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Sent via email

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SIPA Response to Request for Comments -Amendments to OBSI Terms of Reference

The Small Investor Protection Association (SIPA) appreciates the opportunity to comment on the proposed amendments to OBSI's Terms of Reference (TOR).

As former OBSI Chair Peggy-Ann Brown has noted, OBSI was not created as a simple private supplier contracted by each participating bank. OBSI was created to have a much broader public interest and public policy function .The dispute-resolution process that financial consumers access needs to be credible, independent, and impartial – not beholden to any one stakeholder group. These proposals do not reflect that mission. An insightful article **Gravitational collapse and retrograde movements…is the Canadian regulatory system imploding?** By Depth Dynamics exposes many of the issues with these proposals .See http://blog.moneymanagedproperly.com/?p=2572 .

SIPA does not believe any changes to the TOR involving Investments should be made until the CSA has completed its deliberations regarding its own proposals involving OBSI. It appears to us that OBSI's Board is tailoring the TOR to reflect the Finance/FCAC requirements for banking that are so uniformly regarded as deficient and pro-bank. OBSI may need to split into two Branches or cede its role for investigating banking disputes. Given the relatively small dollars involved with banking complaints, that might be good thing. It is not a good idea to mix voluntary Member firms with non-voluntary firms because it inevitably leads to lower standards as voluntary firms continually use the veiled threat of resignation as a tool to achieve their end goals.

SIPA does not support the process of having complainants referred to OLHI for insurance products like Segregated funds. We believe that single point entry to a dispute resolution service is in the best interests of financial consumers. Splitting the complaint resolution process adds an unnecessary burden to already frustrated complainants especially retirees and seniors and facilitates regulatory arbitrage.The October 2011 *G20 High-Level Principles on Financial Consumer Protection* in which Canada is a member states "Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such

mechanisms should not impose unreasonable cost, delays or burdens on consumers. ".

This is also 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. Besides, a portfolio must be examined holistically, not piecemeal, otherwise fairness is compromised. We recommend that OBSI work out a collaboration Agreement with OLHI that would allow OBSI to handle the complaint in an integrated manner.

We have deep concerns about splitting portfolio assessment with OLHI .A 2011 Independent review of OBSI 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". OBSI should be willing to act as a liaison so the investor does not have to deal with two different complaint resolvers. Since there is no problem now, the Board should not create one.

What we would like to see from the OBSI Board is leadership, vision and governance re today's issues. These include but are not limited to:

1. Retention of the Systemic issues identification obligation, a critical feature for a 21st century Ombuds service. On systemic issues, the terms now have a provision under which OBSI will be following up on potential systemic issues that arise out of individual complaint files by contacting the firm and asking it to undertake an investigation. Should a systemic issue be found, OBSI will offer to work with the firm to arrange compensation for affected clients and to fix the problem. If there is disagreement between OBSI and the firm on the nature of problem, or the remedy, the file will be referred to the appropriate regulator for review. What is so wrong with this that it should be amended into neverland?

2. Providing financial and human resources to management so that the cycle time target of 80%/180 days is met (or better) and current chronic underperformance is rectified quickly, certainly ahead of taking on PM's and EMD's.

3. Publish Complaint statistics quarterly. This is necessary for investor advocates, media, regulators etc. to spot trends/patterns and emerging issues.

4. The OBSI Consumer and Investor Advisory Council's continued existence should be entrenched in OBSI's Terms of Reference.

5. 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.

6. Publish OBSI's approach to resolving complaints from the elderly/retirees. Loss calculation Models used to resolve complaints for investors in the accumulation part of their life cycle are decidedly different from those in the distribution mode e.g. RRIF accounts

7. Increase the compensation limit to $500,000 to compensate for 12 years of inflation.

8. When an OBSI recommendation is rejected by a dealer, the applicable regulator should be required to promptly follow up, investigate 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. The Board has a fiduciary duty to help provide closure on stuck cases rather than leave investors hanging. This should be contained in the TOR.

9. Prepare for absorption of Exempt Market Dealers -they are not nearly as well developed as IIROC and MFDA dealers. [In 2010 , Canadian securities regulators levied $66 million in fines, $53 million of which involved folks operating in the fast-growing exempt market].The preparation will require acquisition of trained staff, different policies to reflect the unique nature of the exempt market , augmenting loss-calculation techniques and a level of staffing adequate to meet cycle time standards.

10. Add to the TOR a requirement that each member of the Board of Directors to sign, upon appointment and on an annual basis thereafter, a Conflict- of- Interest and Confidentiality letter which includes the obligation to act in the best interests of OBSI.

<u>Other items</u>

- The lack of regulatory oversight over OBSI has in the past led to major problems and fines. We recommend that the CSA take on oversight responsibility via a structured documented agreement or Memorandum of Agreement. The Agreement is not intended to supersede the authority of the Board but rather to establish that certain terms and conditions and complaint handling standards are respected [the six year old FRAMEWORK FOR COLLABORATION could form the basis of such an Agreement]. A Performance standard applicable to OBSI is also required. We recommend ISO 10003 ***Quality management -- Customer satisfaction -- Guidelines for dispute resolution external to organizations*** be incorporated by reference. See Australia's Regulatory Guide RG 139 ***Approval and oversight of external dispute resolution schemes***

http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-published-13-June-2013.pdf/$file/rg139-published-13-June-2013.pdf

- Given all the changes that are coming down the road that will impact OBSI, we believe the three- year independent review cycle should be reduced to two years not the increase to five years as proposed by the Board. Consideration should also be given to rotating Independent Review agencies to ensure independence.

- The CSA is contemplating NI31-103 amendments that would mandate EMD's and Portfolio Managers to exclusively utilize OBSI as their external option for client complaints – this amounts to adding hundreds of dealers and thousands of advisors. Given the number of documented issues discovered with EMD's and a recent OSC suitability sweep that uncovered shocking EMD and PM non-compliance levels with KYC/Suitability requirements, the foundation of a complaint analysis, we believe that the CSA should either (a) formally establish a discrete compliance/enforcement equivalent to an SRO or (b) require the establishment of a EMD-PM SRO **BEFORE** listing OBSI as the exclusive Ombuds service to be offered as an option to investor complainants. To do otherwise we believe would strain OBSI beyond its capacity limits resulting in investor dissatisfaction, loss of credibility and more industry calls for the dissolution of OBSI. That is surely not the intent of regulators.

- Given the materiality of the proposals we urge the Board to engage with the CSA, MFDA and IIROC as well as investor advocates before proceeding with these proposals as investor protection appears to us to be materially impaired.

Overall, we do not support the proposed changes to the Terms of Reference. 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 OBSI Board. We welcome its public posting and would be pleased to discuss this letter with you at your convenience.

Sincerely,

[Ken Kivenko for]

Stan Buell.

President, Small Investor Protection Association

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