



SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

A Voice for Small Investors

January 28, 2013

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**RE: COMMENT ON PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT
OBLIGATIONS AND TO COMPANION POLICY 31-103CP REGISTRATION
REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS**

The Small Investor Protection Association appreciates the opportunity to comment on the proposed amendments to NI31-103. We commend the CSA for taking this initiative.

We agree that single point entry to a dispute resolution service is in the best interests of financial consumers. This is consistent with the January 2012 World Bank report "[Fundamentals for a Financial Ombudsman](#)" which sets out the basic principles for the creation of an independent and effective financial ombudsman. We agree that the requirement to use OBSI is appropriate for Scholarship Plans and EMD' s where the clients are retail investors. However, we do not have enough information to make an informed recommendation re PMAC as we do not have knowledge of their customer base.

We also agree that OBSI is an acceptable organization as a complaint resolver. This is supported by the 2011 Independent review of OBSI which concluded that "...OBSI's approach to investment loss is based on sound logic, provides a fair and transparent platform for well-founded, consistent decision-making and is consistent with other jurisdictions" Nevertheless ,we believe the following clarifications are required:



1. The limitation time clock will be stopped via tolling agreements for all complaints being applicable in all provinces and territories while the complaint is being investigated by OBSI.
2. The cycle time target of 80%/180 days will be retained (or better) and actual performance results publicly disclosed on a quarterly basis.
3. Complaint statistics will be published quarterly. This is necessary for investor advocates, media, regulators etc. to spot trends/patterns and emerging issues..
4. No changes to core practices or Terms of Reference will be made without commentary from the OBSI Consumer and Investor Council . The Council's existence should be established in OBSI's Terms of Reference.
5. SRO Recognition Orders will require the use of OBSI as the sole complaint resolver.
6. The mandate to deal with Systemic issues will remain intact.
7. OBSI will be required to share calculations with investors as well as dealers.
- 8 OBSI shall be required to perform an annual complainant satisfaction survey and publicly disclose the results and action plans. This is one key element in demonstrating accountability to stakeholders for a sole source provider of dispute resolution services.
9. Normally OBSI will not consider disputes where the complaint involves an insurance company but when accounts are blended with Seg funds and normal securities, OBSI should be willing to act as a liaison so the investor does not have to deal with two different complaint resolvers.
10. OBSI should publish its approach to resolving complaints from the elderly. Loss calculation Models used to resolve complaints for investors in the distribution part of their life cycle are decidedly different from those in the accumulation model e.g. RRIF accounts

Other Issues for comment

1. 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? **Response: For retail investors, especially seniors,**



this is impractical and unfair. The current timing is congruent with prevailing provincial Limitation Acts.

2. 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? **Response: Six months (180 calendar days approx) has been workable but some tolerance should be made for the elderly and the infirm.**

3. When an OBSI recommendation is rejected by a dealer, the applicable regulator will be required to promptly follow up and apply any sanctions that may be applicable and order investor compensation by the dealer as appropriate. This will help alleviate the stuck case problem which has caused so much anguish for complainants .

4. We agree that if the Ombudsman for Banking Services and Investments is unwilling or unable to consider the complaint, that the services of another dispute resolution or mediation service are made available to the client (at no cost) by a dealer provided that the dealer's chosen resolver meets documented compliance standards for dispute resolvers established by the CSA.

Oversight

The lack of regulatory oversight over OBSI has in the past led to major problems. We recommend that the CSA take on oversight responsibility.

We also believe the five year old FRAMEWORK for COLLABORATION needs to be updated to reflect contemporary practices for dispute resolution services. We recommend ISO 10003 **Quality management -- Customer satisfaction -- Guidelines for dispute resolution external to organizations** be incorporated by reference.

There are a number of significant problems with the NAAF/KYC system that have been identified by investor advocates and OBSI. OBSI's use of notional accounts based on faulty KYCs fails to reflect the investor's situation. Most investors do not understand the information on the NAAF/KYC and these can be manipulated. If victims are to receive fair treatment, the dispute resolution process should determine what the KYC should be before examining a notional account based upon a faulty KYC. Better yet, the KYC system needs to be improved downstream especially in the areas of risk tolerance, loss capacity and time horizon.



Improving compliance with existing regulatory requirements needs to be fixed or OBSI will continue to struggle to meet cycle time goals and achieve complainant satisfaction.

While we support this CSA initiative, we feel the longer-term preferred solution is a legislation-enabled financial Ombudsman service modeled on the UK approach.

We hope this commentary proves useful to the CSA. We welcome its public posting and would be pleased to discuss this letter with you at your convenience.

Sincerely,

Stan Buell

President, Small Investor Protection Association

www.sipa.ca

cc

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Alberta Securities Commission

Saskatchewan Financial Services Commission

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