

**CSA Notice and Request for Comment 25-314****Proposed approach to oversight and refinements to the proposed binding authority framework for an identified ombudservice**

**July 15, 2025**

### **Introduction**

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a **60-day comment period expiring September 15, 2025** our proposed approach to oversight of an independent dispute resolution service that can make binding decisions (the **identified ombudservice**) together with additional matters described below. It is anticipated that the Ombudsman for Banking Services and Investments (**OBSI**) will be the identified ombudservice.

The foundation of the CSA's approach to oversight of OBSI would include designation or recognition orders (each, a **designation order**) and a Memorandum of Understanding among participating CSA jurisdictions (the **MOU**). The designation order would set out the terms and conditions that OBSI would be bound by upon designation or recognition as the identified ombudservice,<sup>1</sup> while the MOU would detail how the CSA would oversee OBSI.<sup>2</sup> Together, the designation order and the MOU make up the CSA's proposed approach to oversight (the **oversight framework**). To implement the oversight framework, enabling legislation will be required in each participating jurisdiction.

The CSA is also publishing for comment proposed refinements to the regulatory framework (the **proposed framework**) published by the CSA for comment on November 30, 2023 (the **2023 CSA Notice**). The proposed framework includes a two-stage process for how OBSI would resolve a complaint, with an investigation and recommendation stage (**stage 1**) and an optional review and decision stage (**stage 2**) conducted by OBSI. The proposed refinements would require OBSI to appoint external decision makers to conduct the processes at stage 2 if OBSI's recommendation at stage 1 meets a monetary threshold (the **proposed refinements**). Specifically, if either party initiates stage 2 regarding a stage 1 recommendation of \$75,000 or more, the proposed refinements contemplate that OBSI would be required to appoint an external decision maker or panel of external decision makers to conduct the review and issue a final and binding decision at stage 2. The proposed refinements recognize the potential impact higher-value recommendations may have on the parties once it becomes a binding decision and are

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<sup>1</sup> Published for comment as Annex A.

<sup>2</sup> Published for comment as Annex B.

aimed at addressing concerns raised by commenters in response to the 2023 CSA Notice.

Many CSA jurisdictions will require legislative amendments to enable the proposed framework, including the oversight framework. Any amendments to local acts would be proposed by governments. Proposed legislative amendments would only become law in a CSA jurisdiction if they are proclaimed and in force in that jurisdiction. Nothing in this Notice or the decision to publish this Notice should be considered as an indication of whether such legislative amendments will be made in any jurisdiction.

The British Columbia Securities Commission (**BCSC**) supports the outcomes intended by this project, but did not participate in the 2023 proposal for comment of the amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) or proposed changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**). The BCSC is not participating in the publication of the designation order or the memorandum of understanding. British Columbia is considering legislative changes that may achieve the same outcomes as those intended by the proposed framework. The BCSC is interested in feedback about the oversight framework, the proposed refinements, and OBSI's limitation period and will take comments into consideration.

In Québec, the Autorité des marchés financiers (**AMF**) provides, pursuant to its governing legislation, conciliation and mediation services to consumers of financial products and services, including retail investors. The AMF is participating in the CSA consultation by proposing to maintain the exemption applicable to firms registered in Québec regarding the dispute resolution services requirements under NI 31-103. That being said, most retail investors in Québec also have access to OBSI's dispute resolution. Although OBSI would not be designated or recognized as an identified ombudservice in Québec, OBSI's non-binding services would remain available to retail investors in Québec. Given this context, the AMF would continue participating in the oversight of OBSI, as detailed in the MOU.

## **Background**

On November 30, 2023, the CSA jurisdictions other than the BCSC published for comment proposed amendments to certain complaint handling provisions of NI 31-103, as well as proposed changes to 31-103CP, which would form part of the proposed framework in those jurisdictions. The BCSC supports the outcomes intended by the 2023 CSA Notice.

The 2023 CSA Notice also described potential key structural elements of the proposed framework along with the CSA's rationale for proposing these elements. This included an overview of the CSA's proposed approach to enhanced oversight of OBSI that would broadly follow the approach for oversight of entities such as self-regulatory organizations.

The proposed framework is intended to provide fair and accessible dispute resolution as an alternative to litigation. This includes addressing the problem of low settlements that

is enabled by the power imbalance between typical retail clients and firms. Although it is anticipated that OBSI will be the identified ombudservice, the proposed framework, oversight framework, and the proposed refinements would only apply to OBSI's investment mandate.

### **Overview of OBSI's dispute resolution process under the proposed framework published in 2023**

As noted above, the proposed framework introduced two stages to the dispute resolution process. Stage 1 would carry forward OBSI's current investigative processes, using the inquisitorial approach, and result in a recommended outcome (**recommendation**).

After OBSI makes a recommendation, the complainant or the firm could object to the recommendation within a specified time (the **acceptance period**). A recommendation would become final and binding after:

- OBSI receives acceptance of the recommendation from both the complainant and firm; or
- the end of the acceptance period if the firm did not object to the recommendation and if the complainant accepted the recommendation or did not object to it.

If either or both the complainant and the firm object to OBSI's recommendation, the complaint proceeds to stage 2 where OBSI would review the recommendation and issue a decision. The 2023 CSA Notice proposed that during the review and decision stage, a senior OBSI decision maker who was not involved at stage 1 would consider the party's formal objection to the recommendation. The senior OBSI decision maker would apply the essential process test to maximize the speed, efficiency, and clarity of processes while resolving the dispute in a fair manner. The essential process test would enable the senior OBSI decision maker to use processes that range from inquisitorial to adversarial, but with adversarial processes anticipated to be used infrequently. At the end of stage 2, the senior OBSI decision maker would provide a decision to the parties.

If the complainant initiated the stage 2 review, then the stage 2 decision would be final and binding on both parties once issued. If stage 2 was not initiated by the complainant, the complainant would be able to accept or reject the decision within a specified time (the **post-decision period**). In the exceptional circumstance where the complainant has not accepted or rejected the decision by the end of the post-decision period, the decision would become final and binding on both parties.

Once a decision becomes final and binding, firms would be required to promptly comply with the decision. As stated in the 2023 CSA Notice, it is contemplated that a final decision may be filed with the courts as a court order if a firm fails to comply with the final decision.

### **Highlights of comments and responses regarding oversight and appeals**

The comments received in response to the 2023 CSA Notice generally supported the CSA developing an oversight regime that balances accountability with independence for OBSI. Commenters expressed interest in the CSA's ongoing development of its oversight framework; however, their recommendations on the approach to oversight varied. Some commenters called for an approach that would not unreasonably encroach on OBSI's existing level of independence as an organization, while others called for greater oversight once OBSI receives binding authority. Many commenters also expressed concern about the absence of a substantive external right of appeal from a binding decision of OBSI.

Although commenters generally support a fair, accessible, and cost-effective dispute resolution service, a significant portion identified as a concern the absence of a mechanism to appeal a binding decision. Many commenters, including those that are otherwise supportive of a dispute resolution service with binding authority, advocated strongly for an external appeal mechanism beyond judicial review, and expressed significant concern related to, among other things:

- the internal stage 2 review process under the proposed framework, given the risk of perceived or actual bias, noting that a review by an independent party outside of OBSI would instill confidence in the proposed framework
- procedural fairness, even with the introduction of the essential process test, the application of which would rely on OBSI's discretion
- the absence of a statutory right of appeal

While the CSA remains confident in OBSI's ability to resolve disputes in a fair and independent manner, the CSA is proposing refinements to the proposed framework to further promote trust and confidence in the binding dispute resolution process while maintaining accessibility and efficiency. The proposed refinements are intended to address stakeholder concerns in a more economical way than a statutory right of appeal to a securities tribunal or a court would. As discussed in the 2023 CSA Notice, an appeal process would increase expense, delay, and complexity for all parties. In contrast, the proposed refinements offer a targeted approach to addressing stakeholder concerns that also limits the potential costs to the parties and preserves the accessibility and efficiency of OBSI's dispute resolution processes which are distinct from traditional judicial processes. Specifically, the introduction of external decision makers, who would be retained on a contractual basis rather than being employed full-time by OBSI, provides the opportunity for parties to have their submissions heard by someone external to OBSI in instances where a higher compensation amount is at issue before a binding decision is rendered. Under this approach, OBSI's processes will continue to apply, and parties would not need to retain legal counsel for assistance navigating formal judicial or quasi-judicial procedures to have their matter resolved.

The CSA believes the proposed refinements, together with the CSA's enhanced approach to overseeing OBSI, strike an appropriate balance between maintaining OBSI's level of independence and ensuring a level of accountability that is commensurate with the authority to make final and binding decisions for compensation up to \$350,000.

## **Comments regarding OBSI's limitation period**

Some commenters raised concerns about OBSI's six-year limitation period applying in a binding authority context since many jurisdictions in Canada have a two-year limitation period for pursuing a civil action in court. Other commenters noted that the limitation period for a civil action should remain suspended until OBSI closes a complaint. A few advocated for broader guidelines relating to a "reasonable" timeframe to bring a complaint instead of a specified time limit.

While the CSA is not proposing a change to the limitation period at this time, this consultation provides some additional background information and invites comments regarding OBSI's six-year limitation period.

## **The Oversight Framework**

It remains the CSA's view that implementing the proposed framework would enhance the accessibility and efficiency of the dispute resolution process through OBSI, provide fairness for both firms and complainants, and enhance investor protection and confidence in the investment services sector. Our view is that a comprehensive oversight framework that clearly sets out how OBSI would be accountable to the CSA while also recognizing the unique role of an independent dispute resolution service would further these outcomes as well.

The CSA's current engagement with OBSI's investment mandate is set out in a memorandum of understanding, dated December 1, 2015, which includes standards for OBSI to meet with respect to areas such as governance, independence and standard of fairness, fees and costs, processes to perform functions on a timely and fair basis, and core methodologies for dispute resolution.

The current memorandum of understanding also established a Joint Regulators Committee (**JRC**) whose membership is presently comprised of CSA designated representatives from the Alberta Securities Commission, the BCSC, the Ontario Securities Commission, and the AMF, and representatives from the Canadian Investment Regulatory Organization. The JRC's role 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; and
- facilitate regular communication and consultation among JRC members and OBSI.

The 2023 CSA Notice contemplated that OBSI would be subject to enhanced regulatory oversight commensurate with OBSI's proposed ability to make final and binding

decisions. In our view, an enhanced oversight regime would require, among other things, that OBSI operate in the public interest, that OBSI meet certain corporate governance standards set by the CSA, CSA approval of OBSI's key governing documents (e.g., Terms of Reference, procedural rules, etc.), more robust reporting practices, and examinations by the CSA of OBSI against the obligations in the designation order and local enabling legislation.

To that end, the CSA has developed:

- a draft designation order that includes the terms and conditions that OBSI would be bound by if designated as the identified ombudservice, and
- a draft MOU that, on execution, would be an agreement among jurisdictions (**designating regulators**<sup>3</sup>) regarding their oversight of OBSI as the identified ombudservice and that sets out the CSA's proposed oversight review methodology. The MOU anticipates establishing an oversight committee to co-ordinate and discuss oversight activities and the approval of, or non-objection to, certain key documents of OBSI (the **OBSI Oversight Committee**). We anticipate that transitional provisions would also be added to a final version of the MOU to account for the possible staggered implementation of the proposed framework, including the oversight framework.

#### **(a) Governance**

It is anticipated that under the terms and conditions of the designation order, OBSI would be required to (among other things):

- maintain a separation between the roles of the Chief Executive Officer (**CEO**) and Chair of the Board of Directors (the **Board**)
- maintain appropriate term limits for members of the Board
- maintain skills matrices for the Board, CEO, ombudsperson and external decision makers
- ensure its dispute resolution process remains independent and impartial from the Board
- ensure its corporate governance effectively addresses its public interest obligation, which includes providing independent and impartial dispute resolution services.

Additionally, the nomination of independent directors, appointment of the CEO, and changes to the skills matrices listed above would require concurrence of the designating regulators.

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<sup>3</sup> AMF would participate in the MOU with respect to the supervision of OBSI's non-binding services provided to Québec investors and registered firms.

### **(b) CSA Approval of Documents**

It is anticipated that any changes to the following would require prior approval by designating regulators, following consideration by the OBSI Oversight Committee:

- the terms of reference, by-laws, procedural guidelines,<sup>4</sup> or any other governing documents of OBSI
- the corporate governance structure of OBSI
- the charter or mandate of the Board and each of its committees
- the assignment, transfer, delegation, or sub-contracting of the performance of all or part of OBSI's functions or responsibilities
- the access criteria and process for a firm to become a member of OBSI
- loss calculation methodologies
- the fee model in determining membership fees for firms.

Similarly, any material changes to the following would require prior approval by designating regulators, following consideration by the OBSI Oversight Committee:

- the Board and employee code of conduct and written policy about managing potential conflicts of interest
- the functions OBSI performs
- OBSI's organizational structure, including the location of OBSI's offices.

In instances where there are proposed changes to a document that OBSI publishes detailing its complaint handling process, including any procedures, the CSA would require that they be published for comment before the designating regulators provide their decisions. Where proposed changes have no material impact on investors, firms, or OBSI generally, they would not be required to be published for comment.

### **(c) Reporting Obligations**

The oversight framework sets out the designating regulators' expectations for OBSI with respect to reporting, including prior or prompt notification to the OBSI Oversight Committee of significant events, such as any potential material violations of applicable securities legislation by a firm of which OBSI becomes aware in the ordinary operation of its activities.

Additionally, OBSI would be required to submit written reports regarding its operations, including summary statistics for the previous quarter regarding all complaints, and a summary of files (if any) that were referred to the OBSI Oversight Committee. OBSI would also be required to submit to the OBSI Oversight Committee on an annual basis a written

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<sup>4</sup> Including material relating to the application of the fairness standard and the essential process test that would be required under subsection 5(1)(a) of Appendix A to the Designation Order (see Annex A).

report containing, among other things, a self-assessment of how it is meeting its mandate. This report would include a certification by OBSI's CEO and general counsel that OBSI is in compliance with the terms and conditions set out in the designation order.

The CSA must also receive reasonable prior notification of material changes to OBSI's internal procedural guidelines or any document it intends to publish to the public that could have significant impact on the firms or the capital markets. OBSI must receive confirmation from the CSA that it has no questions or comments on these documents before proceeding with the changes or publication of the material.

#### **(d) Periodic examinations by the CSA**

To confirm OBSI is compliant with the designation order and to ensure that regulatory expectations are met, the designating regulators may perform periodic reviews of OBSI's functions, including reviews relating to specific investment complaint cases considered by OBSI. Such reviews may include the sampling of OBSI recommendations and decisions to identify any relevant trends and patterns. The reviews will be focused on OBSI's performance of its functions and will have no bearing on the outcome of OBSI cases or constitute an appeal of the findings or process. For example, periodic examinations, combined with reporting, would help the CSA identify whether OBSI's interpretation of securities regulatory requirements and policy is consistent with the views of the designating regulators.

OBSI could be required, at the direction of the CSA, to undergo independent third-party evaluations of its operations at minimum once every three years, and to seek the CSA's input on its proposed response to any recommendations arising from the third-party evaluation.

#### **Refinements to the Proposed Framework**

As mentioned above, the proposed refinements would apply in cases where a party objects to a stage 1 recommendation that meets or exceeds \$75,000. In those cases, rather than appointing a senior internal decision-maker to conduct the stage 2 review and issue a binding decision, OBSI would be required to appoint a single or panel of external decision maker(s).

The external decision makers would not be employees of OBSI but instead would be retained by OBSI on a part-time basis. They would be appointed to a roster that would be maintained by OBSI and approved by the CSA. We anticipate that this roster would largely comprise industry experts, lawyers and relevant technical experts.

The external decision makers would receive the same training that decision makers who are employed by OBSI ordinarily receive. This includes training relating to the application of the fairness standard, the essential process test, and decision writing. To ensure consistency in OBSI decision making, all stage 2 processes would be conducted in the same manner regardless of whether the reviewing decision maker is an external decision

maker or not.

The proposed designation order contemplates that OBSI would, given its unique expertise, train all decision makers and would identify and avoid conflicts of interest regarding all decision makers.

While OBSI would be required to appoint a single or panel of external decision makers for stage 2 reviews of stage 1 recommendations that meet or exceed \$75,000, OBSI would be free to exercise its discretion when assigning decision makers to all other stage 2 reviews. For example, in a case where OBSI recommends compensation below \$75,000 or no compensation at all at stage 1, OBSI could assign an external decision maker to an ensuing stage 2 review or determine that a stage 2 review should be conducted by a panel of both internal and external decision makers. When determining who would conduct the stage 2 review where the stage 1 recommendation was less than \$75,000, OBSI would take into consideration the nature of the dispute as well as the skills and experience needed to achieve an efficient resolution of the dispute. We expect that OBSI will develop processes and criteria to determine when to assign external decision makers to complaints below the monetary threshold, which would be subject to the CSA's oversight.

The proposed monetary threshold of \$75,000 is intended to ensure that enhanced procedures apply at stage 2 where OBSI recommends monetary compensation at stage 1 that is sufficiently high and therefore of more significant impact to the parties, without compromising the accessibility, fairness, and overall efficiency of OBSI's dispute resolution process for most cases. Stipulating that higher value cases require external decision makers would also limit the potential cost impact on firms. Since OBSI operates on a cost-recovery basis and allocates its budget between different industry sectors using OBSI's services in the form of membership fees, additional cost requirements on OBSI from retaining external decision makers would be passed on to firms.

**Table 1: OBSI Investment Case Recommendations Over \$50,000 (FY 2020 – 2024)**

<b>Range</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>Total</b>
\$100,000 & over	2	4	3	-	7	<b>16</b>
\$75,000 - \$99,999	-	1	-	3	-	<b>4</b>
\$50,000 - \$74,999	2	3	2	5	7	<b>19</b>
<b>Total</b>	<b>4</b>	<b>8</b>	<b>5</b>	<b>8</b>	<b>14</b>	<b>39</b>

Based on the information from Table 1, on average, there were about 3 cases where OBSI recommended an amount above \$100,000, 4 cases in which OBSI recommended

an amount above \$75,000, and close to 8 cases in which OBSI recommended an amount above \$50,000 in each fiscal year since 2020. While this past data cannot predict the quantum of recommendations upon implementation of the proposed framework, it provides helpful guidance for setting an appropriate monetary threshold in cases involving significant values while maintaining the accessibility and efficiency of the proposed framework.

## **Limitation Periods**

Generally, limitation periods set out the amount of time a party has to commence a claim against another party. In the context of civil litigation, limitation periods are set by provincial laws, which vary by jurisdiction.

While legal limitation periods do not apply to complaints considered by OBSI, for fairness reasons, OBSI imposes a limitation period on claims that complainants can bring to them.<sup>5</sup> Section 5.1(e) of OBSI's Terms of Reference states that OBSI may investigate a complaint it receives provided OBSI is satisfied that the complainant raised their complaint with their firm within six years after the complainant knew or ought to have known about the circumstances from which the complaint arose. This limitation period is reflected in the definition of "complaint" at subsection 13.16(1) of NI 31-103. The same limitation period also applies to OBSI's banking mandate.

Maintaining OBSI's six-year limitation period would provide uniformity across CSA jurisdictions for accessing OBSI's dispute resolution services and is in line with the proposed framework's policy goal of providing an accessible alternative to court.

## **Request for Comments**

In addition to any general comments you may have, we also invite comments on the specific questions below:

1. Is \$75,000 an appropriate threshold amount to require OBSI to appoint an external decision maker or a panel of external decision makers at stage 2?
2. Does setting a monetary threshold for the requirement to appoint an external decision maker at stage 2 impact the accessibility of the proposed framework for investors?
3. What would be potential advantages and disadvantages of permitting OBSI to appoint senior OBSI staff not involved in the stage 1 process to a panel conducting the stage 2 process in cases that meet or exceed the proposed monetary threshold, if the majority of the panel is comprised of external decision makers?

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<sup>5</sup> Limitation Period, "OBSI's approach to the six-year limitation period", at <https://www.obsi.ca/en/how-we-work/our-approaches/limitation-period/>.

4. Does the oversight framework strike the appropriate balance between ensuring OBSI's accountability and maintaining OBSI's organizational and decision-making independence?
5. What would the impact be of maintaining OBSI's current six-year limitation period?

Please submit your comments in writing on or before September 15, 2025 and address your submission to all of the CSA as follows:

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

Please deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA members.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

## **Contents of Annexes**

This Notice contains the following annexes:

Annex A – Draft Designation Order for the identified ombudservice

Annex B – Draft Memorandum of Understanding

## **Questions**

Please refer your questions to any of the following:

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*Draft published for consultation purposes. Legislative amendments are required to enable the proposed framework, including the oversight framework.*

*Many CSA jurisdictions will require legislative amendments to enable the proposed framework, including the oversight framework. Any amendments to local acts would be proposed by governments. Proposed legislative amendments would only become law in a CSA jurisdiction if they are proclaimed and in force in that jurisdiction. Nothing in this document should be considered as an indication of whether such legislative amendments will be made in any jurisdiction.*

## **Annex A**

### **IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5, AS AMENDED (the Act)**

**AND**

### **IN THE MATTER OF OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS**

### **DESIGNATION ORDER**

**(Section X of Y)**

**[Appropriate recitals will be inserted to provide context relating to the memorandum of understanding]**

IT IS ORDERED, under section [TBD] of the Act that OBSI is designated as the identified ombudservice, subject to the terms and conditions set out in Appendix A to this designation order and the applicable provisions of the MOU.

Dated [insert date], effective [insert date]

[signature line]

[signature line]

## Appendix A

### TERMS AND CONDITIONS

#### Definitions

##### 1. General

Unless otherwise defined or interpreted, every term used herein has the meaning ascribed to it in subsection 1.1(3) of National Instrument 14-101 *Definitions* or subsection 13.16.01 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* as applicable.

**“Board”** means the Board of Directors of OBSI.

**“By-Laws”** means the by-laws adopted by OBSI as amended from time to time.

**“complainant”** means any client of a Registered Firm who makes a complaint to OBSI and includes the authorized representative(s) of the client, such as a personal representative, guardian, trustee or executor.

**“Designating Regulators”** means the Alberta Securities Commission; Manitoba Securities Commission; Financial and Consumer Services Commission of New Brunswick; Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; Office of the Superintendent of Securities, Northwest Territories; Nova Scotia Securities Commission; Office of the Superintendent of Securities, Nunavut; Ontario Securities Commission; Prince Edward Island Office of the Superintendent of Securities; Financial and Consumer Affairs Authority of Saskatchewan; and Office of the Yukon Superintendent of Securities.

**“Director”** means a member of the Board.

**“External Decision Makers”** means decision makers who are not OBSI employees and are retained by OBSI on a part-time basis.

**“Independent Director”** means either a Community Director or Consumer Interest Director as defined in the By-Laws.

**“Final OBSI Decision”** means an OBSI Decision delivered in writing that has become final and binding on a Registered Firm or on a Registered Firm and a complainant, in accordance with the process set out in the OBSI rules.

**“MOU”** means the Memorandum of Understanding regarding oversight of OBSI as between the Designating Regulators and those jurisdictions that have not designated or recognized OBSI as the identified ombudservice for the purposes of Division 5 of Part 13 of NI 31-103, which may be amended from time to time.

**"OBSI"** means the Ombudsman for Banking Services and Investments, including all successors and assigns.

**"OBSI Decision"** means a conclusion about a case with reasons delivered by OBSI in writing to the complainant and the Registered Firm following OBSI's review of an OBSI Recommendation.

**"OBSI Recommendation"** means a recommendation delivered by OBSI in writing to the complainant and Registered Firm following OBSI's investigation of a complaint.

**"Ombudsperson"** means the ombudsman appointed by the Board in accordance with the By-Laws.

**"Registered Firm"** means a registered firm to which Part 13, Division 5 of NI 31-103 applies.

**"Terms of Reference"** means OBSI's Terms of Reference, as amended from time to time.

## **Public interest obligation**

### **2.**

OBSI must operate in the public interest. When operating in the public interest, OBSI must, among other things,

- (a) provide independent and impartial dispute resolution services;
- (b) take reasonable steps to ensure that appropriate training is provided to its Directors, Board committee members, senior management staff, and external decision makers in interpreting OBSI's public interest mandate;
- (c) ensure that the compensation structure of its executive officers and senior management is appropriately linked to the effective delivery of OBSI's public interest mandate;
- (d) inform its stakeholders, and the public in general, of OBSI's public interest obligation;
- (e) maintain a dispute resolution process that is fair, efficient, and accessible; and
- (f) apply a standard to its investigation and review of a complaint that is fair in all the circumstances.

## **Governance**

### **3.**

#### **(1) The Board**

OBSI must:

- (a) maintain a Board size of not more than 10 Directors;
- (b) not permit the Ombudsperson to be chair of the Board;
- (c) not permit the same individual to occupy the roles of CEO and chair of the Board;
- (d) not permit Directors to be involved in or influence the dispute resolution process of OBSI including but not limited to the investigation, consideration or disposition of complaints;
- (e) have a majority of the Board, including the chair, be comprised of Community Directors;
- (f) maintain appropriate term limits for the Board;
- (g) maintain a Board skills matrix;
- (h) maintain a skills matrix for External Decision Makers;
- (i) maintain a skills matrix for the Ombudsperson;
- (j) maintain a CEO skills sub-matrix;
- (k) develop, maintain and comply with diversity and inclusion policies; and
- (l) develop and maintain performance benchmarks for OBSI.

#### **(2) Board committees**

OBSI must ensure that:

- (a) the governance and human resources committee of the Board is composed entirely of Independent Directors;
- (b) other Board committees are composed of a majority of Independent Directors; and

- (c) chairs of all Board committees are Independent Directors, unless the Commission otherwise approves.

### **Conflicts of Interest**

- 4. Subject to applicable legislation, OBSI must identify and avoid real, potential, or perceived conflicts of interest between its own interests, or the interests of its Directors, officers, employees, and External Decision Makers and the public interest.

### **Approval of changes**

#### **5.**

**(1)** Prior Commission approval is required for any changes to the following:

- (a) the Terms of Reference, procedural guidelines, or any other procedural rules implemented by OBSI in respect of its role as the identified ombudservice;
- (b) By-Laws or any other governing documents;
- (c) the corporate governance structure of OBSI;
- (d) the charter or mandate of the Board and each of its committees;
- (e) the assignment, transfer, delegation, or sub-contracting of the performance of all or part of OBSI functions or responsibilities;
- (f) the access criteria and process for Registered Firms to become a member of OBSI;
- (g) the loss calculation methodology used by OBSI in delivering an OBSI Recommendation, OBSI Decision or Final OBSI Decision; and
- (h) the fee model in determining membership fees for Registered Firms.

**(2)** Prior Commission approval is required for material changes to the following:

- (a) the Board and employee code of conduct and the written policy about managing potential conflicts of interests of Directors, External Decision Makers and employees;
- (b) OBSI's training materials for External Decision Makers and employees;
- (c) the functions OBSI performs; and
- (d) OBSI's organizational structure, including the location of OBSI's offices.

## **Non-objection to certain changes**

6. Prior Commission non-objection is required for the following, as described in Appendix A of the MOU:
  - (a) nomination of each candidate for an Independent Director position;
  - (b) appointment of the CEO;
  - (c) appointment of the Ombudsperson;
  - (d) changes to the Board's skills matrix;
  - (e) changes to the External Decision Makers' skills matrix;
  - (f) changes to the CEO's skills sub-matrix;
  - (g) changes to the Ombudsperson's skills matrix
  - (h) changes to OBSI's performance benchmarks; and
  - (i) changes to OBSI's fee model.

## **Rules and rule-making**

7.

- (1) OBSI must establish and maintain rules that are necessary to govern and perform all aspects of its functions and responsibilities as the identified ombudservice.
- (2) OBSI must act in accordance with the process for introducing new or amending, revoking or suspending existing by-laws, rules and other materials relevant to OBSI's obligation to operate in the public interest as outlined in Appendix C of the MOU, as amended from time to time. For any proposal to be published for public comment, OBSI must consider and clearly articulate why the proposal is in the public interest.

## **Fees**

8.

- (1) OBSI must not charge a fee to a complainant.
- (2) All fees imposed by OBSI on Registered Firms must be equitably allocated and be proportionate to Registered Firms' activities.
- (3) OBSI's process for setting its fees must be fair and transparent.

**(4)** OBSI must operate on a cost-recovery basis.

### **Financial Viability**

**9.** OBSI must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities as the identified ombudservice.

### **Status**

**10.**

**(1)** OBSI must operate on a not-for-profit basis.

**(2)** OBSI must comply with any terms and conditions the Commission may impose in the public interest concerning any transaction that would result in OBSI:

(a) ceasing to perform its functions;

(b) discontinuing, suspending, or winding-up all or a significant portion of its operations;

(c) disposing of all or substantially all of its assets; or

(d) terminating its agreement with an information technology service provider providing technology systems that the Commission determines are critical to the proper performance of OBSI's functions and to meet its responsibilities as the identified ombudservice.

### **Membership**

**11.**

**(1)** OBSI must have written criteria, in both English and French, for membership in OBSI and that permits Registered Firms that satisfy the criteria to become members of OBSI.

**(2)** The membership criteria and process for obtaining membership must be fair and transparent.

### **Record Keeping**

**12.**

**(1)** OBSI must keep records of all matters related to its investigation and resolution of complaints for an appropriate time in accordance with legal and industry standards for record retention, including but not limited to:

- (a) documentation and records requested and obtained by OBSI during the investigation of a complaint and during the review of an OBSI Recommendation; and
- (b) written reasons prepared for the purpose of resolving disputes, specifying the basis for the OBSI Recommendation or OBSI Decision.

## **Dispute Resolution Process**

### **13.**

- (1) OBSI must develop, maintain, and apply fair, transparent, and accessible processes to resolve complaints. These processes must be made available to the public.

## **Performance of OBSI's functions**

### **14.**

- (1) In investigating and reviewing complaints, OBSI must apply a fairness standard whereby OBSI will consider what would be fair to the parties in all the circumstances of a complaint, taking into account factors including but not limited to the following:
  - (a) applicable law;
  - (b) general principles of good financial services and business practice;
  - (c) regulatory policies and guidance;
  - (d) professional body standards; and
  - (e) any relevant code of practice or conduct applicable to the subject matter of the complaint.
- (2) OBSI must develop, maintain, and apply knowledge and expertise relevant to providing, independent dispute resolution services to Registered Firms and their clients including but not limited to issues related to the exempt markets. For greater certainty, this includes providing relevant training to its employees and External Decision Makers.
- (3) OBSI must share information and cooperate with the Commission, including to facilitate the Commission's effective oversight under the MOU, and provide the Commission with data, reports, documents, and information as the Commission or its staff may request in a format and manner that is acceptable to the Commission or its staff.
- (4) Subject to applicable legislation, OBSI must:
  - (a) collect, use, and disclose personal information only to the extent reasonably necessary to carry out its mandate and activities as an ombudservice; and

- (b) protect personal information and confidential business information in its custody or under its control.
- (5) OBSI must adopt policies and procedures designed to ensure that confidential information, including personal information, related to its operations, or those of any Registered Firm or complainant, is maintained in confidence and not shared inappropriately with other persons, and must use all reasonable efforts to comply with these policies and procedures.
- (6) OBSI must ensure that it is accessible for contact by both the public and the Registered Firms for purposes relating to the performance of its functions in fulfilling its mandate as the identified ombudservice.
- (7) OBSI must maintain control over critical systems or technology systems that support OBSI's critical systems.
- (8) Documents issued to the public or generally to Registered Firms must be published concurrently in English and French. Where practical, these documents must be written in plain language.
- (9) OBSI must promote knowledge of its services, ensure that investors have convenient, well-identified means of access to information regarding its services, and provide its services at no cost to investors who have complaints.
- (10) OBSI must, at least annually, self-assess the performance of its functions, and report thereon to its Board, together with any recommendations for improvements.
- (11) OBSI must cooperate and assist with any reviews of its functions or operations by the Commission or an independent third party that is acting at the direction of the Commission. The scope of the independent third-party review, and the person or the persons that will undertake the review, will be determined by the Commission and will be at OBSI's expense, including OBSI reimbursing the Commission for any fees, when required.
- (12) OBSI must seek the Commission's input on its proposed response to any recommendations arising from a review referred to in subsection (11), including a proposed action plan to implement any recommendations before acting on the recommendations in accordance with timelines established by the Commission.
- (13) OBSI must develop, implement, and maintain adequate controls to ensure capacity, integrity requirements, and security of its technology systems.

## **Reporting Requirements**

15. OBSI must comply with the following reporting requirements:

## **Prior Notification**

- (1)** OBSI will provide the Commission with at least 12 months' written notice prior to completing any transaction that would result in OBSI:
  - (a) ceasing to perform its functions;
  - (b) discontinuing, suspending, or winding-up all or a significant portion of its operations; or
  - (c) disposing of all or substantially all of its assets.
- (2)** OBSI will provide the Commission with at least three months' written notice prior to:
  - (a) terminating its agreement with an information technology service provider providing critical technology systems; or
  - (b) any intended material change to its agreement with an information technology service provider regarding its critical technology systems.
- (3)** OBSI will provide the Commission with reasonable prior notice of any material changes it intends to implement to its internal procedural guidelines.
- (4)** OBSI must not implement any material changes to its internal procedural guidelines referred to in subsection 15(3) until the Designating Regulators notify OBSI that they have no questions or comments regarding the implementation of the proposed changes.
- (5)** OBSI will provide the Commission with reasonable prior notice of any material document that it intends to publish or issue to the public or to any class of members which could have a significant impact on:
  - (a) its members or others who use its services; or
  - (b) the capital markets generally including, for greater clarity, particular stakeholders or sectors.
- (6)** OBSI must not publish or issue any document referred to in subsection 15(5) until the Designating Regulators notify OBSI that they have no questions or comments on the publication or issuance of that document.

## **Prompt Notification**

- (7)** OBSI will provide the Commission notice, in writing, of any potential systemic issue identified by OBSI within 30 days of OBSI making such a determination, providing sufficient detail about why OBSI considers the matter to be a systemic issue in

accordance with the protocol for handling systemic issues, as amended from time to time.

**(8)** OBSI will provide the Commission with prompt notice of the following events and situations, and in each case describe the circumstances that gave rise to the reportable event or situation, and OBSI's proposed response to ensure resolution, and, if appropriate, provide timely updates:

- (a) changes in the members of OBSI's Board and its committees;
- (b) situations that would reasonably be expected to raise concerns about OBSI's financial viability, including but not limited to, an inability to meet its expected expenses for the next quarter or the next year;
- (c) any determination by OBSI, or notification from any of the Designating Regulators, that OBSI is not or will not be in compliance with one or more of the terms and conditions of its designation in any jurisdiction;
- (d) any potential material violations of applicable securities legislation by Registered Firms, and/or rules applicable to investment dealers and mutual fund dealers, of which OBSI becomes aware in the ordinary course operation of its activities;
- (e) any material failures in the controls described in section 14 *Performance of OBSI's functions*;
- (f) any failure, malfunction, delay or material security incident, including cyber security breaches, of OBSI's critical systems or technology systems that support OBSI's critical systems; and
- (g) any breach of security safeguards involving information or data under OBSI's control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to investors, Registered Firms, other market participants, OBSI, or the capital markets.

### **Quarterly Reporting**

**(9)** OBSI will file on a quarterly basis with the Commission a written report pertaining to OBSI's operations promptly after the report is reviewed or approved by the Board, Board committees, or senior management, as the case may be, containing at a minimum the following information and documents:

- (a) summary of ongoing initiatives and emerging or key issues that arose in the previous quarter;
- (b) summary statistics for the previous quarter regarding all complaints including, but not limited to:

- (i) the nature of the complaints received;
  - (ii) outcome of the complaints;
  - (iii) information regarding objections to OBSI Recommendations, including the number of objections, the party who objected and reasons cited for the objection;
  - (iv) instances in which adversarial processes were used during a review;
  - (v) the time taken by OBSI to resolve each complaint, including the duration of an investigation and of any review;
  - (vi) instances of non-compliance with a Final OBSI Decision, if any; and
  - (vii) instances where a Final OBSI Decision was filed with a superior court of justice for purposes of enforcement.
- (c) summary of files, if any, that were referred to any of the Designating Regulators during the previous quarter.

## **Annual Reporting**

**(10)** OBSI will file on an annual basis with the Commission a written report pertaining to OBSI's operations promptly after it has been reviewed or approved by OBSI's Board, Board committees, or senior management, as the case may be, containing at a minimum the following documents:

- (a) the self-assessment referred to in subsection 14(10), which must contain information as specified by staff of the Commission from time to time and include the following information:
  - (i) an assessment of how OBSI is meeting its mandate, including an assessment against the terms and conditions set out in this document;
  - (ii) a description of trends OBSI identifies in the course of providing dispute resolution services;
  - (iii) whether OBSI is meeting its performance benchmarks, and reasons for any benchmarks not being met;
  - (iv) a complete organizational chart;
  - (v) a description and update on significant projects undertaken by OBSI;

- (vi) a description of issues raised by any of the Designating Regulators, external auditors, or internal audits, which are being tracked by OBSI's senior management, together with a summary of the progress made on their resolution; and
- (b) certification by OBSI's CEO and general counsel that OBSI is in compliance with the terms and conditions applicable to it as set out herein.

## **Financial Reporting**

- (11) OBSI will file with the Commission unaudited quarterly financial statements, prepared in accordance with Canadian generally accepted accounting principles for not-for-profit organizations, within 60 days after the end of each financial quarter.
- (12) OBSI will file with the Commission audited annual financial statements, prepared in accordance with Canadian generally accepted accounting principles for not-for-profit organizations accompanied by the report of an independent auditor, prepared in accordance with Canadian generally accepted auditing standards, within 90 days after the end of each fiscal year.

## **Other Reporting**

- (13) On a timely basis, OBSI will provide the Commission with the following information, and documents after publication or completion of review and approval by the Board, Board committees, or senior management, as the case may be:
  - (a) the results from any reviews referred to in subsection 14(11) in Appendix A of this designation order, if applicable, and a remediation plan or any other relevant documentation;
  - (b) material changes to the Board and employee code of conduct and the written policy about managing potential conflicts of interests of Directors, External Decision Makers and employees;
  - (c) the financial budget for the current year, together with the underlying assumptions, that have been approved by the Board;
  - (d) the reports referred to in subsection 14(13) regarding capacity and integrity of systems;
  - (e) enterprise risk management reports, and any material changes to enterprise risk management methodology;
  - (f) the internal audit charter, annual internal audit plan, and internal audit reports;
  - (g) the annual report for the current year; and

- (h) material changes to the dispute resolution processes or scope of work, including departmental risk assessment models.
- (14)** OBSI will, upon request and as soon as practicable, provide the Commission with information concerning closed complaints.

*Draft published for consultation purposes. Legislative amendments are required to enable the proposed framework, including the oversight framework.*

*Many CSA jurisdictions will require legislative amendments to enable the proposed framework, including the oversight framework. Any amendments to local acts would be proposed by governments. Proposed legislative amendments would only become law in a CSA jurisdiction if they are proclaimed and in force in that jurisdiction. Nothing in this document should be considered as an indication of whether such legislative amendments will be made in any jurisdiction.*

## **ANNEX B**

**MEMORANDUM OF UNDERSTANDING REGARDING  
OVERSIGHT OF  
THE OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS (OBSI)  
AS THE IDENTIFIED OMBUDSERVICE FOR PURPOSES OF  
DIVISION 5 of PART 13 UNDER  
NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS, EXEMPTIONS AND  
ONGOING REGISTRANT OBLIGATIONS (National Instrument 31-103)  
AMONG:**

**ALBERTA SECURITIES COMMISSION  
MANITOBA SECURITIES COMMISSION  
FINANCIAL AND CONSUMER SERVICES COMMISSION OF NEW BRUNSWICK  
OFFICE OF THE SUPERINTENDENT OF SECURITIES, DIGITAL GOVERNMENT AND  
SERVICE NEWFOUNDLAND AND LABRADOR  
OFFICE OF THE SUPERINTENDENT OF SECURITIES, NORTHWEST TERRITORIES  
NOVA SCOTIA SECURITIES COMMISSION  
OFFICE OF THE SUPERINTENDENT OF SECURITIES, NUNAVUT  
ONTARIO SECURITIES COMMISSION  
OFFICE OF THE SUPERINTENDENT OF SECURITIES, PRINCE EDWARD ISLAND  
FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN  
OFFICE OF THE YUKON SUPERINTENDENT OF SECURITIES  
(each a Designating Regulator, collectively the Designating Regulators)**

**AND**

**AUTORITÉ DES MARCHÉS FINANCIERS  
(each a Party, collectively the Parties)**

This memorandum of understanding (**MOU**) replaces the amended and restated Memorandum of Understanding dated December 1, 2015 among the Designating Regulators and OBSI.

The Parties agree as follows:

### **1. Underlying Principles**

#### **a. Designation or Recognition**

OBSI is designated or recognized as the identified ombudservice under applicable securities legislation and subject to terms and conditions by each of the Designating Regulators.

#### **b. Oversight Program**

To facilitate effective oversight of OBSI's functions, the Parties to this MOU have developed an oversight program (**Oversight Program**) with respect to OBSI which includes the following:

- (i) establishment of the OBSI Oversight Committee, as set out in section 3;
- (ii) review of information filed by OBSI, as set out in section 4;
- (iii) non-objection process for matters other than rule review, as set out in section 5;
- (iv) oversight activities of OBSI, as set out in section 6; and
- (v) review of By-Laws and Rules of OBSI, as set out in section 7.

The purpose of the Oversight Program is to ensure that OBSI is acting in accordance with its public interest mandate and is complying with the terms and conditions of OBSI's designation or recognition as the identified ombudservice by the Designating Regulators.

#### **c. Oversight Program Guiding Principles**

The guiding principles for the Designating Regulators' joint oversight of OBSI through the OBSI Oversight Committee are:

- (i) Harmonious direction – the Designating Regulators will strive to speak as one when giving direction to OBSI;
- (ii) Transparency – each Designating Regulator will proactively share with other Designating Regulators important communications with OBSI in a timely manner; and
- (iii) Efficiency – each Designating Regulator will strive to conduct oversight in an effective manner while attempting to minimize the resources required from other Designating Regulators and OBSI.

#### **d. Coordination with Non-Designating Regulators**

In respect of oversight of OBSI, the Designating Regulators will coordinate with any Canadian securities regulatory authority that has not designated or recognized OBSI as the identified ombudservice under National Instrument 31-103 (**Non-Designating Regulators**).

## **2. Definitions**

Unless otherwise defined or interpreted in this MOU, every term used in this MOU that is defined in section 13.16.01 of National Instrument 31-103 has the meaning ascribed to it in that section.

"Board" has the meaning ascribed to that term in the OBSI Designation Order.

"Co-ordinating Regulator" means the Designating Regulator that is designated as such from time to time by consensus of all the Designating Regulators.

"External Decision Maker" has the meaning ascribed to that term in the OBSI Designation Order.

"Independent Director" has the meaning ascribed to that term in the OBSI Designation Order.

“OBSI Designation Order” means an order issued by each Designating Regulator pursuant to its securities legislation designating or recognizing OBSI as the identified ombudservice for the purposes of Division 5 of Part 13 of National Instrument 31-103.

“Ombudsperson” has the meaning ascribed to that term in the OBSI Designation Order.

“Registered Firm” means all registered firms to which Division 5 of NI 31-103 is applicable.

“Reviewing Regulator” means a Designating Regulator that is participating in an oversight review of OBSI.

“Rule” means any terms of reference, by-law, rule, form, policy, procedure, methodology, protocol or other similar instrument of OBSI, but excludes internal procedural guidelines.

“Rule Change” means a new Rule, or an amendment, a revocation or a suspension of an existing Rule.

### **3. General Provisions**

#### **a. OBSI Oversight Committee**

The OBSI Oversight Committee will act as a forum and venue for the discussion of issues, concerns and proposals related to the Designating Regulators’ oversight of OBSI.

Each of the Designating Regulators shall designate from time-to-time representatives to serve on the OBSI Oversight Committee.

#### **b. Co-ordinating Regulator**

The Co-ordinating Regulator is tasked with the role of coordinating, communicating and scheduling activities of and relating to the OBSI Oversight Committee. The Co-ordinating Regulator is responsible for administrative matters relating to the OBSI Oversight Committee, including taking minutes at meetings.

The Co-ordinating Regulator must not make any unilateral decision respecting, or give unilateral direction to, OBSI on behalf of the OBSI Oversight Committee.

#### **c. OBSI Oversight Committee Reporting**

The OBSI Oversight Committee will provide to the Chief Executives of the Designating Regulators an annual written report that will include a summary of all oversight activities conducted during the previous period (**Annual Report on Oversight Activities**).

The Annual Report on Oversight Activities will also be published promptly after delivery to the Chief Executives of the Designating Regulators.

#### **d. Communication with OBSI**

Except with respect to discussing local matters with OBSI, the Designating Regulators will communicate with OBSI through the OBSI Oversight Committee for the purposes of matters arising under this MOU or relating to the Oversight Program in general. The Designating Regulators must not make any unilateral decision, or give unilateral direction, with respect to the oversight or operations of OBSI.

#### **e. Status Meetings**

The Co-ordinating Regulator will organize at least one meeting of the OBSI Oversight Committee each quarter, to which interested parties (such as staff of a Non-Designating Regulator, OBSI, or a self-regulatory organization) may be invited to share their expertise and participate on an as-needed basis.

In addition, the Co-ordinating Regulator will organize at least one meeting of the OBSI Oversight Committee with the Board of Directors of OBSI, annually. The purpose of the annual meeting with the Board is to discuss matters relating to the Oversight Program and other matters that are of mutual interest to the Designating Regulators and OBSI. Additional ad hoc meetings may also be scheduled to facilitate discussion with interested parties.

The Co-ordinating Regulator will provide OBSI with key staff contacts from each Designating Regulator for the purposes of matters arising under this MOU or relating to the general oversight of OBSI.

#### **4. Review of Information Filed**

Meetings of the OBSI Oversight Committee will be the primary venue through which the Designating Regulators will consider and discuss information filed by OBSI pursuant to the Oversight Program.

Outside of an OBSI Oversight Committee meeting, any comments of the staff of the Designating Regulators on information filed by OBSI will be sent to the Co-ordinating Regulator, with a copy to all members of the OBSI Oversight Committee. The Co-ordinating Regulator will then request that OBSI respond to comments raised by the Designating Regulators and copy staff of the other Designating Regulators on its response.

#### **5. Non-Objection Process**

The Designating Regulators have developed a non-objection process, as set out in Appendix A.

#### **6. Oversight Reviews**

The Designating Regulators have developed procedures for performing periodic reviews of OBSI's functions, as set out in Appendix B.

#### **7. Oversight Activities**

The OBSI Oversight Committee will, from time to time, establish priority plans and activities (**Oversight Activities**) pursuant to the Oversight Program. Oversight Activities must be informed by the OBSI Designation Order, strategic priorities and action plans developed by OBSI, as well as any other criteria deemed appropriate by the Designating Regulators.

Oversight Activities shall not override any terms and conditions included in OBSI Designation Orders.

Oversight Activities may include the development of additional one-time or recurring practices or protocols applicable to OBSI, including reporting protocols for the purpose of addressing systemic issues as they emerge.

The Designating Regulators, in their discretion, may also engage in an examination and review of OBSI. Should the Designating Regulators proceed with an examination and review of OBSI, the Designating Regulators may develop, maintain and apply a protocol and practice for review of OBSI recommendations and decisions to assess OBSI's functions. In assessing OBSI's functions, the Designating Regulators may assess a number of factors, including whether

- a) OBSI applies a standard of what is fair to the parties in all the circumstances of the case,
- b) OBSI's interpretations of securities law requirements, including rules, and regulatory guidance, conflict with regulatory expectations,
- c) OBSI applies only inquisitorial processes in the investigation and recommendation stage, and
- d) OBSI applies the essential process test in a way that maintains fairness and accessibility to its services and efficiency for parties.

Such a protocol may include sampling of OBSI recommendations and decisions once the OBSI dispute resolution process has concluded in order to assess such items identified in the protocol established by the Designating Regulators. Any such assessment will note observations and patterns identified in the course of the review. The findings of an examination and review of OBSI's functions will have no bearing on the outcome of cases and will not constitute an appeal of the findings or process.

Oversight Activities will also include directing OBSI to undertake independent third-party evaluations of its operations, in accordance with OBSI Designation Orders, pursuant to a schedule developed by the Designating Regulators. At minimum, independent third-party evaluations could be required once every three years.

Pursuant to Oversight Activities, the Designating Regulators may develop procedures for performing periodic reviews of OBSI's functions (pursuant to the terms and conditions of the OBSI Designation Order) which for greater clarity may include reviews relating to specific investment complaint cases considered by OBSI to ensure regulatory expectations are met. For example, this may include the sampling of OBSI recommendations and decisions to identify any relevant trends and patterns.

## **8. Review of Rules**

The Designating Regulators have developed a joint review and decision protocol (**Protocol**) for coordinating the review and approval of, or non-objection to, a Rule of OBSI, as set out in Appendix C.

## **9. Information Sharing and Confidentiality**

- (a) Without limiting the transparency guiding principle in section 1(c) and the Parties' agreement to facilitate the Oversight Program through the OBSI Oversight Committee, or any information sharing agreements to which a Party or OBSI is a party, each Party will share with the other Parties, and authorize OBSI to share on a timely basis with the other Parties in circumstances where the other Parties may be significantly impacted:

- (i) directives from a Party to OBSI, and
- (ii) other information or data communicated between the Party and OBSI,

excluding circumstances where a Party is obligated to maintain confidentiality from other parties, including where personal information is concerned.

- (b) All notices, reports, documents and any other information or data shared amongst any of the Parties pursuant to this MOU are shared exclusively for the regulatory purposes of the Parties, and with the expectation that they be shared and maintained in confidence,

except as may otherwise be required by applicable law. Necessary and appropriate safeguards should be maintained to protect the confidentiality of documents. If any Party is required to disclose or provide access to such information or data provided by another Party, the recipient Party should assert all appropriate legal exemptions or privileges with respect to such information or data as may be available, and notify and obtain the written consent of the other Party, where permissible, prior to complying with such a requirement.

#### **10. Authority**

Nothing in this MOU is intended to limit the powers of any of the Parties under applicable securities legislation to take any measures authorized or required under such legislation.

#### **11. Appendices**

The MOU represents the Parties' commitment to a coordinated and cooperative approach to conducting the Oversight Program, and the appendices are integral to the execution of this commitment.

#### **12. Amendments to and Withdrawal from this MOU**

This MOU may be amended from time to time, as mutually agreed upon by the Parties. Any amendments must be in writing and approved by the duly authorized representatives of each Designating Regulator in accordance with the applicable legislation of each province or territory.

This MOU may be terminated if mutually agreed upon by the Parties.

Each Party can, at any time, withdraw from this MOU on at least 90 days' written notice to the Co-ordinating Regulator and to each of the Parties.

#### **13. Effective Date**

This MOU will come into effect on the date that the Designating Regulators designate or recognize OBSI as the independent ombudservice.

IN WITNESS WHEREOF the duly authorized signatories of the parties below have signed this MOU.

[Name of Designating Regulator  
Per: "individual X"  
Title: Chair and Chief Executive Officer  
Date: XXX]

## **APPENDIX A NON-OBJECTION PROCESS**

### **1. Purposes of non-objection process**

The Designating Regulators agree and hereby adopt a non-objection process for the following purposes:

- (a) nomination of each candidate for an Independent Director position;
- (b) appointment of the Chief Executive Officer (**CEO**);
- (c) appointment of the Ombudsperson;
- (d) changes to the Board's skills matrix;
- (e) changes to the External Decision Makers' skills matrix;
- (f) changes to the CEO's skills sub-matrix;
- (g) changes to OBSI's performance benchmarks; and
- (h) changes to the OBSI fee model.

### **2. Non-objection criteria**

Without limiting the discretion of each Designating Regulator, the Designating Regulators agree to consider these factors when following the non-objection process:

- (a) whether the proposed action subject to the non-objection process is in the public interest;
- (b) whether OBSI has provided sufficient analysis; and
- (c) whether there are conflicts with applicable laws or the terms and conditions of OBSI's designation or recognition.

### **3. Required filings**

- (a) **Language requirements.** OBSI will file the information required under this section concurrently in both English and French.
- (b) **Filings.** OBSI will file the following information with staff of the Designating Regulators on the OBSI Oversight Committee, and upon request by any Designating Regulator, any other document or information:
  - (i) under subsection 1(a):

- (A) documentation including the analysis undertaken to confirm that the candidate satisfies the definition of an Independent Director as defined in the OBSI Designation Order.
- (ii) under subsections 1(b) and (c):
  - (A) documentation including the analysis undertaken to support the selection of the CEO and Ombudsperson;
  - (B) confirmation that the Board has concluded that the CEO and Ombudsperson nominee is suitable for the respective offices; and
  - (C) completed CEO skills sub-matrix.
- (iii) under subsection 1(d):
  - (A) Board skills matrices reflecting proposed changes, including rationale.
- (iv) under subsection 1(e):
  - (A) External Decision Makers' skills matrices reflecting proposed changes, including rationale.
- (v) under subsection 1(f):
  - (A) CEO skills sub-matrix reflecting proposed changes, including rationale.
- (vi) under subsection 1(g):
  - (A) memorandum and supporting information used by OBSI to inform its decision.

#### 4. Non-Objection Process

- (a) **Confirming receipt.** Upon receipt of the materials filed under subsection 3(b), staff of the Co-ordinating Regulator will, as soon as practicable, send written confirmation of receipt to OBSI, with a copy to staff of the other Designating Regulators.
- (b) **Designating Regulator review.** Staff of each Designating Regulator will provide any comments in writing to staff of the other Designating Regulators within 10 business days of receiving the materials filed under subsection 3(b), or as otherwise agreed upon by staff of the Designating Regulators (for example, Designating Regulators may agree to provide comments for referral to OBSI through the venue of an OBSI Oversight Committee meeting). The process to provide comments and obtain responses from OBSI will be established and agreed upon by staff of the Designating Regulators. If no comments are provided by staff of a Designating Regulator within the prescribed period, then that Designating Regulator will be deemed not to object.

- (c) **Intention to object.** After completing the comment process provided under subsection 4(b) above, if all Designating Regulators do not intend to object, staff of the Co-ordinating Regulator will send a written notice of non-objection to OBSI and will copy staff of all Designating Regulators. If staff of any Designating Regulator intends to recommend that the Designating Regulator object, the Designating Regulators will use best efforts to adhere to the following:
- (i) within a reasonable timeline agreed upon by staff of the Designating Regulators, staff of any Designating Regulator who intends to make a recommendation that the Designating Regulator objects will advise staff of the other Designating Regulators, in writing (as applicable), of their intended recommendation and provide reasons for it;
  - (ii) within 5 business days of receiving or sending a notice of intended recommendation, staff of the Co-ordinating Regulator will convene a conference call with staff of the other Designating Regulators and, as applicable, OBSI;
  - (iii) if the intended recommendation still exists after any such discussion, staff of the applicable Designating Regulators will, within a reasonable timeline agreed upon by staff of the Designating Regulators recommend to their respective decision makers that they object;
  - (iv) if the decision maker of any Designating Regulator intends to object, the Co-ordinating Regulator will provide written notification to OBSI with reasons for the intended objection and copy staff of the other Designating Regulators, and will give OBSI an opportunity to present written submissions;
  - (v) after considering the written submissions provided by OBSI, if any of the Designating Regulators still intends to object, then the Designating Regulators shall use the process provided under section 12 of Appendix C of this MOU, but not including the process described at section 13, with necessary adaptations;
  - (vi) if any Designating Regulator objects after having completed the process described in paragraph 4(c)(v), it will provide promptly a written confirmation of objection to staff of the other Designating Regulators. Staff of the Co-ordinating Regulator will then provide to OBSI a written notice of objection and will copy staff of the other Designating Regulators; and
  - (vii) if after completing the process described in paragraph 4(c)(v), Designating Regulators that intended to object as described in paragraph 4(c)(iv) do not object, they will provide promptly a written non-objection confirmation to staff of the other Designating Regulators. Designating Regulators that did not intend to object will be deemed not to object. Staff of the Co-ordinating Regulator will then send a written notice of non-objection to OBSI and will copy staff of the other Designating Regulators.

## **APPENDIX B OVERSIGHT REVIEWS**

The Designating Regulators (**DRs**) will carry out periodic coordinated oversight reviews of OBSI for the purposes of: (i) evaluating whether selected processes are effective, efficient, and are applied consistently and fairly; and (ii) assessing compliance with the terms and conditions of designation or recognition.

A DR may choose to participate in a review of OBSI, or may choose to rely on another DR for the review of OBSI.

The scope of the review will be determined by utilizing a risk-based methodology established and agreed upon by staff of the DRs.

When conducting a coordinated review, the Reviewing Regulators will use best efforts to adhere to the following within any timelines established among themselves:

- 1) The Reviewing Regulators will establish and agree on a work plan for the coordinated review that sets the target completion date for each step, including conducting the review, reviewing draft reports, confirming factual accuracy, translating and publishing the final report, and follow-up plans.
- 2) The Reviewing Regulators will develop and use a uniform review program and uniform performance benchmarks to conduct the coordinated review and will ensure the review is appropriately staffed in their respective jurisdiction.
- 3) The Co-ordinating Regulator will, as needed, arrange for communication among the Reviewing Regulators during the course of a review, to discuss the progress of the work completed and to ensure appropriate consistency in the Reviewing Regulators' approach.
- 4) Each Reviewing Regulator will share with all other Reviewing Regulators the results of its review, including draft findings and, upon request, supporting materials.
- 5) Unless otherwise agreed upon, the Co-ordinating Regulator will draft a review report and share it among the Reviewing Regulators to ensure it meets all of their expectations and requirements, as applicable. The review report will:
  - a. take into account the draft findings and comments of the Reviewing Regulators, and
  - b. use a common set of criteria to rate the significance and urgency of findings.
- 6) If the Reviewing Regulators disagree on the content of the draft review report, the Reviewing Regulators will follow the process provided in section 12 of Appendix C of this MOU for resolution.
- 7) After the Reviewing Regulators are mutually satisfied with the draft review report, the Co-ordinating Regulator will forward the draft review report to OBSI to confirm factual

accuracy.

- 8) OBSI will review the draft review report for factual accuracy and respond to the Reviewing Regulators with comments.
- 9) The Reviewing Regulators will consider OBSI's comments and revise the review report as necessary.
- 10) The Co-ordinating Regulator will send the revised review report to OBSI for its formal response.
- 11) On receipt of OBSI's formal response, the Reviewing Regulators will incorporate such formal response and any follow-up plans into the review report as applicable.
- 12) Each Reviewing Regulator will seek the necessary internal approval to publish the final review report, taking into account language translation needs where applicable.
- 13) When each Reviewing Regulator has obtained the necessary internal approvals, the Co-ordinating Regulator will, and the other Reviewing Regulators may, publish the final review report.

## **APPENDIX C JOINT REVIEW AND DECISION PROTOCOL**

### **1. Scope and purpose**

The Designating Regulators have entered into this Protocol to establish uniform procedures for their review of and decision-making about Rule Changes proposed by OBSI.

Any review of a new by-law, amendment to an existing by-law or revocation of an existing by-law proposed by OBSI will follow the process for review of and decision-making about Rule Changes set out in this Protocol, with the necessary adaptations.

### **2. Classifying Rule Changes**

- (a) **Classification.** OBSI will classify each proposed Rule Change as either “housekeeping” or “public comment”.
- (b) **Housekeeping Rule Changes.** A “housekeeping” Rule Change is a Rule Change that has no material impact on complainants, Registered Firms, OBSI, or the Canadian capital markets generally.
- (c) **Public comment Rule Changes.** A “public comment” Rule Change is any Rule Change that is not a housekeeping Rule Change.
- (d) **Designating Regulators’ disagreement with classification.** If staff of a Designating Regulator thinks that OBSI incorrectly classified a proposed Rule Change as housekeeping, the Designating Regulators and OBSI will use best efforts to adhere to the following:
  - (i) Within 10 business days of the date of OBSI’s filing under section 3, staff of the Designating Regulator who intends to disagree with the classification will advise staff of the other Designating Regulators, in writing, that they intend to disagree and provide reasons for its intended disagreement.
  - (ii) Within 3 business days of receiving or sending a notice of disagreement, staff of the Co-ordinating Regulator will discuss the classification, and may arrange a conference call, with staff of the other Designating Regulators and, as applicable, OBSI.
  - (iii) If disagreement with the classification still exists after any such discussion, staff of the Co-ordinating Regulator will notify OBSI of the disagreement, in writing, with a copy to staff of the other Designating Regulators within 15 business days of the date of OBSI’s filing.
  - (iv) If staff of the Co-ordinating Regulator send a notice of disagreement to OBSI under paragraph 2(d)(iii), OBSI will reclassify the proposed Rule Change as a public comment Rule Change or withdraw the proposed Rule Change by filing a written notice with staff of the Designating Regulators indicating that it will be withdrawing the Rule Change.

- (v) If OBSI does not receive any such notice of disagreement within 15 business days of the date of OBSI's filing, OBSI will assume that staff of the Designating Regulators agree with the classification.

### 3. Required filings

- (a) **Language requirements.** OBSI will file the information required under this section concurrently in both English and French, accompanied with an attestation from a certified translator.
- (b) **Filings for housekeeping Rule Changes.** OBSI will file the following information with staff of the Designating Regulators for each proposed housekeeping Rule Change:
  - (i) a cover letter that indicates the classification of the proposed Rule Change,
  - (ii) the Board resolution, if applicable, including the date that the proposed Rule Change was approved and a statement that the Board has determined that the proposed Rule Change is in the public interest,
  - (iii) the text of the proposed Rule Change and, where applicable, a blacklined version showing the changes to an existing Rule,
  - (iv) confirmation that OBSI followed its established internal governance practices in approving the proposed Rule Change and considered the need for consequential amendments,
  - (v) a statement as to whether the proposed Rule Change conflicts with applicable laws or the terms and conditions of the OBSI Designation Order, and
  - (vi) a notice for publication including:
    - (A) a brief description of the proposed Rule Change,
    - (B) the reasons for the housekeeping classification, and
    - (C) the anticipated effective date of the proposed Rule Change.
- (c) **Filings for public comment Rule Changes.** OBSI will file the following information and data with staff of the Designating Regulators for each proposed public comment Rule Change:
  - (i) a cover letter that indicates the classification of the proposed Rule Change,
  - (ii) the Board resolution (if applicable), including the date that the proposed Rule Change was approved, and a reasonable explanation of why the Board has determined that the proposed Rule Change is in the public interest,

(iii) the text of the proposed Rule Change, and, where applicable, a blacklined version showing the changes to an existing Rule,

(iv) the items in subparagraphs 3(b)(v) and (vi), and

(v) a notice for publication including:

(A) Information that must be included:

- a. a concise statement, together with supporting analysis, of the nature, purpose and effect of the proposed Rule Change,
- b. an explanation as to how OBSI has taken the public interest into account when developing the Rule Change, why the proposed Rule Change is in the public interest, and the anticipated effects of the proposed Rule Change on investors and registrants, OBSI, and the Canadian capital markets.
- c. a description of the Rule Change,
- d. a description of the Rule-making process, including the context in which OBSI developed the proposed Rule Change, the process followed and the consultation process undertaken, including applicable stakeholder engagements, when developing the Rule Change,
- e. the anticipated effective date of the proposed Rule Change, and
- f. a request for public comment together with details on how to submit comments within the stated comment period deadline, and a statement that OBSI will publish all comments received during the comment period on its public website.

(B) Information that must be included, if relevant:

- a. where the proposed Rule Change requires registrants or OBSI to make technological systems changes, a description of the implications of the proposed Rule Change and, where possible, a discussion of material implementation issues and plans,
- b. any issues considered and any alternative approaches considered, including the reasons for rejecting those alternative approaches, and
- c. a reference to other jurisdictions including an indication as to whether another ombudservice has a comparable requirement or is contemplating making a comparable requirement and, if applicable, a

comparison of the proposed Rule Change to the requirement of the other jurisdiction.

#### **4. Review criteria**

Without limiting the discretion of the Designating Regulators, the Designating Regulators agree that the following are factors that staff of the Designating Regulators should consider when reviewing proposed Rule Changes:

- (a) whether a proposed Rule Change is in the public interest,
- (b) whether OBSI has provided sufficient analysis of the nature, purpose and effect of a proposed Rule Change, and
- (c) whether the proposed Rule Change conflicts with applicable laws or is consistent with the terms and conditions of the OBSI Designation Order.

#### **5. Review and approval process for housekeeping Rule Changes**

- (a) **Confirming receipt.** Upon receipt of the materials filed under subsection 3(b), staff of the Co-ordinating Regulator will, as soon as practicable, send written confirmation of receipt of the proposed housekeeping Rule Change to OBSI, with a copy to staff of the other Designating Regulators.
- (b) **Approval.** Except where a notice of disagreement has been sent to OBSI in accordance with paragraph 2(d)(iii), the proposed Rule Change will be deemed approved or non-objected to on the eleventh business day following the date of OBSI's filing under section 3.

#### **6. Review process for public comment Rule Changes**

- (a) **Confirming receipt.** Upon receipt of the materials filed under subsection 3(c), staff of the Co-ordinating Regulator will, as soon as practicable, send written confirmation of receipt of the proposed public comment Rule Change to OBSI, with a copy to staff of the other Designating Regulators.
- (b) **Publication and public comment period.** As soon as practicable, staff of the Co-ordinating Regulator and OBSI will, and staff of the other Designating Regulators may:
  - (i) coordinate a publication date among themselves, and
  - (ii) publish on their respective public websites or bulletin the materials referred to in paragraphs 3(c)(iii) and (v) for the comment period recommended by OBSI, commencing on the date the proposed public comment Rule Change appears on the public website or in the bulletin of the Co-ordinating Regulator.
- (c) **Publishing and responding to public comments.** Within 3 business days of the end of the subsection 6(b) comment period, OBSI will publish any public comments on its public

website, if it has not already done so. OBSI will also prepare a summary of public comments and responses to those public comments, if any, and send them to staff of the Designating Regulators within any timelines established by staff of the Designating Regulators.

- (d) **Designating Regulator review.** After the subsection 6(b) comment period has ended, and, if applicable, OBSI has provided the summary and responses required by subsection 6(c), staff of the Designating Regulators will, in writing, provide any significant comments to staff of the other Designating Regulators within any timelines established among themselves.
- (e) **Designating Regulators have no comments.** If staff of the Co-ordinating Regulator do not receive and do not have any significant comments within the period provided for under subsection 6(d), staff of the Designating Regulators will be deemed not to have any comments and proceed immediately to the approval or non-objection process in section 8.
- (f) **Designating Regulators have comments.** If staff of the Co-ordinating Regulator receive or have significant comments within the period provided for under subsection 6(d), staff of the Designating Regulators and, as applicable, OBSI will use best efforts to adhere to the following process using timelines established among themselves:
  - (i) After the end of the period provided for under subsection 6(d), staff of the Co-ordinating Regulator will prepare and send to staff of the other Designating Regulators a draft comment letter that incorporates their own significant comments and the significant comments raised by staff of the other Designating Regulators and may, if deemed necessary, identify different views among staff of the Designating Regulators.
  - (ii) Staff of the Designating Regulators will provide any significant comments on the draft comment letter, in writing, to staff of the Co-ordinating Regulator and the other Designating Regulators; and if staff of the Co-ordinating Regulator do not receive any such comments within the timelines agreed upon, staff of the other Designating Regulators will be deemed not to have any comments.
  - (iii) Following the other Designating Regulators' response (or deemed response), staff of the Co-ordinating Regulator will consolidate all comments received and, when finalized to the satisfaction of staff of the Designating Regulators, send the comment letter to OBSI, with a copy to staff of the other Designating Regulators.
  - (iv) OBSI will respond, in writing, to the comment letter sent by staff of the Co-ordinating Regulator, with a copy to staff of the other Designating Regulators.
  - (v) After receiving OBSI's response, staff of the Designating Regulators will provide any significant comments, in writing, to staff of the other Designating Regulators; if staff of the Co-ordinating Regulator do not receive and do not have any such

comments within the timelines agreed upon, staff of the Designating Regulators will:

(A) be deemed not to have any comments, and

(B) proceed immediately to the approval or non-objection process in section 8.

(vi) Staff of the Designating Regulators and, as applicable, OBSI will follow the process in paragraphs 6(f)(i) to (v) when staff of the Designating Regulators have significant comments on OBSI's response to any comment letter.

(vii) Staff of the Co-ordinating Regulator will attempt to resolve any issues that staff of the Designating Regulators have raised on a timely basis and will consult with staff of the other Designating Regulators or OBSI, as needed.

(viii) If staff of the Designating Regulators disagree about the substantive content of the comment letter in paragraph 6(f)(i) or whether to recommend approval of or non-objection to the Rule Change, staff of the Co-ordinating Regulator will invoke section 12.

(ix) If OBSI fails to respond to comments of staff of the Designating Regulators within 120 days of receipt of the most recent comment letter from staff of the Designating Regulators (or such other time agreed upon by staff of the Designating Regulators), OBSI may withdraw the Rule Change in accordance with section 13 or staff of the Designating Regulators will, if they agree among themselves to do so in writing, recommend that their respective decision makers object to or not approve the Rule Change.

## **7. Revising and republishing public comment Rule Changes**

(a) **Language requirements.** If, subsequent to its publication for comment, OBSI revises a public comment Rule Change, OBSI will file any such revision, which will include, as applicable, a blacklined version to the original published version, a blacklined version to the existing Rule, and the text of the revised Rule Change concurrently in both English and French, accompanied with an attestation from a certified translator.

(b) **Revising Rule Changes.** If such a revision changes the Rule Change's substance or effect in a material way, staff of the Co-ordinating Regulator may, in consultation with OBSI and staff of the other Designating Regulators, require the revised Rule Change to be republished for an additional comment period. Upon republication, the previously published Rule Change will be superseded.

(c) **Published documents.** If a public comment Rule Change is republished, the revised request for comments will include, as applicable, the information filed under subsection 7(a), the date of Board approval (if different from the original published version), OBSI's summary of public comments received and responses for the previous request for

comments, together with an explanation of the revisions to the Rule Change and the supporting rationale for the revisions, including why the revisions are in the public interest.

- (d) **Applicable provisions.** Any republished public comment Rule Change will be subject to all provisions in this Protocol applicable to public comment Rule Changes, except where otherwise provided for in this Protocol.

## 8. Approval process for public comment Rule Changes

- (a) **Co-ordinating Regulator seeks approval.** Staff of the Co-ordinating Regulator will use their best efforts to seek approval or non-objection to the Rule Change within 30 business days of the end of the review process set out in section 6.
- (b) **Co-ordinating Regulator circulates documents.** After the Co-ordinating Regulator make a decision about a Rule Change, staff of the Co-ordinating Regulator will promptly circulate to staff of the other Designating Regulators applicable documentation relating to the Co-ordinating Regulators' decision.
- (c) **Other DRs seek approval.** Staff of the other Designating Regulators will use their best efforts to seek approval or non-objection within 30 business days of receipt of applicable documentation from staff of the Co-ordinating Regulator.
- (d) **Other DRs communicate decision to Co-ordinating Regulator.** Staff of each Designating Regulator will promptly inform staff of the Co-ordinating Regulator in writing after a decision about the Rule Change has been made.
- (e) **Co-ordinating Regulator communicates decision to OBSI.** Staff of the Co-ordinating Regulator will promptly communicate to OBSI, in writing, the decision about the Rule Change, including any conditions, upon receipt of notification of the other Designating Regulators' decisions.

## 9. Effective date of Rule Changes

- (a) **Public comment Rule Changes.** Public comment Rule Changes (other than Rule Changes implemented under section 11) will be effective on the later of:
  - (i) the date the Co-ordinating Regulator publish the notice of approval or non-objection in accordance with subsection 10(a), and
  - (ii) the date designated by OBSI under subparagraph 3(c)(v)(A) or the date as determined by OBSI.
- (b) **Housekeeping Rule Changes.** Housekeeping Rule Changes will be effective on the later of:

- (i) the date of deemed approval or non-objection in accordance with subsection 5(b), and
  - (ii) the date designated by OBSI under subparagraph 3(b)(vii)(C).
- (c) **Revisions to the effective date of a Rule Change.** OBSI will advise staff of the Designating Regulators in writing if it has not made a Rule Change effective by the date designated by OBSI under subsection 9(a), and will include the following information:
- (i) the reasons it has not yet made the Rule Change effective,
  - (ii) OBSI's projected timeline for making the Rule Change effective, and
  - (iii) the impact on the public interest of not making the Rule Change effective by the date designated by OBSI under subsection 9(a).

## 10. Publishing notice of approval

- (a) **Public comment Rule Changes.** For any public comment Rule Change, staff of the Co-ordinating Regulator and OBSI will both publish a notice of approval of or non-objection on their respective public websites, together with:
- (i) if applicable, OBSI's summary of comments received and responses,
  - (ii) if changes were made to the version published for public comment, a blacklined version of the revised Rule Change compared to the previously published public comment Rule Change, and
  - (iii) if requested, a blacklined version to the existing Rule.
- (b) **Housekeeping Rule Changes.** For any housekeeping Rule Change, staff of the Co-ordinating Regulator will prepare a notice of deemed approval or non-objection, and both the Co-ordinating Regulator and OBSI will publish the notice, together with the materials referred to in paragraphs 3(b)(iii) and (vii), on their respective public websites.
- (c) **Publication by other Designating Regulators.** Any other Designating Regulators may publish notices of approval at their own discretion.

## 11. Immediate implementation

- (a) **Criteria for immediate implementation.** If OBSI identifies an urgent need to implement a proposed public comment Rule Change because of a substantial risk of material harm to investors and Registered Firms, OBSI, or the Canadian capital markets generally, OBSI may make the proposed public comment Rule Change effective immediately, subject to subsection 11(d), and provided that:

- (i) OBSI provides staff of each Designating Regulator with written notice of its intention to rely upon this procedure at least 10 business days before the Board considers the proposed public comment Rule Change for approval, and
- (ii) OBSI's written notice in paragraph 11(a)(i) includes:
  - (A) the date on which OBSI intends the proposed public comment Rule Change to be effective, and
  - (B) an analysis in support of the need for immediate implementation of the proposed public comment Rule Change.
- (b) **Notice of disagreement.** If staff of a Designating Regulator does not agree that immediate implementation is necessary, staff of the Designating Regulators and, as applicable, OBSI, will use best efforts to adhere to the following:
  - (i) Staff of each Designating Regulator which disagrees with the need for immediate implementation will, within five business days after OBSI provides notice under subsection 11(a), advise staff of the other Designating Regulators in writing that they disagree and provide the reasons for its disagreement.
  - (ii) Staff of the Co-ordinating Regulator will promptly notify OBSI in writing of the disagreement.
  - (iii) Staff of the Designating Regulators and OBSI will discuss and attempt to resolve any concerns raised on a timely basis but, if the concerns are not resolved to the satisfaction of staff of all Designating Regulators, OBSI cannot immediately implement the proposed public comment Rule Change.
- (c) **Notice of no disagreement.** Where there is no notice of disagreement under and within the timelines set out in paragraph 11(b)(i), or where concerns have been resolved under paragraph 11(b)(iii), staff of the Co-ordinating Regulator will immediately provide written notice of no disagreement to OBSI, with a copy to staff of the other Designating Regulators, indicating that it may now seek Board approval to immediately implement the proposed public comment Rule Change.
- (d) **Effective date.** Proposed public comment Rule Changes that OBSI immediately implements in accordance with section 11 will be effective on the later of the following:
  - (i) the date the Board approves the Rule Change, and
  - (ii) the date designated by OBSI in its written notice to staff of the Designating Regulators.
- (e) **Subsequent review of Rule Change.** A public comment Rule Change that is implemented immediately will subsequently be published, reviewed, and approved or non-objected to in accordance with the applicable provisions of this Protocol.

- (f) **Subsequent disapproval of Rule Change.** If the Designating Regulators subsequently object to or do not approve a public comment Rule Change that OBSI immediately implemented, OBSI will promptly repeal the public comment Rule Change and inform Registered Firms of the Designating Regulators' decision.

## 12. Disagreements

If any disagreement, either among the Designating Regulators or between the Designating Regulators and OBSI, about a matter arising out of or relating to this Protocol cannot be resolved through staff discussions, staff of the Designating Regulators will use best efforts to adhere to the following using timelines established among themselves:

- (a) If staff of one of the Designating Regulators notifies the other Designating Regulators that in their view there is a disagreement that cannot be resolved through staff discussions, then staff of the Co-ordinating Regulator will arrange for senior staff of the Designating Regulators to discuss the issues and attempt to reach a consensus.
- (b) If, following such discussions, a consensus is not reached, staff of the Co-ordinating Regulator will escalate the disagreement as applicable and, ultimately, to the Designating Regulators' Chairs or other senior executives of the Designating Regulators or such other process as agreed to by staff of the Designating Regulators.
- (c) If, following such escalation, a consensus is not reached, OBSI may withdraw the Rule Change in accordance with section 13 or staff of the Designating Regulators will recommend that their respective decision makers object to or not approve the Rule Change.

## 13. Withdrawing Rule Changes

- (a) **Filing notice of withdrawal.** If OBSI withdraws a proposed public comment Rule Change that the Designating Regulators have not yet approved or non-objected to, OBSI will file with staff of the Designating Regulators a written notice indicating that it will be withdrawing the Rule Change.
- (b) **Contents of notice of withdrawal.** The written notice in subsection 13(a) must contain:
  - (i) the reason OBSI submitted the proposed Rule Change,
  - (ii) any date that the Board approved the proposed Rule Change,
  - (iii) any prior publication dates, if applicable,
  - (iv) the Board resolution supporting the withdrawal of the proposed Rule Change, if applicable,
  - (v) the reasons OBSI is withdrawing the proposed Rule Change, and

(vi) the impact of withdrawing the proposed Rule Change on the public interest.

- (c) **Publishing notice of withdrawal.** Where the proposed Rule Change being withdrawn had previously been published for comment under subsection 6(b), staff of the Co-ordinating Regulator and OBSI will both publish a notice on their public websites stating that OBSI will be withdrawing the proposed Rule Change, together with the reasons OBSI is withdrawing the proposed Rule Change.

#### **14. Reviewing and amending Protocol**

Staff of the Designating Regulators will, when they agree it is necessary to do so, conduct a joint review of the operation of this Protocol in order to identify issues relating to:

- (a) the effectiveness of this Protocol,
- (b) the continuing appropriateness of the timelines and other requirements set out in this Protocol, and
- (c) any necessary or desirable amendments to this Protocol.

#### **15. Waiving or varying Appendix C**

- (a) **OBSI request.** OBSI may file a written request with the Designating Regulators to waive or vary any part of this Protocol and, in such a case, the Designating Regulators will use best efforts to adhere to the following using timelines established among themselves:
- (i) A Designating Regulator who objects to the granting of the waiver or variation will, in writing, notify the other Designating Regulators of its objection, together with the reasons for its objection.
  - (ii) If the Co-ordinating Regulator does not receive or send any notice of objection within the agreed upon timelines, the Designating Regulators are deemed to not object to the waiver or variation.
  - (iii) The Co-ordinating Regulator will provide written notice to OBSI as to whether or not the waiver or variation has been granted.
- (b) **DR request.** The Designating Regulators may waive or vary any part of this Protocol if all of the Designating Regulators agree in writing (or such other means, as appropriate) to such waiver or variation.
- (c) **General.** A waiver or variation may be specific or general and may be made for a time or for all time as mutually agreed to by the Designating Regulators.

#### **16. Publishing materials**

If staff of the Co-ordinating Regulator publish any materials under this Protocol, staff of the other Designating Regulators may also publish the same materials, and in such a case, staff of the Co-ordinating Regulator will coordinate the publication date with staff of the other Designating Regulators.

## **APPENDIX D**

### **Oversight of OBSI by the AMF**

WHEREAS OBSI is designated or recognized as the identified ombudservice under applicable securities legislation and subject to terms and conditions by each of the Designating Regulators;

WHEREAS in Québec the Autorité des marchés financiers (the **AMF**) provides conciliation and mediation services to consumers of financial products and services, including retail investors, and Registered Firms are deemed to comply with the dispute resolution requirements included in NI 31-103 if they comply with the applicable provisions of the *Derivatives Act* (Québec) and 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 conciliation or mediation services of the AMF;

WHEREAS investors in Québec only have access to the non-binding services of OBSI;

WHEREAS it is in the interests of investors and Registered Firms in Québec that the AMF participates in the Oversight Program and be informed of any potential systemic issue identified by OBSI;

Consequently, the AMF participates in the Oversight Program, the parties have agreed on AMF participating in the Oversight Program as follows:

1. The AMF shall participate in the Oversight Program with respect to the supervision of OBSI's non-binding services provided to investors and Registered Firms in Québec.
2. The AMF shall be informed of any potential systemic issues identified by OBSI.
3. The AMF shall designate representatives to serve on the OBSI Oversight Committee as established in section 3 of the MOU, and shall participate in the Oversight Program as per sections 3 (General Provisions), 4 (Review of Information Filed), 6 (Oversight Reviews) and 7 (Oversight Activities) within the limits provided in sections 1 and 2 of Appendix D.
4. The AMF may participate in discussion of issues, concerns and proposals relating to the oversight of OBSI and may comment on the documents referred to in Appendices A and C and, without limiting the scope of the forgoing, shall participate in discussions on issues, concerns, proposals or comment on documents pertaining to:
  - i. any changes to the Terms of reference, By-Laws, procedural guidelines or any other governing documents of OBSI, fee model or to the loss calculation methodology used by OBSI in delivering an OBSI recommendation;
  - ii. any potential systemic issue identified by OBSI;
  - iii. the results of any independent third-party review of OBSI's function conducted in accordance with an OBSI Designation Order and any remediation plan or any other relevant documentation.

5. The AMF may choose to participate in a review of OBSI as set out in Appendix B or may choose to rely on a Designating Regulator for the review of OBSI for the purpose of being informed of draft findings and commenting on the draft review report.