of the process.

Allowing for an appeal to a specialized tribunal would provide an additional layer of oversight and ensure that decisions made by the identified ombudsservice are subject to a comprehensive and impartial review. It would contribute to a more robust and transparent dispute resolution process that would instill confidence in both investors and industry participants. Public consultations should further explore the optimal structure and function of such an appeals process.

6. **Relying exclusively on the Securities Tribunal for all reviews:**

In line with my response to question 5, I support a streamlined approach to dispute resolution that relies on the securities tribunal for all reviews and does not introduce a separate statutory right of appeal. In my view a singular reliance on the securities tribunal, irrespective of the monetary value of the dispute, promotes consistency, efficiency, and clarity in the dispute resolution framework. By consolidating all reviews under the auspices of the securities tribunal, the system maintains a cohesive and integrated approach to oversight, enhancing accountability and transparency.

7. **Importance of Oversight Elements:**

I broadly support the proposed oversight framework outlined by the CSA and see it as a positive step toward ensuring the effectiveness and integrity of the dispute resolution process. What is missing, however, is a clear articulation of how the CSA's oversight will integrate with the governance responsibilities of OBSI's board and the regulatory scope and intensity of FCAC.

The CSA oversight framework will need to strike a balance, ensuring that it appropriately governs OBSI's board without undermining its independence and that it co-exists with FCAC's regulatory constructs without conflict or duplication. Getting this balance right is crucial for allowing OBSI to operate independently, efficiently, and effectively. A clear delineation of roles and responsibilities among the CSA, the FCAC and OBSI will foster a collaborative relationship that bolsters the overall strength of the regulatory framework.

8. **Sufficiency of Oversight for Accountability:**

As noted above, I consider the proposed oversight framework a significant and necessary component for ensuring accountability within the dispute resolution process. The concern I have does not relate to the adequacy of the proposed oversight, but rather how the CSA

framework will integrate with FCAC oversight and how it will accommodate the independence of OBSI's board. The oversight mechanisms of the CSA and the FCAC will need to operate in harmony and support OBSI's existing governance structure to preserve its autonomy and reinforce its capacity to make impartial decisions. A collaborative and synergistic relationship between the CSA, the FCAC and OBSI's board is essential to strike the right balance between regulatory scrutiny and operational effectiveness.

9. Prohibiting Misleading Terminology for Internal Complaint-Handling Services:

I fully support prohibiting the use of certain terms for internal or affiliated complaint-handling services as a necessary measure to mitigate dealer-induced investor confusion. Clarity in terminology will better ensure transparency and align with the broader objective of enhancing investor protection.