



July 9, 2012

VIA EMAIL: [tfleming@obsi.ca](mailto:tfleming@obsi.ca)

Tyler Fleming  
Director, Stakeholder Relations and Communications  
Ombudsman for Banking Services and Investments  
401 Bay Street, Suite 1505, P.O. Box 5  
Toronto, ON, M5H 2Y4

Dear Mr. Fleming:

**Re: Proposed Changes to OBSI's Suitability and Loss Assessment Process**

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We are writing to provide comments of the members of The Investment Funds Institute of Canada in response to the May 10, 2012 request for written feedback regarding the proposed changes to OBSI's suitability and loss assessment process.

We appreciate the opportunity to comment on the proposed changes, and provide the following recommendations that we believe will improve the overall methodology:

**Proposed changes to OBSI's loss calculation processes**

**1) Use common indices as performance benchmarks in most cases**

In determining financial harm and compensation for mutual fund cases, we suggest that OBSI first establish whether the dealer's assessment of investment performance was reasonable. If OBSI determines that such assessment was reasonable, we believe OBSI should accept the dealer's determination of the matter.

We also recommend that when considering a complaint concerning a mutual fund dealer account, OBSI compare the performance of the unsuitable mutual fund holdings with suitable mutual fund holdings. Suitable mutual fund may be funds from the same family, proprietary group or other suitable funds in the account. This approach would take into account what the investor would likely have done through the dealer, and be subject to the same fees, expenses and risks.

We note that an index may not be a suitable proxy for a mutual fund as mutual funds (excepting index based funds) may be more diversified than an index. For example, a Canadian Equity Fund will generally be more diversified than the S&P TSX Composite Index. As an alternative to using common indices as performance benchmarks in most cases, we recommend that OBSI use a relatively fixed basket of mutual funds to represent the returns for a particular risk category. As an illustration of how this approach might be implemented, for moderate risk funds sold through an independent dealer, OBSI could take the ten largest funds by assets sold through the independent dealer channel, ensure the fee structure matches up with the dealer's fee structure, throw out the best and the worst to remove anomalies, and average the returns of the remaining eight. The basket of funds could be reassessed periodically and substitutions made as deemed appropriate. We acknowledge that this approach would require more work at OBSI in establishing a performance benchmark, but it would have advantages in better approximating a diversified return that would be representative of the risk class and available to clients.

**2) Take fees and trading costs into account in all suitable performance comparisons**

If the approach outlined above is used fees and costs will not need to be separately calculated, they will be reflected in the comparison between mutual funds. We would also appreciate if OBSI could clarify whether "fees and trading costs" include commissions, MER, back-end or deferred fees, redemption fees, switch fees, trailer fees.

### **Additional proposed changes**

#### **3) Add interest on compensable losses only if an Investigation Report is issued**

We believe this proposed change is acceptable only to the extent interest is not awarded where there is a delay in the process caused by OBSI or the investor. If the resolution of complaints is delayed beyond OBSI's published performance objectives, OBSI must identify the party responsible for such delays.

In cases where compensable losses are calculated using notional portfolio approach, the addition of interest on such amount appears to allow investors to receive compensation beyond what the market would have provided. We suggest that OBSI should not assess interest on compensable losses where notional portfolio approach is used.

#### **4) Apply a self-imposed six-year limitation period**

We view OBSI's proposed implementation of a limitation period for investor complaints to be a positive development. However, we also believe that OBSI's limitation period should be consistent with the statutory limitation period in the investor's province of residence as there is no apparent policy reason to extend OBSI's proposed limitation period beyond such statutory limitation period.

As previously stated in our letter dated January 10, 2012, regarding the Navigator Report Recommendations, we believe that the dispute resolution process should be delivered as expeditiously as possible particularly where the parties are entitled to access the court system or services of another provider within a certain time period. Consequently, if OBSI's dispute resolution process extends beyond the provincial statutory limitation period, the investor may unfairly lose access to the court system as a result.

#### **5) Provide working versions of our loss calculation spreadsheets**

We believe that this proposed change would enhance OBSI's accountability and transparency in the resolution of investor complaints. Additionally, OBSI should ensure that the spreadsheets are provided in a format that would enable firms to review the calculation process and considerations. Where applicable, the loss calculations should also demonstrate how investor responsibilities are taken into account.

### **Other Issues**

#### **6) KYC Determination**

In the case where advisors have satisfied their KYC obligations, OBSI should not assess information that was not available to the advisor at the time the relevant suitability assessment was made. If OBSI determines that the KYC information on record for an investor did not reflect the investor's actual circumstances at the relevant times, it should provide the reasons for such determination.

#### **7) Determining Investment Characteristics and Risks**

In the revised consultation paper, OBSI states that it initially rates all securities on a five-point scale; if the participating firm uses a three-point scale or other scale, OBSI would re-evaluate the securities to determine where they fit in the participating firm's scale based its analysis. When dealing with a MFDA member firm, OBSI should risk-rate the security in question in accordance with MFDA's risk rating scale and applicable guidance.

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Mr. Tyler Fleming, Director, OBSI  
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Thank you for providing our members with an opportunity to comment. Should you have any questions or wish to discuss these comments, please contact me directly by phone at 416-309-2327 or by email at [jcockerline@ific.ca](mailto:jcockerline@ific.ca).

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



Jon Cockerline  
Director, Policy & Research