



SIPA

SMALL INVESTOR PROTECTION ASSOCIATION

A Voice for Small Investors

Via email

January 8, 2014

Financial Consumer Agency of Canada,
Compliance and Enforcement Branch,
427 Laurier Avenue West, 6th Floor,
Ottawa, Ontario K1R 1B9,
email ecb@fcac.gc.ca

Comments: Ombudsman for Banking Services and Investments Application as an External Complaints Body

Dear Sirs;

The Small Investor Protection Association (SIPA) appreciates the opportunity to comment on OBSI's reputation, character and integrity and other factors relevant to providing robust dispute resolution services as an External Complaint Body (ECB).

The Small Investor Protection Association was founded in 1998 and is registered in Ontario as a national non-profit organization. At the time there were no organizations interested solely in the welfare of investors.

Since its founding, SIPA has interviewed hundreds of small investors. Most of these investors have brutally frank comments about mutual fund risk disclosure from their dealer representatives. As a result, we obtain a great deal of consumer/complainant feedback and SIPA acts as a Voice for Small Investors to assist Government and Regulators to better understand the need for substantive change.

We are submitting comments, but disagree with the concept of banks contracting for their own "independent" dispute resolution bodies. If OBSI is considered as a "service provider" that can be terminated for convenience, that would be unsatisfactory. If the participating banks are free to leave at will - that tension can undermine proper functioning, because the ECB might be intimidated that what it might do will cause a bank to opt out. An ECB has an obligation to look at complaints on the merits of the complaint and determine what is fair and reasonable in each situation – without the anxiety of a bank unilaterally terminating the relationship.

Feedback suggests that small investors are generally satisfied with their treatment by OBSI, the processes used and the outcomes. The cost of civil litigation is



excessive for small investors who have suffered major loss, and seniors do not have the resources of time and physical and mental stamina to run the gauntlet of civil litigation even if they do have the financial resources or can employ legal services on a contingency basis.

The multilingual capability, the assistance provided in framing complaints and the presence of a Consumer Advisory Council instill confidence in OBSI as an accessible and fair medium for dispute resolution.

OBSERVATIONS

Under most provincial Limitation Acts, bringing a dispute to an independent third party complaint resolver stops the limitation time clock. As OBSI is a non profit with numerous safeguards for independence, and has been operating for a great many years, we accept that it is an independent third party under the law, providing of course that the nature of the contractual relationship with the participating banks has no hidden surprises.

The FCAC require independent reviews every five years. In a field as dynamic as the banking market with rapid innovation, periodic crises, continuous Regulatory reforms, key civil litigation decisions impacting redress, emerging issues like regulatory arbitrage, technological developments like mobile trades/transactions, online trading and constant international developments in redress mechanisms, we believe FCAC should as a minimum, make it a condition of approval of an ECB to conduct these audits every three years.

The mandate to investigate Systemic issues has recently been removed by OBSI's Board of Directors despite overwhelming consumer advocates support for retention. However, we understand that FCAC (whose current rules prohibit a bank ECB to investigate systemic issues) will take over reports of systemic issues, investigate and provide restitution as appropriate. We also expect the FCAC will do the same thing in cases where the bank has rejected an OBSI recommendation and OBSI been obliged to name and shame.

A FEW CONCERNS

Based on small investor feedback received, there are several concerns with OBSI:

1. The Terms of Reference state that OBSI can refuse to investigate "where OBSI decides that there is a more appropriate place for the Complaint to be dealt with, such as a court of law, a regulatory procedure, an arbitration procedure or any other dispute resolution process".

This is not in accordance with the most basic principles of fairness. The OBSI Terms of Reference should be amended to require valid reasons to be provided to a complainant for a denial of service.



2. The practice of using notional accounts based on KYCs is concerning. Feedback indicates that many KYCs do not reflect reality and often the small investor has not seen the KYC until a dispute is pursued. Forgery of client signatures is not uncommon. OBSI should opt for another method whenever there is doubt about the veracity of a KYC. Also many small investors do not really understand what is conveyed by the KYC as these are most often prepared by the investment representative, and sometime after the fact.
3. Disclosure details of OBSI's method of funding and dollar amounts from banks are opaque. Are there any provisions that relate to fees dependent on incident rate?
4. The OBSI website is difficult to navigate.

RECOMMENDATIONS

OBSI should be required to articulate its internal processes to define, organize and communicate to FCAC any systemic issue discovered.

Key elements of its contracts for service with banks that might lead to a conflict of interest e.g. fee schedule, incentive clauses, duration of contract, termination provisions, and advance communication to bank management of recommendations should be posted on the OBSI website.

Clarify that OBSI will also Name and Shame if a bank refuses to cooperate with an investigation.

Require that OBSI have a policy for expedited investigations for retirees/seniors living on fixed income and for financial distress cases. Such cases are critical for this vulnerable demographic.

Require each OBSI Board member to annually sign a certificate of independence/conflict-of-interest. Investigators and contract employees should also sign on for independence/conflict- of-interest.

Permission is granted for public posting.

If there are any questions, pleas contact SIPA.

Yours truly,

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