OMBUDSMAN
for Banking Services and Investments | des Services Bancaires et d'Investissement

CONFIDENTIAL &
WITHOUT PREJUDICE

INVESTIGATION REPORT

Date: January 20, 2014
Clients: Mr. and Mrs. H
Firm: Equity Associates Inc. (Equity Associates)

CONFIDENTIALITY

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INVESTIGATION SUMMARY

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▪ Mr. F selected and purchased risky long-term mutual funds that were unsuitable for the Hs. The mutual funds declined in value significantly.
▪ Equity Associates is responsible for the losses the Hs incurred on the unsuitable investments.</td></tr>
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401 Bay Street, Suite 1505, P.O. Box 5, Toronto, Ontario M5H 2Y4 Tel: 416.287.2877 Fax: 416.225.4722 Toll Free Call Centre: 1.888.451.4519
Email: ombudsman@obsi.ca Web site: obsi.ca

STANDARD OF REVIEW

OBSI is obligated to assess and resolve complaints using a fairness standard, as set out in OBSI's Terms of Reference:

> The Ombudsman shall make a recommendation or reject a Complaint with reference to what is, in the Ombudsman's opinion, **fair** in all the circumstances to the Complainant and the Participating Firm. In determining what is fair, the Ombudsman shall take into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct applicable to the subject matter of the Complaint. (Emphasis added.)

While OBSI considers the rules and standards developed by other bodies, including regulatory bodies like the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA), the focus for OBSI is on what is fair between the parties in the particular circumstances. Therefore, OBSI's conclusions will not necessarily be the same as conclusions drawn by another body bound by specific rules or subject to a different standard.

OVERVIEW

In August 2007, Mr. and Mrs. H told Mr. F that they had purchased a new home. It was not yet constructed and they expected it to be completed in 2008. In June 2008, Mr. and Mrs. H sold their existing home. They planned to use the proceeds to complete the purchase of their new home that was under construction and expected to be ready in November 2008. Therefore, they had a short-term investment horizon and they could not afford to lose any of their money.

In July 2008, Mr. F invested proceeds of the sale of the Hs' previous home ($268,000) in a variety of long-term, primarily medium to high-risk mutual funds that were unsuitable.

Mr. and Mrs. H say there was no discussion about the investments Mr. F selected, but rather that Mr. F simply told them he would look after it and guaranteed they would have no losses. Our review of the mutual fund order forms Mr. F used for the purchases indicates they were altered photocopies of previously used forms or blank forms and, therefore, the Hs did not sign for the investments purchased with their house proceeds. In addition, Equity Associates allowed Mr. F to open new accounts for the Hs and to invest their house money without collecting Know Your Client (KYC) information, as required by securities rules. As a result, Equity Associates could not assess the suitability of the investments as it was required to do.

When their new house was ready in April 2009, Mr. and Mrs. H asked Mr. F for all of the $268,000 they invested so they could complete the purchase of their new home. Mr. F delayed, asking if the Hs could take less money because the markets were not good at the time. In fact, the mutual funds Mr. F selected had declined in value by $75,427 in the ten months since they had been purchased. In contrast, suitable risk-free investments would have earned some interest.

For the reasons outlined in this report, we conclude that Equity Associates should compensate Mr. and Mrs. H for the losses they incurred.

BACKGROUND

- Mrs. H became a client of Mr. F's in 2004 when he was at another firm. When Mr. F moved to Equity Associates, Mrs. H opened RRSP and non-registered accounts at Equity Associates. She transferred her mutual funds in kind to the new accounts in April 2004. Mr. H became a client of Mr. F's when he transferred his RRSP and non-registered investments to Equity Associates in April 2005.

- On May 28, 2007, the Hs signed an agreement to purchase a new home that was not yet constructed, for $240,350. They paid a $5,000 deposit. The purchase was expected to close on July 23, 2008.

- On August 8 and 15, 2007, Mrs. H sent e-mails to Mr. F informing him of their home purchase and that they expected to take possession in less than a year.

- On June 26, 2008, the Hs sold their existing home and received proceeds of $317,463. By this time, completion of the new home was expected on November 26, 2008. The Hs deposited $200,000 to a new joint account, and $68,000 to a second, new joint account with Equity Associates. The memo lines of the cheques said "House Sale 1" and "House Sale 2." The Hs wrote a third cheque payable to Mr. F for $2,680. The memo line for the third cheque read "Fees."

- Equity Associates was unable to provide account opening documents for either joint account. Equity Associates says that Mr. F relied on the Know Your Client (KYC) forms the Hs signed on May 11, 2008 for their RRSP accounts. The May 2008 KYC forms showed their investment objectives as income and growth, and their risk tolerance as medium-high.

- On July 4, 2008, about five months before the new house was due to be completed, Mr. F invested the $268,000 in the two joint accounts into mutual funds, of which 72% were equity funds and 28% were balanced funds.

- On August 15, 2008, the Hs builder sent them a letter saying the closing date was delayed to February 13, 2009. The Hs say that on August 21, 2008 they signed an Amendment to the Purchase Agreement changing the closing date to April 29, 2009. They say they informed Mr. F of this change in a phone conversation in early September 2008.

- On April 14, 2009, Mr. and Mrs. H emailed Mr. F saying they were preparing to close on the new house purchase and needed to withdraw the full amount they invested in the joint accounts. On April 20, 2009, Mr. F replied by e-mail, asking them to clarify the amount they needed to withdraw and if they could take less than $268,000.

- On April 23, 2009, Mr. H sent a fax to Mr. F saying that they had no tolerance for losses and they expected Mr. F to honour his guarantee that there would be no loss on their joint account investments. On April 23, 2009, Mr. F responded saying that due to stock market conditions “we were not able to attain our goal.”
- On April 23, 2009, the mutual funds in the joint accounts were sold and the Hs received $192,573, for a loss of $75,427 ($268,000 - $192,573).

COMPLAINT

- In a letter to Equity Associates dated June 8, 2009, the Hs complained that:
    - they needed the entire $268,000 for their home purchase;
    - they had no tolerance for loss;
    - Mr. F guaranteed they would not lose money;
    - the investments Mr. F selected were unsuitable; and
    - when they asked Mr. F about their investments, he misled them about their losses.
- The Hs requested compensation for their loss, which they estimated to be $77,000.

EQUITY ASSOCIATES’ RESPONSE

- In letters dated March 8 and September 7, 2010, Equity Associates responded saying:
    - Mr. F denies that the entire $268,000 invested in July 2008 was required to purchase the property within a year;
    - Mr. F says the Hs advised him that they had other assets they could use for the house purchase;
    - Mr. F denies telling the Hs there was no chance of a loss of capital;
    - There were no KYC forms completed for the joint accounts. Equity Associates relied on KYC documentation with respect to individual plans opened previously and found the investments to be suitable.
- Equity Associates did not offer any compensation.

OBSI’S ANALYSIS

During the course of our investigation, we reviewed documents received from the parties including correspondence between the Hs and Equity Associates and account statements issued by Equity Associates and the fund companies. In addition to interviewing the Hs regarding the complaint, we interviewed Mr. F and discussed the case with Ms. S, Chief Compliance Officer at Equity Associates and Mr. G, Chief Executive Officer at Equity Associates.

OBSI examined the following issues in respect of the Hs complaint:

1. What were the Hs' personal and financial circumstances, and investment knowledge and experience and what were their investment objectives and risk tolerance for the joint accounts?

2. Were the investments Mr. F purchased in the joint accounts suitable?

3. If the joint account investments were unsuitable, did the Hs incur financial harm?

4. Who bears responsibility for the financial harm, if any?

Issue 1 – What were the H's personal and financial circumstances, investment knowledge and experience, and investment objectives and risk tolerance?

- Although investment firms and advisors are required under securities rules to complete a new account application form for each new account, and to collect "Know Your Client" (KYC) information including personal and financial information, investment objectives and risk tolerance information for each account, Mr. F and Equity Associates acknowledge that no account opening forms were completed for the joint accounts.

- Equity Associates says Mr. F relied on the KYC forms the Hs signed on May, 11 2008 for their RRSP accounts, as summarized in Table 1 below. Mr. F says he did not rely on the RRSP account KYC forms, but rather that the Chief Compliance Officer at Equity Associates told him not to complete new KYC forms.

Table 1: May 2008 KYC information for the RRSP accounts

	Mrs. H	Mr. H
Date of Birth	[redacted]	[redacted]
Occupation	[redacted]	N/A
Estimated Income	$50,000-$74,000k	$50,000-$74,000k
Estimated Net Worth	$200,000-$999,000	$200,000-$999,000
Investment Knowledge	Novice	Novice
Investment Time Horizon	11-20 yrs	11-20 yrs
Investment Objectives	Income & Growth	Income & Growth
Risk Tolerance	Medium-High	Medium-High

Personal and Financial Circumstances

- In June 2008, when they opened the joint accounts, Mr. H was 63 and Mrs. H was 68 years old. Although the May 2008 KYC form for their RRSP accounts shows Mrs. H was working, they say they were both retired. They say Mr. H had not worked since 1990 because he was diagnosed with a chronic illness. Before his illness, Mr. H had been a technical expert on fuels. Mrs. H says she retired in 2005.

- Mr. H says that in May 2008, his annual income included $60,000 from his pension and $15,000 from CPP Disability payments. Mrs. H says she was receiving approximately $14,000 per year from CPP and OAS. She had no private pension or other income. On this basis, we calculate their combined annual income was approximately $89,000 ($60,000 + $15,000 + $14,000).

- In May 2008, Mr. and Mrs. H had combined RRSP investments worth approximately $215,485 and combined non-registered investments worth approximately $77,838. All of the investments were held at Equity Associates. In June 2008, their home sold for proceeds of $317,463, but after paying off personal loans for their car and boat, they were left with $268,000. They had no other outstanding debts. They say they also owned a cottage worth about $500,000. On this basis we calculate their net worth was approximately $1,061,323 ($215,485 + $77,838 + $268,000 + $500,000).

- To summarize, in July 2008, at the time they deposited the proceeds of the sale of their home to the new joint accounts at Equity Associates, the Hs were retired with a combined income of $89,000. They had an approximate net worth of over $1 million. However, only the $268,000 in the joint accounts from the sale of their previous home was liquid and potentially available for the new home purchase. All parties agree that the $77,838 in other non-registered investments at Equity Associates was not intended to be used for the new house purchase.

Investment Knowledge and Experience

- The Hs say they had limited investment knowledge, relied on their advisors and followed their advice and recommendations. In our interview with Mr. F, he confirmed the Hs were novice investors. Accordingly, he recorded their investment knowledge as novice on the May 2008 KYC form, which was the lowest level in a range of novice, fair, good and sophisticated.

- Mr. H says that before investing in mutual funds with Mr. F in 2005, he had been investing in mutual funds since the 1990s. Mrs. H says that before investing with Mr. F, she had a RRSP with another firm, but she could not recall what it was invested in.

- In our interview with them, we found that Mr. and Mrs. H were unable to describe the characteristics of the mutual funds they held. They have just enough knowledge and experience to recognize that mutual funds fluctuate in value and they know mutual funds are not guaranteed, but they cannot distinguish the risks of different types of mutual funds and had no knowledge or experience with individual stocks, bonds or other types of investments. Further, the parties agree that the Hs accepted all of Mr. F's investment recommendations, did not make any of their own suggestions and relied entirely on Mr. F's advice. Based on our interviews with Mr. F and with the Hs, we find they were novice investors as shown on the May 2008 KYC form and that their investment knowledge is limited.

Investment Objectives and Risk Tolerance

- On May 28, 2007, the Hs signed an agreement to purchase a new home for $240,350. According to the agreement, they were required make installments totaling $5,000 by July 25, 2007, with the balance due at closing on July 23, 2008. The Hs emailed Mr. F on August 8 and 15, 2007 advising him they had purchased a new home, would be selling their existing home and would move in a year's time.

- The Hs say that after they sold their existing home in June 2008, they told Mr. F that they would need all of the $268,000 net proceeds to close the purchase of their new house. By June 2008, the closing date had been delayed from July to November 2008. They say they told Mr. F they would need the money in November 2008 and that they could not risk any losses.

- Mr. F says he knew the Hs were buying a new home but says he did not know when the purchase would close. He says they did not have any discussion about risk in June 2008. Rather, he says they wanted to invest the money similarly to their son-in-law's investments, which were medium-risk mutual funds that generated income. The Hs disagree. They say there was never any discussion about investing like their son-in-law. Rather, they say there was no discussion at all and that Mr. F simply told them he would look after investing their house money. Mr. F told us that the Hs had other assets outside of Equity Associates that they planned to use to pay for the new house purchase, but he could provide no evidence to support this assertion. Mr. F has no notes from his discussions with the Hs in June or July 2008.

- In a letter to Equity Associate's Chief Compliance Officer at the time, dated January 2010 about the Hs' complaint, Mr. F says the Hs told him on November 24, 2008 that they would use a line of credit to cover the purchase of the new house. Mr. F has no notes indicating there was a discussion about using a line of credit to complete the purchase. In our interview with Mr. F, he said the line of credit came up in April 2009 when he spoke to Mr. H about the decline in the value of the investments in the joint accounts. He says Mr. H indicated he would leave the joint accounts invested and use the line of credit for the home purchase.

- The Hs agree they mentioned the line of credit to Mr. F in 2009. They say they were angry that their investments had declined in value, that there was not enough money for their closing costs and, as a result, they would have to use their line of credit to cover the shortfall. The say they established the line of credit after they entered into the agreement to purchase the new home in 2007 as a contingency to be used only if they had not been able to sell their former home before the new purchase was complete.

- In any event, it is clear that the Hs did not discuss using a line of credit until months after the joint account investments were made in July 2008 and we accept the Hs explanation that they only discussed the line of credit as a last resort after losing some of their money.

- Email correspondence from the Hs to Mr. F in April 2009 clearly show that they expected to receive all of the money they invested in the joint accounts when it was time to close on their new home purchase. For example, on April 14, 2009, the Hs emailed Mr. F saying, "As discussed before we left, we <u>now</u> need to have the full amount of the funds we invested deposited to our account at [Credit Union #1] (the Chequing Account), so we can get it moved to where we need to make payment." (Underlining for emphasis made by the Hs.) On Friday, April 17, 2009 the Hs emailed Mr. F again because they had not yet had a response to their April 14, 2009 email.

- On April 20, 2009, Mr. F responded saying "We have had a question on the amount to send, BUT also the email was not received till today which is Monday, Apparently it went to another address I will process the monies BUT must have the amount to send to you. Also with the market NOT good today, can we wait or we can process say $100,000 or 150,000"

- On April 22, 2009, the Hs faxed a copy of a void cheque to Mr. F with instructions saying "Total Amount of Investment is Required. Funds Required By 3:00 pm, Thursday April 23/09."

- On April 23, 2009, the Hs sent another fax saying "We fully expect you to honour your guarantee that there would be <u>No Loss</u> of the funds Invested. We told you when we invested that we had <u>Zero Tolerance</u> for any loss of the principal amount because it was needed to purchase a new house that was already committed to."

- Mr. F responded saying "It is with regret the due to stock market conditions we were not able to attain our goal and we will continue to manage your other portfolios with due diligence."

- We find it clear from the emails that the Hs intended to use the money in the joint accounts for the home purchase. When Mr. F responded to their requests for the money expressing regret about current market conditions, he made no mention of the other assets he says the Hs planned to use for home purchase. He also did not contradict or comment on the Hs claim that they told him when they invested that they had zero tolerance for loss or that he guaranteed there would be no loss.

Conclusion

There is no evidence to support Mr. F's assertion that the Hs had other assets they planned to use to complete the new house purchase. They did not have significant liquid assets beyond the money in the joint accounts, and the evidence indicates the Hs did not consider using their line of credit for the purchase until they realized in April 2009 that the investments in their joint account were insufficient to cover the purchase price.

Email correspondence between the Hs and Mr. F show they advised him in 2007 that they had bought a new house and planned to sell their existing home before the new house was ready a year later. In addition, consistent with their position that they told Mr. F in June 2008 that they would need all of their $268,000 net proceeds and could not take any risk, faxes and emails in April 2009 show that the Hs asked to withdraw the full amount of the money they deposited to the joint accounts to complete the purchase. Notably, Mr. F did not deny the Hs assertion that they told him they had zero tolerance for any loss and that he guaranteed they would have no loss.

Equity Associates says that it and Mr. F relied on the May 2008 KYC forms that were completed for other accounts to determine the Hs investment objectives and risk tolerance for the new joint accounts but they should not have. Mr. F should have asked the Hs the appropriate questions and completed a separate KYC form for the new joint account. It was clear that they intended to use the money deposited to their joint account to purchase their new house and that their risk tolerance and investment objectives for this money would be different than their risk tolerance and investment objectives for their other accounts.

Since they needed most of the money in the joint accounts to pay the outstanding balance on the purchase, as well as legal and other closing costs, they could not afford any loss. Therefore, the Hs investment time horizon was short and they needed safe, risk-free investments. We assessed the suitability of their joint account investments against these parameters.

Issue 2 – Were the investments Mr. F purchased in the joint accounts suitable?

- On July 4, 2008, Mr. F purchased $268,000 of mutual funds in the joint accounts. Our analysis, as summarized below, shows that when the investments were purchased, they were all equity or balanced funds, none of which were risk-free and all of which were intended, according to the mutual fund prospectuses, for investors with a medium to long-term time horizon.

Table 2: Risk profile of the Hs' joint account investments

Low	Low-Medium	Medium	Medium-High	High
0%	17%	46%	21%	17%

Table 3: Investment objectives of the Hs' joint account investments

Safety	Income	Growth & Income	Growth	Speculation
0%	0%	50%	50%	0%

Conclusion

We find that none of the mutual funds Mr. F purchased were suitable given Mr. and Mrs. H's short-term time horizon and objective to have safe, risk-free investments.

Issue 3 – If the joint account investments were unsuitable, did Mr. and Mrs. H incur financial harm?

- In June 2008, the Hs gave Mr. F three cheques: $200,000 payable to Equity Associates with the note "House Sale 1", $68,000 payable to Equity Associates with the note "House Sale 2", and $2,680 payable to Mr. F with the note "Fees." Mr. F was not authorized to accept or charge these fees. When Equity Associates learned of the fees, it refunded them to the Hs on May 21, 2010. As such, our calculation focuses on the remaining $268,000.

- As shown in Table 5, we calculate that Mr. and Mrs. H lost $75,427 on the mutual funds in the joint accounts.

Table 4: Actual loss on mutual funds in joint accounts

	Combined
Capital Invested	$268,000
Less: Proceeds of April 23, 2009 Sale	$192,573
Loss	**$75,427**

- If the Hs had been invested in a suitable short-term, liquid and safe investment such as short-term cashable GICs from June 2008 to April 2009, they would have earned $4,573 in interest.

- In addition to their actual investment losses and unrealized interest, the Hs had to borrow $46,546 to complete their new home purchase ($239,119 needed for closing - $192,573 mutual fund redemption proceeds). Their line of credit statements show that it took them six months from April to November 2009 to pay down the line of credit. Therefore, they paid interest on their line of credit that they would not have incurred if they had been suitably invested. The Hs' line of credit statements show they borrowed at an annual rate of 3.5%. Therefore, we calculate they paid approximately $797 in unnecessary interest [(($45,546 x 3.5%) / 12 months) x 6 months].

Conclusion

In total, we calculate the Hs incurred financial harm of $80,797 ($75,427 + $4,573 + $797).

Issue 4 – Who bears responsibility for the financial harm, if any?

Vicarious Liability

- The case law is clear that investment firms are vicariously liable for the actions of their investment advisors in regard to securities-related business. As Mr. Justice D.J. Gordon said in *Blackburn v. Midland Walwyn Capital Inc.* [2003] O.J. No. 621 (OSCJ), affirmed on appeal [2005] O.J. No. 678 (OCA), at para 191 regarding vicarious liability: "…a firm is absolutely responsible for the conduct of its stockbroker." The reasons for holding investment firms liable for the conduct of their investment advisors were explained by McLachlin J., as she then was, in *Bazley v. Curry*, [1999] 2 S.C.R. 534 (S.C.C.), at para 31:

  > Vicarious liability is arguably fair in this sense. The employer puts in the community an enterprise which carries with it certain risks. When those risks materialize and cause injury to a member of the public despite the employer's reasonable efforts, it is fair that the persons or organization that create the enterprise and hence the risk should bear the loss. This accords with the notion that it is right and just that the person who creates a risk bear the loss when the risk ripens into harm.

- In this case, Mr. F selected and purchased unsuitable investments in the H's accounts, for which Equity Associates is vicariously liable.

- In addition, Equity Associates allowed Mr. F to open the new joint accounts without documenting KYC information as required under securities rules. Without KYC information, Equity Associates was not able to assess the suitability of the investments Mr. F recommended as it was required to do. If Equity Associates had refused to open the account until KYC information was properly documented, it is very likely that unsuitable investments would not have been made and any losses would have been prevented. On this basis, we find Equity Associates is also directly responsible for the financial harm the Hs incurred on the unsuitable investments. However, we also considered whether the Hs should be held responsible for a portion of their loss.

Client Responsibility

- In Re: Daubney, (2008) 31 OSCB 4817, the Ontario Securities Commission panel said the duty of care with respect to the recommendation of suitable investments is on "the registrant who is better placed to understand the risks and benefits of any particular investment product. That duty cannot be transferred to the client."

- Nevertheless, during our attempts to resolve this matter, Equity Associates commented that the Hs had been invested in medium- and medium-high risk mutual funds since 2004, and therefore, they understand and can accept the risks. Equity Associates also questioned why the Hs did not complain after the joint account purchases were made if they did not want medium and medium-high risk investments.

- The purchases in the joint accounts were made with three order entry forms dated July 4, 2008. However, based on our review of the forms, it is clear that they are altered photocopies of used forms or blank forms that the Hs had previously signed. For example, on two of the forms, the signatures for Mr. and Mrs. Hs are identical, indicating at least one of the forms is a copy. In addition, two of the forms have the same marking at the bottom-left of the form indicating that they were copies of each other or another form. Also, part of the lines on the purchase instructions section are obscured, indicating that liquid paper was used to delete the previous order details and insert new ones. The client names on the form also appear to have been altered with liquid paper. Therefore, we find it apparent that the Hs did not specifically sign to authorize the equity and balanced mutual fund purchases in the joint accounts.

- Further, Mr. and Mrs. H say that Mr. F never discussed or made recommendations about how to invest the money in the joint accounts, telling them only that he would look after it. While they received trade confirmations and mutual fund prospectuses in the mail pertaining to the joint account investments, Mr. and Mrs. H say they did not review them in detail because Mr. F assured them, and went so far as to guarantee, that their investments would not lose money. We find their assertion credible given that Mr. F made no attempt to deny making a guarantee when the Hs referenced it in an email to him. They say he had been their advisor for years and they trusted him as a professional so they did not have any reason to question the information they received.

- The account statements the Hs received for the joint accounts were semi-annual consolidated statements from Equity Associates. They would have received their first statement in January 2009, for the period ending December 31, 2008. This statement shows the joint account values were $137,178 and $47,058, for a total of $184,236, or $83,764 less than their original $268,000 investment. In January 2009, they also received annual mutual fund company statements showing the mutual funds they held and that their values had declined since they were purchased.

- The Hs say they received many statements for their different accounts both directly from Equity Associates and from the individual fund companies. They say they did not review the documents in detail because they spoke with Mr. F periodically and he reassured them that their $268,000 was safely invested.

- The Hs say that in the fall of 2008, they heard and read a lot of negative news about major bank failures and called Mr. F about it. Mr. F says he met with the Hs, showed them that their investments had lost approximately $104,000 and says that they were "fine with it." The Hs say they did not meet with Mr. F again after their June 26, 2008 meeting where they wrote out cheques to him and Equity Associates. Rather, they say when they called him in November 2008, Mr. F told them they had nothing to worry about. Mr. F has no notes about their November 2008 discussions.

- The Hs say they called Mr. F in February 2009 because they expected to close their new home purchase soon. They said that Mr. F told them they had lost 5%, but assured them if they stayed invested, the $268,000 would be available when their house purchase closed. Shortly after, when the Hs were emailing Mr. F in April 2009 urgently requesting receipt of their full $268,000 investment, Mr. F was slow to respond, asked if they could take less than $268,000 and did not deny guaranteeing they would receive their full investment when needed, which we find lends support to the Hs contention that he had guaranteed no losses.

- While the Hs may have been able to identify that their joint accounts were invested in mutual funds, which they knew were not guaranteed, they were assured by Mr. F that they were safely invested. By the time they received account statements showing losses in January 2009, it was too late. Their home purchase would close shortly and they did not have time to recover the losses. Further, since Mr. F knew or should have known that they had only a short time until they would need the money and therefore, they could not afford to be exposed to any risk, they reasonably relied on his guarantee that they would not experience losses. In the circumstances, we cannot see that the Hs should bear any responsibility for the unsuitable investments Mr. F selected.

Conclusion

Mr. F recommended unsuitable investments given the Hs short investment time horizon and inability to take any risk with the joint accounts. Equity Associates is vicariously liable for Mr. F's unsuitable investment recommendations. We believe it is also directly responsible for the financial harm the Hs incurred for allowing new accounts to be opened without KYC information specific to them. In all of the circumstances, we cannot see that the Hs bear responsibility for the financial harm arising from Mr. F's unsuitable advice.

Recommendation

As stated earlier, OBSI is obligated to assess and resolve complaints according to what is fair to the parties in the particular circumstances of each case. In all of the circumstances of this complaint, we believe it is fair to recommend that Equity Associates compensate Mr. and Mrs. H for $80,797 plus interest of $2,589[1] for total compensation of $83,386.

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[1] Interest is calculated using the average 3-month Canadian Treasury Bill yield of 0.83% (as calculated by the Bank of Canada) compounded annually from December 2009 after the line of credit was paid off, to the date OBSI's report is final.