ANNEX B

Summary of Comments on the 2012 Proposal and CSA Responses

This Annex summarizes the public comments we received on the 2012 Proposal and our responses to those comments.

In this document, we have consolidated and summarized the comments and our responses by the general theme of the comments. In general, we have not included drafting comments.

Time limit to bring complaint

The 2012 Proposal included a provision that complaints must be brought within 6 years from the time when the client knew or reasonably ought to have known of the trading or advising activity giving rise to the complaint. The notice of publication of the 2012 Proposal asked "Would the time limit on complaints be more appropriate if it was counted from the time when the trading or advising activity that it relates to occurred, rather than from the time when the client knew or reasonably ought to have known of the trading or advising activity?"

Investor advocates supported counting the time limit on raising complaints from the time when the client knew or reasonably ought to have known of the trading or advising activity. There were also proposals for a subjective standard or special provisions for elderly clients.

Industry commenters generally supported counting from the time when the trading or advising activity actually occurred. Some industry commenters advocated for a shorter time limit. This included suggestions that a 6 year period would be objectionable on the basis that it is longer than the 2 year statutory limitation periods in some jurisdictions.

We acknowledge that counting from the time when the activity occurred has the merit of providing greater certainty. However, we have concluded that this advantage is outweighed by the investor protection benefits of counting from the time when the client should have discovered the problem giving rise to the complaint. In many cases, this will be the same as the time when the trading or advising activity that the complaint relates to occurred. In other cases, it may take longer before it would be fair to say that a client should have discovered the problem.

We have revised the drafting of this provision to more closely conform with the drafting used in limitation period statutes, but we do not agree that the time limit for seeking a recommendation from an informal dispute resolution service should be the same as the statutory limitation periods for a civil action in court that leads to an enforceable remedy.

We also do not think that a subjective standard would be workable or fair in all cases. Whether an elderly investor was vulnerable and exploited is a matter for factual determination during the consideration of their complaint and should not be assumed without investigation.

Escalating a complaint to an independent dispute resolution or mediation service

The notice of publication of the 2012 Proposal also included a second issue for comment: "OBSI's current terms of reference require a complaint to be made to the ombudsman within 180 days of the client's receipt of notice of the firm's rejection of their complaint or recommended resolution of the complaint, subject to the ombudsman's authority to receive and investigate a complaint in other

circumstances if the ombudsman considers it fair to do so. Should NI 31-103 include a deadline for clients to bring complaints to it? If so, is 180 days the appropriate period?"

Most commenters were in favour of specifying that a complaint must be made within 180 days of the client's receipt of notice of the firm's rejection of their claim or recommended resolution of the complaint. There were some comments for and against the qualification that the 180 day limit could be extended if the ombudservice considers it fair to do so. We believe the 180 day time frame is reasonable and understand that it has worked well in practice for OBSI and SRO member firms. We think that it may sometimes be appropriate for OBSI (or an alternative service provider where OBSI is unwilling to consider an eligible complaint) and the firm and client involved in a complaint to agree to a longer notice period as a matter of fairness. However, we believe it is desirable to provide a specific and unambiguous time limit in the Rule. The same is true with respect to the 90 days that a firm is allowed to inform a client of its decision before the client can escalate the complaint.

General support

There were expressions of general support for mandating OBSI as the common service provider for all registered dealers and advisers. This support came in the letters from investor advocates and some industry associations.

Criticism of OBSI and calls for CSA oversight

Several commenters that are registered firms or industry associations expressed a lack of confidence in OBSI. Some investor advocates, while supporting the proposal to mandate OBSI in the Rule, expressed concerns about the timeliness of its process for making recommendations. Linked to these comments were calls for the CSA to exercise oversight of OBSI.

As stated in the notice of publication of the 2012 Proposal, we believe OBSI is the appropriate choice to be the common dispute resolution service provider for all registered dealers and registered advisers. OBSI is independent and not-for-profit. It has extensive experience, having served in that capacity for SRO members and other registrants for the past 10 years. During that time it has resolved thousands of complaints from investors. OBSI has adhered to standards established by the Joint Forum of Financial Market Regulators. Under that oversight framework, OBSI has been subject to independent third party evaluations on a regular basis, the most recent of which was conducted in 2011. OBSI was found to substantially meet the Joint Forum's standards. OBSI has established an effective system to respond to investors with a call centre and infrastructure to respond to public enquiries in over 170 languages. It also has the ability to redirect callers to the appropriate organization if a matter is outside its mandate.

This notice discusses the CSA oversight regime that will be implemented with the MOU, and also discusses the introduction of the JRC which will also play an important role in ensuring OBSI's effectiveness. We have considered OBSI's capacity both to resolve its backlog of unresolved cases and to assume its expanded mandate under the Amendments and will monitor its performance going forward.

We also note that OBSI has implemented corporate governance changes and amended its terms of reference since the publication of the 2012 Proposal. We support these changes.

OBSI fees

Industry commenters expressed concerns that OBSI's fees for non-SRO dealers and advisers that would be required to become Participating Firms under the 2012 proposal had not been made public at the time it was published for comment. These concerns focused on the possibility that fees might be excessive, and

that firms in a category of registrant which might place few demands on OBSI's services might subsidize firms in categories of registrant that make relatively greater use of OBSI.

OBSI has finalized its fee model for non-SRO members after consulting with the CSA jurisdictions outside of Québec. The existing fee models for SRO members will remain in place. This notice refers to the MOU provision that OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership, and notes that OBSI's model for setting fees for its Participating Firms will be reviewed after OBSI has developed some practical experience with its expanded mandate under the Amendments. We have stated our intention to ensure that fees are set fairly across categories of registered dealer and registered adviser.

Recommendations should be replaced with binding decisions

Some investor advocates took the position that OBSI's current 'name and shame' sanction is not sufficient and that the recommendations contemplated in the proposed amendments should become binding decisions. On the other side there were industry comments that 'name and shame' is too powerful a sanction, in that firms might agree to recommendations simply to avoid it.

Implementing the Amendments and ongoing CSA oversight of OBSI will put us in a better position to assess over time whether its recommendations should be made binding.

Not appropriate for PMs and EMDs; alternative service providers

Portfolio managers (PMs) and exempt market dealers (EMDs) took the position that mandating OBSI is not appropriate for their client base. Among other things, they say that

- they have relatively small numbers of clients who are generally of higher net worth and sophistication, so firms will seek to resolve their complaints without the need to turn to a third party service provider
- in the few cases where dispute resolution is required, their clients are of a kind that prefers to be able to choose service providers, and they do not need protection in the form of a choice prescribed by regulators
- OBSI lacks expertise in regard to managed accounts and the exempt market

We do not think that OBSI lacks the expertise to consider complaints relating to managed accounts or exempt market investments. OBSI has experience of managed accounts because some IIROC member firms provide discretionary trading services. It has experience with the exempt market because all IIROC member firms are authorized to trade in exempt market securities and many MFDA members are registered as EMDs, as well as being mutual fund dealers. We also note that the Amendments provide that section 13.16 does not apply in respect of a permitted client that is not an individual.

$350,000 limit

Some commenters suggested that the $350,000 limit should be raised or eliminated. We have changed the limit so that it applies only to the amount that can be recommended, recognizing that a complaint might begin as a claim for a larger amount. However, we do not think it is necessary to change the amount at this time. OBSI's experience is that the large majority of recommendations are for amounts well below $350,000. We believe that if a client wishes to seek an award larger than $350,000 in a complaint that is escalated from the firm's internal complaint handling process, that complaint would be more appropriately handled by another forum, such as the courts or arbitration agreed to by the parties. Again, implementing the Amendments and ongoing CSA oversight of OBSI will put us in a better position to assess whether a change to the limit may be appropriate in the future.

OBSI corporate governance and terms of reference

We received comments recommending changes to OBSI's corporate governance or terms of reference.

OBSI remains an independent agency and the oversight model adopted by the CSA jurisdictions outside of Québec does not contemplate a role for us that would extend to determining the structure of OBSI's board of directors. As noted above, since the publication of the 2012 Proposal, OBSI has implemented corporate governance changes which we support.

With respect to OBSI's terms of reference, we observe that OBSI has a separate process to receive public comments on the content of its terms of reference. Also, the MOU contemplates that OBSI will at an early stage

- consult with designated CSA jurisdictions on issues that might have significant implications for the dispute resolution system and for OSBI's members
- share with designated CSA jurisdictions any draft documents that are proposed to be published for stakeholder feedback, including any proposed changes to its terms of reference.

List of commenters

We received submissions from the following 24 commenters:

1. Advocis
2. Alternative Investment Management Association
3. Association of Canadian Compliance Professionals
4. Borden Ladner Gervais LLP
5. Brandes Investment Partners & Co.
6. Canadian Foundation for Advancement of Investor Rights
7. CI Financial Corp.
8. Exempt Market Dealers Association of Canada
9. Fidelity Investments Canada ULC
10. Invesco Canada Ltd.
11. Investment Industry Association of Canada
12. Kenmar Associates
13. National Exempt Market Association
14. Portfolio Management Association of Canada
15. RBC Dominion Securities Inc., RBC Direct Investing Inc., Royal Mutual Funds Inc., RBC Global Asset Management, Phillips Hager & North Investment Funds Ltd. and RBC PH&N Investment
16. RESP Dealers Association of Canada
17. Robertson-Devir
18. Scotia Asset Management L.P.
19. Small Investor Protection Association
20. Stikeman Elliott LLP
21. The Canadian Advocacy Council for Canadian CFA Institute Societies
22. The Investment Funds Institute of Canada
23. The Investor Advisory Panel
24. Walton Capital Management Inc.