February 19, 2024

via email

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
November 30, 2023

ATTENTION:
The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Canada
comments@osc.gov.on.ca

CC Provincial securities regulators

I greatly appreciate the opportunity to provide commentary on this very important consultation. Poor complaint resolution can cause life-altering harm on investors so an effective ombudservice is essential.

I am in full support of the CSA binding authority initiative for the ombudservice but have some issues/questions/suggestions with the proposed binding framework and National Instrument:

The proposed framework deals at length with the legal aspects of the framework and some changes to the National Instrument, From my perspective as a financial consumer I provide some comments that I hope will be useful.

The ombudservice should apply to investors across Canada including Quebec and B.C. and be prepared to offer linguistic assistance as required. Given the scope of the recent formation of a new self-regulator, it seems to me that it should have a defined role in the framework. Mutual funds are historically the most complained about product/ service.

The role of the ombudservice is to level the playing field between well-resourced Dealers and individual complainants' in the resolution of complaints. This is consistent with acting in the public interest.

Access to the ombudservice should include complaints about advisory services provided, excessive / improper fees, improper behaviour such as borrowing money from clients, diverting clients to high risk side deal investing, providing incorrect income tax advice, becoming the beneficiary of the client's estate, unfair settling of complaints, taking excessive time to transfer securities or cash to another Dealer or failing to act effectively / in timely manner in cases of fraud.

The current OBSI delineation of access appears to do the job. Access should not be limited to "registerable activities", whatever that means. A key component of resolution is how OBSI calculates losses. If their approach is accepted by stakeholders, the framework will be on a solid footing. Basically, the goal of resolution is to determine fault and if appropriate, assess monetary losses and to put the complainant in the position they would be in if the fault(s) or negligence had not occurred. This is fundamental.

The judicial review adds another step of unknown time and cost. Why is it necessary? At this point the Dealer would have had three tries to make things right. The initial complaint, the OBSI stage 1 and the stage 2- three strikes and you're out. By then, the complainant will be worn down and susceptible to exploitive offers.

OBSI should file court orders and the applicable regulator commence enforcement action if the Dealer rejects the final binding decision.

Consumers will need help working their way through the multi-step process especially if cross examinations and production of evidence is required. The elderly, vulnerable clients and recent immigrants will be impacted.

The Instrument defines complaint in an unusually narrow manner .Why? The broader the complaint definition the more likely Dealers and regulators will learn what is aggravating customers. The banking consumer regulator definition is more on point. Or international best practice standards should be used.

The framework should hold dealers and complainants to a binding decision only if the complainant agrees, with informed consent.

Dealers filing Stage 2 requests should be required to pay for the extra service and not burden the OBSI with the extra costs. If stage 2 takes an excessive time, the compensation amount should be increased (at a reasonable interest rate) unless the objection is found to have merit. Public disclosure of stage 2 statistics will provide the necessary public transparency of this added step.

The Stage 2 process should only be available to Dealers for claims above $35,000 or $50,000.

The oversight of the ombudservice should not be overbearing to the point where the public does not perceive the service as independent. The relative roles of the Board and overseers should be defined. Also, coordination with the banking regulator is highly recommended.

Final, binding decisions should give rise to an immediate payable not subject to other conditions such as gag orders, non-disparagement provisions and other mechanisms used to silence and humble victims.

I concur with eliminating the misleading titles of Dealer complaint entities. I suggest that any response from a Dealer must come from the regulated Dealer within a prescribed time frame, say maximum 60 calendar days (banking is 56 days).

Affiliates of the Dealer not regulated by the provincial securities regulators should not be part of the complaint handling system.

A simultaneous rollout of an updated version of the Instrument complaint handling rules should take place to **prevent** complaints into OBSI in the first place.

I have no problem with retaining the $350,000 payout limit at this time but suggest it be reviewed periodically.

This letter may be posted on your website.

Respectfully,

Stan Gourley