

ANNEX C

BLACKLINE SHOWING PROPOSED CHANGES TO COMPANION POLICY 31-103CP NATIONAL INSTRUMENT 31-103 REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

Division 5 Complaints

13.14 Application of this Division

Division 5 applies to registered firms that are registered dealers and registered advisers. Investment fund managers are only subject to Division 5 if they also operate under a dealer or adviser registration, in which case the requirements in this Division apply in respect of the activities conducted under their dealer or adviser registration. Furthermore, since sections 13.16(8) and 13.16.1(4) exclude from sections 13.16 and 13.16.1 a complaint made by a permitted client that is not an individual, we would not expect a registered firm that only has such clients to maintain membership in OBSI or an identified ombudservice.

In Québec, a registered firm is deemed to comply with this Division if it complies with sections 168.1.1 to ~~168.1.3~~ 168.1.4 of the Québec Securities Act, ~~which provides a substantially similar regime for complaint handling.~~

The guidance in Division 5 of this Companion Policy applies to registered firms registered in any jurisdiction ~~including Québec.~~

However, ~~section 168.1.3 of~~ the Québec Securities Act, includes requirements with respect to dispute resolution ~~or mediation~~ services that are different than those set out in section 13.16 of NI 31-103. In Québec, registrants must, in accordance with the Québec Securities Act, inform each complainant, ~~in writing and without delay, that if the complainant is dissatisfied with how the complaint is handled or with the outcome, they may of their right to~~ request the ~~registrant to forward a copy~~ examination of the their complaint file to record by the Autorité des marchés financiers if they are dissatisfied with the registered firms' processing of their complaint or the outcome. The registrant must forward a copy of the complaint file to the Autorité des marchés financiers, ~~which will examine the complaint for~~ examination. The Autorité des marchés financiers may, with the parties' consent, act as a conciliator or mediator ~~if it considers it appropriate to do so and the parties agree~~ or designate a person to act as such.

13.15 Handling complaints

General duty to document and respond to complaints

Under Section 13.15 ~~requires~~, registered firms to must document ~~complaints,~~ and ~~to effectively, in a manner that a reasonable investor would consider fair~~ and ~~fairly effective,~~ respond to ~~them~~ each complaint made to the registered firm about any product or service offered by the registered firm or a representative of the firm. We are of the view that ~~registered firms should document and respond to all~~ this includes complaints received from a client, a former client or a prospective client who has dealt with the registered firm (complainant), regardless of whether the method used to initiate the complaint was verbal or written.

~~Firms~~ Registered firms are reminded that under paragraph 11.5(2)(m) they are required to maintain records which demonstrate compliance with complaint handling requirements under paragraph 11.5(2)(m).

Complaint handling policies

An effective complaint ~~system~~ handling policy should deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve ~~the objective of handling complaints fairly~~ these objectives, the firm's complaint ~~system~~ handling policy should include standards ~~allowing~~ for objective factual investigation and analysis of the matters specific to the complaint.

We take the view that registered firms should take an objective and balanced approach to the gathering of facts ~~that~~ objectively considers, including concerning the interests ~~actions~~ of

• the complainant

• the registered representative, and

• the firm

Registered firms should not limit their consideration and handling of complaints to those relating to possible violations of securities legislation.

Complaint monitoring

The registered firm's complaint handling policy should provide for specific procedures for reporting ~~the~~ complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. ~~Firms~~ Registered firms should take appropriate measures to deal with such problems as they arise.

Responding to complaints

Types of complaints

All complaints relating to one of the following matters should be responded to by the firm by providing an initial and substantive response, both in writing and within a reasonable time:

• a trading or advising activity, including regarding client information, trading authority, and suitability

• a breach of client confidentiality

• theft, fraud, misappropriation, or forgery

• misrepresentation

• an undisclosed or prohibited conflict of interest, or

• personal financial dealings with a client

Firms may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded to in the manner described below. This determination should be made, in all cases, by considering if an investor, acting reasonably, would expect a written response to their complaint.

When complaints are not made in writing

We would not expect that complaints relating to matters other than those listed above, when made verbally and when not otherwise considered serious based on an investor's reasonable expectations, would need to be responded to in writing. However, we do expect that verbal complaints be given as much attention as written complaints. If a complaint is made verbally and is not clearly expressed, the firm may request the complainant to put the complaint in writing and we expect firms to offer reasonable assistance to do so.

Firms are entitled to expect the complainant to put unclear verbal issues into written format in order to try to resolve confusion about the nature of the issue. If the verbal complaint is clearly frivolous, we do not expect firms to offer assistance to put the complaint in writing. The firm may nonetheless ask the complainant to put the complaint in writing on his or her own.

Timeline for responding to complaints

Firms should

- promptly send an initial written response to a complainant: we consider that an initial response should be provided to the complainant within five business days of receipt of the complaint
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the firm's decision on the complaint

A firm may also wish to use its initial response to seek clarification or additional information from the client. Requirements for providing information about the availability of dispute resolution or mediation services paid for by the firm are discussed below.

We encourage firms to resolve complaints relating to the matters listed above within 90 days.

13.15.1 Prohibited terminology

Section 13.15.1 is intended to reduce the risk of investors confusing an independent not-for-profit ombudservice such as OBSI with a department or affiliate of a registered firm.

13.16 Dispute resolution service ~~Section~~ offered to clients

~~13.15 requires a registered firm to document and respond to each complaint made to it about any product or service that is offered by the firm or one of its representatives. Section 13.16 provides for recourse to an independent dispute resolution or mediation service at a registered firm's expense for specified complaints where the firm's internal complaint handling process has not produced a timely decision that is satisfactory to the client.~~

Registered

Under section 13.16, registered firms may be required to make an independent dispute resolution or mediation service ~~paid for by the firm~~ available to a client in respect of a complaint that where the firm's internal complaint handling process has not produced a timely decision that is satisfactory to the client.

- ~~• relates to a trading or advising activity of the firm or its representatives, and~~
- ~~• is raised within six years of the date when the client knew or reasonably ought to have known of the act or omission that is a cause of or contributed to the complaint~~

Where there is an identified ombudservice in the jurisdiction, the requirements in subsection 13.16(6.1) apply instead of the requirements in subsection 13.16(6). In these circumstances, a registered firm must make the identified ombudservice available to a client.

As soon as possible after a client makes a complaint (for example, when sending its acknowledgment or initial response to the complaint), and again when the firm informs the client of its decision in respect of the complaint, a registered firm must provide a client with information about

- ~~• a description of~~ the firm's obligations under section 13.16, and if applicable, subsections 13.16.1(1) and (2).
- ~~• the steps the client must take for an independent dispute resolution or mediation service to be made available to the client at the firm's expense, and~~
- ~~• the name of the independent~~ dispute resolution or mediation service, that will be made available to the client ~~(outside of Québec, this will normally be the Ombudsman for Banking Services and Investments (OBSI), as discussed below) and how to contact it~~ and contact information for the independent dispute resolution or mediation service.

Registrants who do business in other sectors

Some registrants are also registered or licensed to do business in other sectors, such as insurance. If there is a complaint about a registrant, then a registrant should inform their client that the services of the independent dispute resolution service or identified ombudservice are limited to complaints concerning registerable activities.

Taking a complaint to the independent dispute resolution or mediation service

A client may ~~escalate an eligible~~ take a complaint to the independent dispute resolution or mediation service made available by the registered firm in either of two circumstances:

- ~~• If the firm fails to give the client notice of its decision within 90 days of receiving the complaint (telling, then the client that the firm plans to take more than 90 days to make its decision does not 'stop the clock'). The client is then~~

entitled to ~~escalate~~take the complaint to the ~~independent~~ service immediately ~~or at any later date until the firm has notified the client of its decision.~~

~~•~~ If the firm has given the client notice of its decision about the complaint ~~(whether it does so within 90 days or after a longer period)~~ and the client is not satisfied with the decision, the ~~client~~complainant then has 180 days ~~in which to~~ escalatetake the complaint to the ~~independent~~ service for consideration.

~~In either instance, the client may escalate the complaint by directly contacting the independent service.~~

~~We think that it may sometimes be appropriate for the independent service, the firm and the client involved in a complaint to agree to longer notice periods than the prescribed 90 and 180 day periods as a matter of fairness. We recognize that where a client does not cooperate with reasonable requests for information relating to a complaint, a firm may have difficulty making a timely decision in respect of the complaint. We expect that this would be relevant to any subsequent determination or recommendation made by an independent service about that complaint.~~

If a registered firm's complaint handling process takes longer than 90 days, a firm communicating to the complainant that the firm plans to take more than 90 days to make its decision does not 'stop the clock'. In addition, we note that the prescribed 90- and 180-day periods for a complainant to take a dispute to the independent dispute resolution or mediation service, as set out in section 13.16(4), apply respectively to when a registered firm first receives a complaint from a client and to the period after the client receives written notice of the firm's decision. The 90-day period applies to all internal complaint handling processes that may be pursued by the registered firm prior to providing the client written notice of a decision. If a client receives a written notice of the registered firm's decision, then the client has 180 days to notify the independent dispute resolution or mediation service that the client wishes to have their complaint considered. If a registered firm's complaint handling policy includes a secondary complaint handling department that can be engaged following the firm's initial handling of the complaint, then a complainant may take a dispute to the independent dispute resolution or mediation service before the secondary complaint handling department is engaged, as long as the conditions in section 13.16(4) are met.

The client must agree that the amount of any recommendation or decision by the independent dispute resolution or mediation service for monetary compensation will not exceed the compensation limit, that is \$350,000. This limit applies only to the amount that ~~can~~may be ~~recommended. Until it is escalated to~~recommend or awarded, so outside the processes of the independent dispute resolution or mediation service, a complaint ~~made to~~regarding a registered firm may include a claim for a larger amount.

~~Except in Québec~~

~~We would regard it as a serious compliance issue if a registered firm misrepresented the services of the independent dispute resolution or mediation service, or exerted pressure on a client to not engage in that service.~~

~~Nothing in section 13.16 affects a client's right to choose to seek other recourse, including through the courts. If a client does not make use of the service, or if a client abandons a complaint that is under consideration by the service, the registered firm is not obligated to provide another service at the firm's expense.~~

Membership

Where there is an identified ombudservice in the jurisdiction, registered firms must be members of the identified ombudservice.

In jurisdictions without an identified ombudservice, a registered firm must take reasonable steps to ensure that the dispute resolution and mediation service that is made available to its clients ~~for these purposes~~under subsection 13.16(4) will be OBSI ~~(except in Québec)~~. The reasonable steps we expect a firm to take include maintaining ongoing membership in OBSI as a "Participating Firm" and, with respect to each complaint, participating in the dispute resolution process in a manner consistent with the firm's obligation to deal fairly, honestly and in good faith with its client. This would include entering into consent agreements with clients contemplated under OBSI's procedures.

~~Since section 13.16 does not apply in respect of a complaint made by a permitted client that is not an individual, we would not expect a firm that only has clients of that kind to maintain membership in OBSI.~~

A

Alternative service offerings

Except in Québec, a registered firm should not make an alternative independent dispute resolution or mediation service available to a client [for the purposes of the requirement in subsection 13.16\(6\)](#) at the same time as it makes OBSI available. Such a parallel offering would not be consistent with the requirement to take reasonable steps to ensure that OBSI will be the independent service that is made available to the client. ~~Except in Québec, we expect that alternative service providers will only be used for purposes of section 13.16 in exceptional circumstances.~~

~~We would regard it as a serious compliance issue if a firm misrepresented OBSI's services or exerted pressure on a client to refuse OBSI's services.~~

~~If a client declines to make use of OBSI in respect of a complaint, or if a client abandons a complaint that is under consideration by OBSI, the registered firm is not obligated to provide another service at the firm's expense. A firm is only required to make one dispute resolution or mediation service available at its expense for each complaint.~~

~~Nothing in section 13.16 affects a client's right to choose to seek other recourse, including through the courts.~~

~~Registrants that are members of an SRO, including those that are registered in Québec, must also comply with their SRO's requirements with respect to the provision of independent dispute resolution or mediation services.~~

Registrants who do business in other sectors

~~Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint mechanisms for each sector in which they do business and how to use them.~~

Similarly, a parallel offering would not be consistent with the requirement to make the identified ombudservice available under [subsection 13.16\(6.1\)](#).

13.16.1 Registered firm obligations relating to an identified ombudservice

In a jurisdiction where there is an identified ombudservice, [section 13.16.1 sets out the obligations of a registered firm regarding a complaint being investigated or reviewed by an identified ombudservice.](#)

Use of the identified ombudservice is optional for complainants, but participation in the identified ombudservices process by a registered firm is mandatory where a complainant has taken a complaint to the identified ombudservice.

Background regarding the identified ombudservice's process

The following guidance outlines the processes which may be followed by the identified ombudservice and clarifies the nature of a final decision of the identified ombudservice for the purposes of [section 13.16.1](#). The identified ombudservice may issue either a recommendation or a decision in resolving a complaint. Both a recommendation and a decision may become a final decision that will be binding on a registered firm. A complainant may reject a final decision, whether it is a deemed final decision after the recommendation stage or a decision from the review stage, as long as only the firm and not the complainant objects to the recommendation of the identified ombudservice (see below). However, if the complainant also makes a written objection to the recommendation, then the complainant will also be bound by the final decision. A final decision of the identified ombudservice may require the firm to provide monetary compensation to a complainant or to take a specific type of corrective action, as appropriate in the circumstances.

Once a complaint is brought to the identified ombudservice and is determined to be within the identified ombudservice's mandate, the identified ombudservice will commence its investigation of the complaint. During its investigation, the identified ombudservice may request documents and information that are relevant to its assessment of the complaint. We will consider it a failure to cooperate with an investigation of an identified ombudservice if a firm takes any action which may frustrate the identified ombudservice's investigation. This may include, for example, being unresponsive to the identified ombudservice's requests for documentation or information.

Once the investigation stage has been concluded, the identified ombudservice will issue a recommendation. This recommendation will be deemed a final decision once a specified period of time has elapsed where: (i) neither the registered firm nor the complainant has submitted a written objection to the identified ombudservice regarding the recommendation; and (ii) the complainant has not rejected the recommendation or otherwise withdrawn from the dispute resolution process in a manner authorized by the identified ombudservice by the time that the identified ombudservice concludes its investigation and provides the parties with its written recommendation.

If either the registered firm or the complainant makes a written objection to the recommendation, then the identified ombudservice will conduct an independent review of the complaint and issue a decision at the conclusion of its review. If only the registered firm requested the review, the decision will become final once: (i) a specified period of time has passed since the date of the decision; and (ii) the complainant has not rejected the decision or otherwise withdrawn from the dispute resolution process in a manner authorized by the identified ombudservice. If the complainant has requested the review of the recommendation, they will not be able to reject a decision (once issued) or otherwise withdraw from the dispute resolution process.

NI 31-103 does not provide for partial compliance with a final decision of the identified ombudservice. However, firms may also seek to negotiate a settlement with a complainant at any time.