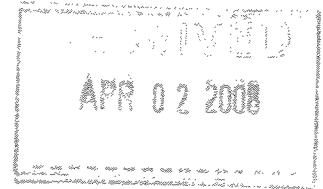




March 27, 2008

Terms of Reference Review  
OBSI, PO Box 896, Station Adelaide,  
Toronto, ON M5C 2K3



Dear Sir;

We are pleased to enclose comments on the Terms of Reference prepared by our Advisory Committee.

As previously expressed to the OBSI Board, SIPA no longer recommends OBSI in provinces where limitation periods have been reduced. The reason is that OBSI insists on the prerequisite of proceeding through the industry's complaints handling process and this process historically has taken considerable periods of time frustrating aggrieved investors.

Although we believe that OBSI's recommendations reflect industry attitude and falls far short of Michael Lauber's initial expressed objective "to make clients whole", we would be prepared to again recommend the OBSI process if OBSI could provide assurance that the limitation period clock would be stopped from the date an investor advises OBSI of their intent to proceed through the OBSI/industry process.

We recognize that an Ombudsman process could be a preferred process provided the evaluations are carried out fairly and objectively. We do not believe that aggrieved investors should be held responsible for mitigating their losses after the fact when they have depended upon the professional advice received and were not aware of any responsibility in this regard.

We trust our appended comments may be of assistance.

Yours truly,

Stan Buell, P. Eng.  
President



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Protection  
Association

Terms of Reference Review,  
OBSI, PO Box 896, Station Adelaide,  
Toronto, ON M5C 2K3  
[publicaffairs@obsi.ca](mailto:publicaffairs@obsi.ca)

March 2008

## SIPA submission OBSI Request for Comments Re: - Terms of Reference

Dear Sir:

SIPA is pleased to comment on the proposed changes. Please excuse our tardy response as we only recently became aware of the proposed changes. As you are aware, we have over the years made additional suggestions to assist small investors navigate the convoluted complaint process. The complaint process was a key element of the 2004 SIPA- CARP report *Giving Small Investors a fair Chance*. We note that the 2007 OBSI Annual Report detects a growing problem re seniors and industry dissemination of OBSI's services.

It should be noted that since our 2004 report that the SRO's have done virtually nothing to improve complaint handling and restitution systems. At the same time, some horrendous cases of financial assault have come to light. Indeed, the prevailing defective complaint system causes as much investor stress and disillusionment as the original wrongdoing.

### Standard to be applied

We would support a plan to have OBSI accept ISO standards for dispute resolution as the foundation. In the event of a conflict with prevailing practices in Canada, the ISO standard would prevail.

### Availability and accessibility

Immediate work is required in dramatically improving OBSI's public profile and ensuring that investors, especially small investors, are effectively referred to OBSI by participating firms. We suggest that the OUTREACH program be expanded and that an email ALERT system be introduced when a major industry issue becomes apparent.

### Timeline before OBSI involvement

The current open-ended limit is not a fair criterion especially with the introduction of dramatically shortened provincial statute of limitation periods, some as short as 2



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years as is the case in Ontario. SIPA concur that 90 calendar days is fair - this timeline should be harmonized with the Finance Canada, SRO's and other relevant institutions. In any event we would recommend that OBSI participating sponsors agree that member firms will stay the limitation clock during an OBSI investigation unless prohibited by law.

#### Dealing with Systemic issues:

This is the most important change for us. It is a documented fact that small unsophisticated investor are special targets. Unsuitable investments top the list and are often tied to a systemic issue with a broker/dealer, branch or firm .We generally agree with the definition of systemic issue.

"Systemic Issue" means a matter discovered in the course of considering a Complaint which may have caused a loss or inconvenience to one or more other Customers in a similar fashion to that experienced by the original Complainant;

A more comprehensive, definitive and workable definition might be that provided by the Australian Ombudsman. <http://www.abio.org.au/ABIOWeb/abiowebwebsite.nsf>  
Their definition includes serious misconduct, product flaws, deficient disclosure and technical/administrative errors.

Small investors trust their advisers and are reluctant to complain. Often, they do not even recognize that they have been exploited. Regulatory Commissions and SRO's have taken the position they are not in the restitution business. For example, the MFDA has never investigated a complaint process case or enforced an OBSI recommendation. In September, 2002, the IDA has publicly announced that they have no Duty of Care to individual investors. This means, according to the IDA, that it has no duty of care to individual investors and has NO accountability for investor losses due to negligence, delay or inaction. So sending systemic issues to them is not a useful action. They can't be held responsible, do not provide restitution - they can refer you to their troubled arbitration system that limits restitution to \$100,000 and can cost anywhere from \$3000 and up to use.

It is left to OBSI to fulfill a critical role in society. If not OBSI, who? If not now, when? SIPA wholly endorses the view that systemic issues are key to a modern ombudsman's role and we believe it is a crucial improvement for small investors, seniors and, retirees. OBSI, while not the ideal ombudsman structure, has the unique qualifications, expertise, processes and experience to perform this function. This function is far too important to be left in the hands of industry SRO's., whose historical inaction and lax enforcement is a documented fact. In several countries, the Ombudsman service is deemed so crucial to a nation it is enacted into law.



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### OBSI assistance in filing a complaint

SIPA strongly recommends that OBSI add a positive information element: provide basic information such as what the statute of limitation periods are by province, the general significance of such periods and whether or not OBSI involvement stops the limitation clock. Small investors would greatly appreciate help in documenting and articulating complaints. To avoid a conflict of interest, the person assisting should not be the assessor.

### Significance of a "Recommendation"

We believe that OBSI recommendations, if accepted by a complainant, should not be constrained by a Confidentiality Agreement aka "gag order". If a complainant accepts an OBSI restitution recommendation but the firm insists that a Confidentiality Agreement be signed before it can be executed, OBSI shall determine that in effect the firm has rejected its recommendation and publicly disclose these facts. The intent here is to retain the ability to warn fellow investors and friends of the financial abuse, especially if the Terms of Reference are not changed to include investigation of systemic issues.

We sincerely hope that the comments included herein are useful and will be reflected in the revised Terms of Reference. Millions of Main Street investors will benefit. This is a socio-economic problem and should be dealt with from that perspective. The result will be more Canadians better able to enjoy a pleasant and fulfilling life.

It would be our pleasure to meet you to discuss this further.

SIPA Advisory Committee  
Small Investor Protection Association  
Markham, Ontario  
(905)-471-2911