



# DISPUTE RESOLUTION SERVICE REQUIREMENTS FOR DEALERS AND ADVISERS

*...in a nutshell*

Effective August 1, 2014, all registered dealers and advisers (outside of Quebec) will be required to use the Ombudsman for Banking Services and Investments (OBSI) as their independent dispute resolution services (DRS) provider.

## Who does this impact?

With the new requirement, there are now two mandated dispute resolution regimes. Disputes that arise in Quebec will continue to be administered by the Autorité des marchés financiers ("AMF"). For disputes that arise outside of Quebec, firms will need to take reasonable steps to ensure that OBSI's DRS will be made available to clients that have an "Eligible Complaint" (see definition on p.2).

## Important dates

While the requirements came into force on May 1, 2014, registered firms who are not currently OBSI members have a three month transition period (i.e. until August 1, 2014) to become members in good standing with OBSI (see "Recommended next steps" below for guidance on how to become a member in good standing with OBSI).

## Recommended next steps

	Firms Registered Outside of Quebec (OBSI)	Firms Registered in Quebec (AMF) <sup>1</sup>
<b>STEP 1: Set up the DRS process</b>	Before July 1, 2014 <sup>2</sup> , apply for membership with OBSI as a "Participating Firm". The application form is available at:  <a href="http://www.obsi.ca/images/Documents/05_RR/resources_for_firms/obsi_welcomekit_companyinformationform_web_fillable.pdf">http://www.obsi.ca/images/Documents/05_RR/resources_for_firms/obsi_welcomekit_companyinformationform_web_fillable.pdf</a>	Appoint a "Person in Charge" of your dispute resolution policy. Duties of a Person in Charge include the following:  a) Train staff and provide compliance rules, b) Deliver acknowledgement of receipt to those who submit a complaint, c) Transfer complaint file to AMF at the request of a complainant, and d) File complaint reports to AMF twice a year (on July 30 and January 30) using the AMF's Complaint Reporting System. See: <a href="http://www.lautorite.qc.ca/en/how-to-use-crs.html">http://www.lautorite.qc.ca/en/how-to-use-crs.html</a>
<b>STEP 2: Pay annual fees</b>	<b>You must pay the applicable fees by (\$165 per registered dealing, advising and associate advising representative, per year) August 1, 2014</b> in order to become a member in good standing with OBSI.	Not applicable.
<b>STEP 3: Update your policies &amp; procedures</b>	Update your policies and procedures to reflect the revised complaint handling process.	Set up a complaint examination and DRS policy and procedures. The following link provides a sample policy:  <a href="http://www.lautorite.qc.ca/files/pdf/professionnels/obligations/Complaint-examination-policy.pdf">http://www.lautorite.qc.ca/files/pdf/professionnels/obligations/Complaint-examination-policy.pdf</a>
<b>STEP 4: Train employees</b>	Train employees on your updated policies and procedures.	
<b>STEP 5: Communicate the availability of DRS to clients</b>	Communicate with clients about the DRS that is available to them, at the firm's expense, during the initial client intake process, and where there is a complaint, with the Initial Response and Decision Letter (see "What should you do when you receive a client complaint" below) <sup>3</sup> . The initial disclosure may form a part of your relationship disclosure information, which may be included in your account opening documents.	

<sup>1</sup> Firms that are registered as a portfolio manager and/or exempt market dealer in more than one province including Quebec must be familiar with the dispute resolution regimes in both jurisdictions, and are thus recommended to follow the steps set out in both columns.

<sup>2</sup> July 1, 2014 is not a prescribed cut-off date for applications. However, firms are required to be members in good standing by August 1, 2014 which requires you to have paid the required membership fees. Firms are therefore encouraged to submit their forms before July 1, 2014 to give OBSI ample time to process your application, issue an invoice, and give you sufficient opportunity to pay the fees before the August 1 deadline.

<sup>3</sup> The requirement to communicate the availability of DRS to clients does not apply to any permitted client that is not an individual.

## What should you do when you receive a client complaint?

	Firms Registered Outside of Quebec (OBSI)	Firms Registered in Quebec (AMF)
<b>STEP 1</b> <b>Address internally</b>	<p>Try to address the complaint within your firm's internal complaint handling regime in a manner that a reasonable investor would consider fair and effective. Specifically, under securities regulations, you are required to respond as follows:</p> <ul style="list-style-type: none"> <li>(a) Upon receiving the complaint, send an initial written response to the client acknowledging receipt of the complaint (the "Initial Response") as soon as possible, and</li> <li>(b) Within 90 days of receiving the complaint<sup>4</sup>, provide a substantive response to the complaint, indicating your decision on the complaint (the "Decision Letter").</li> </ul> <p>The Initial Response and the Decision Letter must provide the client with information about your obligations to provide independent DRS at your expense, the steps the client must take for the DRS to be made available to them, and the name and contact information of the DRS that will be made available (i.e. in most circumstances, OBSI or AMF).</p>	<p>In addition to the steps outlined to the left... For Quebec registrants, there are additional requirements:</p> <ul style="list-style-type: none"> <li>(1) you must set up a separate file for each claim; and</li> <li>(2) include the following information in the Initial Response: <ul style="list-style-type: none"> <li>(a) a description of complaint,</li> <li>(b) name and contact information of person in charge,</li> <li>(c) copy of complaint policy,</li> <li>(d) notice that if the client is not satisfied with the firm's decision, they could request a transfer of the file to AMF for DRS if appropriate, and</li> <li>(e) reminder that filing a complaint to AMF doesn't interrupt the limitation period for civil remedies.</li> </ul> </li> </ul> <p>The form of Initial Response is available at: <a href="http://www.lautorite.qc.ca/files/pdf/professionnels/obligations/Accuse-de-reception-A.pdf">http://www.lautorite.qc.ca/files/pdf/professionnels/obligations/Accuse-de-reception-A.pdf</a></p>
<b>STEP 2</b> <b>If the complaint is not resolved in Step 1, determine whether the complaint is an "Eligible Complaint" (if it arises outside of Quebec) or a "Qualified Claim" (if it arises in Quebec)</b>	<p>A complaint is an "Eligible Complaint" for OBSI's purposes if:</p> <ul style="list-style-type: none"> <li>a) the complaint relates to a trading or advising activity of the firm or its representative; and</li> <li>b) the complaint is brought: <ul style="list-style-type: none"> <li>(i) within 6 years from the time when the client first knew or reasonably ought to have known of an act or omission that is a cause of the complaint,</li> <li>(ii) within 180 days after the firm has responded with its decision, or the decision letter</li> <li>(iii) after 90 days of the firm's receipt of the complaint, the firm has not given the client written notice of a decision, whichever is earlier; and</li> </ul> </li> <li>c) the amount claimed doesn't exceed \$350,000.</li> </ul>	<p>Generally, to be considered a "Qualified Claim" for AMF purposes, a complaint must have one of the following attributes:</p> <ul style="list-style-type: none"> <li>(i) a reproach against the firm,</li> <li>(ii) the identification of real or potential harm by the claimant, or</li> <li>(iii) a request for remedial action.</li> </ul> <p>The claim must also be in writing (or, if verbal, must be documented by the firm to keep on file) without undue delays in processing the complaint.</p> <p>Note: If a claim is resolved within the firm internally it is generally not considered to be a Qualified Claim. However, if no solution is found in-house and the claimant remains unsatisfied, then the AMF will address it as a Qualified Claim.</p>
<b>STEP 3</b> <b>Transfer Eligible Complaint or Qualified Claims to a DRS</b>	<p>If the client remains dissatisfied with the firm's complaint examination procedure or its outcome and the complaint is an Eligible Complaint, you must inform the client in writing that they may bring their case to OBSI.</p> <p>Regardless of whether the complaint is an "Eligible Complaint", the client retains their ability to take the complaint to a DRS of their own choosing <u>at their own expense</u>, or to bring an action in court.</p>	<p>If the client remains dissatisfied with the firm's complaint examination procedure or its outcome and the claim is a Qualified Claim, the client may require that you forward a copy of their file to the AMF. The AMF would examine the forwarded file and may, if it considers it appropriate and the parties agree, act as a mediator. The AMF may alternatively appoint a third party as the mediator, if the parties agree<sup>5</sup>.</p> <p>At all times, the client retains their ability to bring an action in court at their own expense.</p>
<b>STEP 4</b> <b>Cooperate with the DRS</b>	<p>If a complaint file is transferred to a DRS, you must forward the complaint file and all relevant materials to the DRS in accordance with rules on protection of personal privacy.</p>	
<b>STEP 5</b> <b>Review the recommendations and accept or reject the recommendations</b>	<p>As OBSI's recommendations are not binding, you may decide to accept or reject the recommendations. However, if you reject the recommendations, OBSI has the ability to "name and shame" the firm on a sanction list that is publicly available.</p>	<p>As the AMF's suggestions are not binding, you may decide to accept or reject the suggestions. The AMF does not have the power to publish whether a registrant has complied with the AMF's suggestions.</p>

## We are here to help

If you have any questions or would like to discuss further, please contact any member of our Regulatory Compliance group:

### TORONTO

#### Erez Blumberger

Chief Regulatory Counsel  
416.966.2004 ext. 235  
erez@aumlaw.com

#### Richard Roskies

Legal Counsel  
416.966.2004 ext. 230  
richard@aumlaw.com

#### Richard E. Austin

Senior Legal Counsel  
416.966.2004 ext. 244  
raustin@aumlaw.com

#### Jess Dichter

Legal Counsel  
416.966.2004 ext. 223  
jess@aumlaw.com

#### Adam Braun

Legal Counsel  
416.966.2004 ext. 222  
adam@aumlaw.com

#### Jennifer Lee

Legal Counsel  
416.966.2004 ext. 237  
jennifer@aumlaw.com

### MONTRÉAL

#### Pierre-Yves Châtillon

Senior Legal Counsel  
514.769.4454  
pierre@aumlaw.com

<sup>4</sup> In Quebec, this time frame is not mandatory but recommended.

<sup>5</sup> The mediator may not be forced to disclose matters revealed to firm while acting as a mediator or provided before a judicial court or board.