February 19, 2024

Transmitted via email

Response to Canadian Administrators call for Comments

CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Proposed Changes to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

To:
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8

Attention: The Secretary
comments@osc.gov.on.ca

I greatly appreciate the opportunity to provide input on the OBSI binding mandate consultation. Poor complaint resolution has cost Canadians millions of dollars in lost savings – **an ombudservice with binding authority is an essential investor protection.**

Here are some of my comments:

"Access to independent, affordable, fair, accountable, timely and efficient redress mechanisms is critical for investor protection" – IOSCO https://www.iosco.org/news/pdf/IOSCONEWS590.pdf

CSA jurisdictions should proceed with binding without undue delay even if it means a temporary inefficient period of transition until all provinces are on board.

The compensation limit should not be increased until the proposed framework is implemented and proven to be efficient, effective and fair.

Why would the CSA want to protect Dealers by limiting complainant OBSI access to "registerable activities"? Access to the identified ombudservice should be available where the actions and/ or inactions of the Dealer have caused investor harm or distress and have not been satisfactorily resolved. For what reason does the CSA not want an investor to have free ombudsman access for such cases? It is not realistic to expect the average retail investor to launch a civil action if she is dissatisfied with the Dealer response**.**

Forcing an investor to be bound by a decision simply because she did not respond within a specified time is oppressive. Express consent should be mandatory in such cases. If an investor does not respond within a reasonable specified period, OBSI could close the file and suggest other alternatives such as IIROC arbitration, small claims or other venues. That would be a more respectful way to bring finality to a complaint.

An investor that objects to a decision should not be coerced into being bound by the resulting decision. Where else in the world are retail investors treated in such a heavy handed manner? Why is such behaviour necessary?

An investor should not be placed in a position to have to file a court order to collect on an ombudservice final decision. Instead, the applicable CSA regulator or SRO should commence a *fitness for registration* investigation of the Firm.

All low-ball settlements by Dealers should be transparent to the public via periodic statistical reporting. This visibility may deter bad actors and provide material for researchers analyzing framework efficacy.

Although the consultation paper is silent on confidentiality agreements, I assume that a **final, binding** decision on a Dealer prevents the Dealer from imposing conditions on the victim. In principle, the decision on compensation becomes recorded as a payable on the books of the Dealer. This is a huge benefit for complainants and all Canadians.

Why is a judicial review required after stage 2 assessment of an objection? Such a review could drag out the case for months placing complainants in a vulnerable position via unsolicited low- ball settlement offers from unscrupulous Dealers. Such a review practically guarantees that the ombudservice will not be fast, informal, fair or effective unless steps are taken to minimize response time.

With binding authority, I expect some Firms will double their efforts to divert complaints away from the ombudservice. While I agree that the prohibition against misleading names for "ombudsman" is necessary, it is not sufficient. I suggest that only "registerable entities" be permitted to participate in the complaint handling system and that a final response letter be required to be sent to complainants in a timeframe comparable to other similar entities in other counties, all lower than 90 days. Banks in Canada must respond in 56 calendar days. The AMF has proposed 60 days for Quebec incorporated Dealers.

The CSA oversight of OBSI appears overwhelming, amounting to a takeover. The governance role of the Board is being heavily discounted. This will lead to increased costs, increased management time on administration and a public perception that OBSI is not independent. The average cost to resolve a complaint could approach the average compensation complaint size ($8985 in 2022). I respectfully suggest other approaches be employed to assure accountability. Why not focus on increased transparency, enhanced governance and more frequent independent reviews as alternatives?

In order to keep OBSI budget intact and not burden Dealers who do not use phase 2 with higher fees , objecting dealers should be charged an hourly rate for the cost of a senior OBSI investigator.

The definition of complaint in National Instrument 31-103 is not one that a *reasonable investor* would accept. Limiting complaints to trading and advising is not supportive of investor protection and unduly reduces the amount of feedback to Firms regarding investor dissatisfaction. The CSA should use international best practices here". I note that the -103 Companion Document, in an apparent contradiction, does expect Dealers to address

non-securities related complaints even if the compliant does not meet the strict definition of complaint in the Instrument proper.

The World Bank writes:
The timely resolution of complaints, including provision of redress where warranted, should be a primary responsibility of FSPs [financial service providers]. An IDR mechanism is defined as a complaints handling function, unit, or dedicated team within an FSP. The IDR mechanism should be implemented with proper structure, policies, procedures, systems, and governance.[7]
https://www.fsrao.ca/complaints-resolution-policy-framework-and-best-practices

I encourage all the CSA jurisdictions and CIRO to make binding authority for OBSI across Canada a high priority.

This letter may be posted on regulatory websites.

Sincerely,

Arthur Ross