

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 Coordinating 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 Coordinating 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 of 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.