

**Amended and Restated Memorandum of Understanding
concerning oversight of the Ombudsman for Banking Services and Investments**

among

the Canadian Securities Administrators

and

OBSI

WHEREAS an accessible and effective dispute resolution service is vital to the integrity of the Canadian securities market and is an important public policy objective of the CSA;

WHEREAS investors should have ready recourse to effective dispute resolution mechanisms both (a) within a Registered Firm and (b) in the case of unresolved complaints at the firm level, within an independent third-party dispute resolution system;

WHEREAS the CSA consider effective dispute resolution through an independent ombudservice to be an important component of a well functioning investor protection policy framework;

WHEREAS OBSI has established an accessible and effective system to resolve investor complaints based on standards acceptable to the CSA;

WHEREAS OBSI resolves the vast majority of complaints brought to it to the satisfaction of both the investors and the firms involved and, in those instances where a Registered Firm does not accept OBSI's recommendations, the CSA consider the mechanism of making such refusals transparent to be an important element of the investor protection framework;

WHEREAS the CSA have made amendments to NI 31-103 effective May 1, 2014, to require, among other things, that Registered Firms make available the services of OBSI for disputes that fall within OBSI's mandate;

WHEREAS these amendments to NI 31-103 are not applicable in Québec since the Autorité des marchés financiers may act as a mediator and Registered Firms are deemed to comply with the dispute resolution requirements included in NI 31-103 if they comply with the applicable provisions in the *Securities Act* (Québec);

WHEREAS investors in Québec are nevertheless entitled to use the services of OBSI for disputes that fall within OBSI's mandate, in lieu of the mediation services of the Autorité des marchés financiers; and

WHEREAS the CSA consider it important to articulate an oversight framework for OBSI as the mandated dispute resolution service provider under NI 31-103.

The parties agree as follows:

Article 1 – Definitions

- 1) For purposes of this Amended and Restated Memorandum of Understanding (“MOU”):
 - a) “Board of Directors” means the board of directors of OBSI;
 - b) “By-Laws” means the by-laws adopted by OBSI, which became effective on December 3, 2013, as amended from time to time;
 - c) “Chair” means the chair of the Board of Directors;
 - d) “CSA” means “Canadian Securities Administrators”;
 - e) “CSA Designates” mean the Alberta Securities Commission, the British Columbia Securities Commission, the Ontario Securities Commission, and the Autorité des marchés financiers, or another member or members of the CSA selected from time to time to act as the CSA Designates under this MOU;
 - f) “JRC” means the OBSI Joint Regulators Committee which includes representatives from the CSA Designates, the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada. The terms of reference for the JRC are attached as Schedule A to this MOU;
 - g) “NI 31-103” means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
 - h) “OBSI” means the Ombudsman for Banking Services and Investments, or its successor;
 - i) “Ombudsman” means the ombudsman appointed by the Board of Directors;
 - j) “Registered Firm” has the same meaning as in NI 31-103;
 - k) “Registered Individual” has the same meaning as in NI 31-103; and
 - l) “Terms of Reference” means the Terms of Reference adopted by OBSI on December 2, 2013, as amended from time to time.

Article 2 - Purpose

- 2) This MOU provides an oversight framework for the CSA and OBSI to cooperate and communicate constructively.
- 3) The purpose of the oversight framework is to ensure that OBSI continues to meet the following standards set by the CSA:

- a) *Governance* – OBSI’s governance structure should provide for fair and meaningful representation on its Board of Directors and board committees of different stakeholders, promote accountability of the Ombudsman, and allow OBSI to manage conflicts of interest.
- b) *Independence and Standard of Fairness* – OBSI should provide impartial and objective dispute resolution services that are independent from the investment industry, and that are based on a standard that is fair to both Registered Firms and investors in the circumstances of each individual complaint. When determining what is fair, OBSI should take into account general principles of good financial services and business practice, and any relevant laws, regulatory policies, guidance, professional standards and codes of practice or conduct.
- c) *Processes to perform functions on a timely and fair basis* – OBSI should maintain its ability to perform its dispute resolution on a timely basis and deal with complaints without undue delay and should establish processes that are demonstrably fair to both parties.
- d) *Fees and costs* – OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership.
- e) *Resources* – OBSI should have the appropriate resources to carry out its functions and to deal with each complaint thoroughly and competently.
- f) *Accessibility* – OBSI should promote knowledge of its services, ensure that investors have convenient, well identified means of access to its services, and provide its services at no cost to investors who have complaints.
- g) *Systems and controls* – OBSI should have effective and adequate internal controls to ensure the confidentiality, integrity and competence of its investigative and dispute resolution processes.
- h) *Core Methodologies* – OBSI should have appropriate and transparent processes for developing its core methodologies for dispute resolution.
- i) *Information sharing* – OBSI should share information and cooperate with the CSA through the CSA Designates in order to facilitate effective oversight under this MOU.
- j) *Transparency* – OBSI should undertake public consultations in respect of material changes to its operations or services, including material changes to its Terms of Reference or By-Laws.

- 4) This MOU is not intended to:
 - a) displace or reduce the duties or responsibilities of the Board of Directors in overseeing OBSI; the Board of Directors continues to be fully responsible for providing oversight of OBSI and the Ombudsman (through the adoption of transparent governance and other policies embracing best practices and through sound stewardship of the operations of OBSI) in accordance with OBSI's Terms of Reference and By-Laws;
 - b) 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, unless provided by section 7 of this MOU.
- 5) This MOU is intended to replace the oversight framework contemplated in the Joint Forum of Financial Market Regulators' *The Financial Services OmbudsNetwork – A Framework for Collaboration*, which was adopted and endorsed by the CSA in August 2007.

Article 3 – Cooperation and Information Sharing

- 6) The CSA and OBSI agree that:
 - a) The CSA Designates and the Chair will meet and communicate as appropriate to discuss matters significant to investor disputes.
 - b) The Chair will consult at an early stage with the CSA Designates on issues that might have significant implications for the dispute resolution system and for its members.
 - c) The Chair will share at an early stage with the CSA Designates draft documents that are proposed to be published for stakeholder feedback, including any proposed changes to OBSI's Terms of Reference, By-Laws or fees.
- 7) The Chair will inform the CSA Designates of issues and share information that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients of one or more firms.
- 8) The Chair will deliver an annual report to the CSA Designates on OBSI's activities, including the number and types of complaints handled.
- 9) The Board of Directors will make itself available to meet with the CSA Designates and the JRC at least once a year, or more frequently if requested by the CSA Designates to discuss, among other things:
 - a) material operating issues, including fees, specific to OBSI;
 - b) governance matters; and
 - c) effectiveness of OBSI's dispute resolution practices.

- 10) The Ombudsman will also meet with the CSA Designates and the JRC, as appropriate, to discuss significant issues that could materially impact OBSI's operations or the effectiveness of the dispute resolution system for investors.

Article 4 – Independent Evaluations

- 11) Within two years of the amendments to NI 31-103 coming into force, OBSI will commence an independent evaluation of its operations and practices in accordance with terms of reference and a mandate established in consultation with the CSA, and undertaken by an evaluator acceptable to the CSA in consultation with the JRC. OBSI will cooperate with the evaluator to facilitate the completion of the evaluator's report within a reasonable time from the commencement of the evaluation. Thereafter, such independent evaluations will occur at least once every five years.
- 12) The Board of Directors will provide the CSA Designates with an action plan respecting the proposed implementation of any recommendations made in the independent evaluator's report.

Article 5 – Amendments

The parties will periodically review the functioning and effectiveness of this MOU with a view, among other things, to expanding or altering the scope or operation of this MOU should that be judged necessary.

Article 6 - Execution of MOU

Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the parties.

The effective date of the MOU is December 1, 2015.

The MOU may be signed in any number of counterparts (which may be delivered by facsimile, PDF format or other electronic transmission), each of which is deemed an original, and all of which taken together constitute one single document.

– EXECUTION PAGES OMMITTED –

SCHEDULE A

OBSI Joint Regulators Committee (“JRC”) Terms of Reference

1. Mandate

The role of JRC is 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 JRC members and OBSI.

As part of these overall purposes, the JRC will provide a forum for the CSA Designates, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (“MFDA”) to:

- introduce issues and concerns regarding OBSI that have come to the attention of the regulators through investors and Registered Firms and discuss these among the regulators, before bringing them to the attention of OBSI
- identify emerging issues or potential risks and challenges
- discuss background and current information with respect to regulatory policies and guidance as well as standards applicable to and methodologies used by Registered Firms in order to assist OBSI in understanding the context of disputes.

The JRC will provide a forum for OBSI to:

- introduce issues and concerns, including matters that impact OBSI’s operations or the effectiveness of the dispute resolution system for investors
- bring to the attention of the JRC at an early stage, issues that might have significant implications for the dispute resolution system and for Registered Firms
- bring to the attention of the JRC issues that might impact the regulators, and to consult in relation to measures that might be taken to improve the way that Registered Firms deal with complaints.

2. JRC membership and frequency of meetings

The JRC will consist of representatives of the CSA Designates, IIROC and the MFDA.

The JRC will meet on a regularly scheduled basis and at least twice a year. Special meetings will be scheduled as necessary. Representatives of OBSI may be invited to attend a meeting or a portion of a meeting, either on an ad hoc or on a regularly scheduled basis. For example, the JRC may wish to meet from time to time with the Ombudsman and senior staff to learn about investors' complaint experiences relating to Registered Firms and to facilitate OBSI staff's understanding of industry practices.

As provided in the MOU, the JRC will meet with the Board of Directors of OBSI at least once a year to discuss, among other things:

- material operating issues, including fees, specific to OBSI
- OBSI governance matters
- effectiveness of OBSI's dispute resolution practices.

3. Matters for discussion at JRC meetings

Matters for consideration or discussion by the JRC will include:

- consultation regarding the criteria that OBSI should meet to achieve the public interest objectives of dispute resolution, as well as any need for improvements to industry standards
- updates on proposed changes to rules, guidelines, terms of reference and other matters relating to complaint handling or dispute resolution
- complaint handling practices and Registered Firms' compliance with related rules established by the regulators
- information sharing regarding types of complaints, timelines for resolving complaints and discussion of general trends; including matching aggregated information from regulators (e.g. with respect to types of complaints /volumes) with aggregated information from OBSI
- coordination of JRC members' respective communications to ensure investor awareness of dispute resolution and the availability of OBSI processes
- consultation on fee setting by OBSI
- consultation regarding the choice of independent evaluator and discussion of the results of the first independent evaluation, and subsequent evaluations at least every five years, including any recommendations by the evaluator and OBSI's action plan to address the recommendations.