

**Kenmar COMMENT LETTER /SUBMISSION**

**NOTICE AND REQUEST FOR COMMENT ON  
PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 31-103  
*REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT  
OBLIGATIONS*  
AND TO  
COMPANION POLICY 31-103CP  
*REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT  
OBLIGATIONS***

**November 15, 2012**

**Dispute Resolution Service**

[http://www.osc.gov.on.ca/en/SecuritiesLaw\\_ni\\_20121115\\_31-103\\_pro-amd-reg-requirements.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20121115_31-103_pro-amd-reg-requirements.htm)

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8  
Fax: (416) 593-8145  
E-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

Anne-Marie Beaudoin, Secrétaire  
Autorité des marchés financiers  
Tour de la Bourse  
800, square Victoria  
C.P. 246, 22<sup>e</sup> étage  
Montréal, Québec H4Z 1G3  
Fax: (514) 864-6381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

We appreciate the opportunity to comment on the proposed amendments.

We agree that single point entry to a dispute resolution service is in the best interests of financial consumers. We also agree that OBSI is an acceptable entity as the sole arbiter of disputes with some provisos:

1. The limitation clock will be stopped for all complaints being handled in all provinces and territories.
2. The cycle time target of 80%/180 days will be retained ( or better) and actual results published quarterly
3. Complaint statistics will be published quarterly. This is necessary for investor advocates, media, regulators etc. to spot trends/patterns – annual reporting is not responsive to needs. The reporting was quarterly but was changed to annual without public consultation.
4. No changes to core practices or Terms of Reference will be made without commentary from the Consumer and Investor Council whose existence should be encapsulated in the Terms of Reference.
5. The SROs requirement to use OBSI as the sole dispute resolution service provider for their member firms cannot be changed without prior CSA approval.
6. The mandate to deal with Systemic issues must remain intact. It could come under attack if DRAFT FCAC / Finance proposals come into effect and OBSI wishes to retain banking clients. Ditto for “Name and Shame”.
7. Discussions will be held with the Portfolio Management Association of Canada and the Exempt Market Dealers Association of Canada to ensure the \$350K restitution limit is adequate and if not adequate, a carve out for these Associations be accommodated.
8. OBSI will be required to share calculations with investors as well as dealers.
9. “Advising activity” includes recommendations for leveraging, margin purchases and shorting and referral agreements.
10. Require that OBSI have a policy for fast tracking investigations for seniors living on fixed income and for financial distress cases. This will be especially important during the transition period when many new participating firms switch to OBSI.
11. OBSI shall be required to perform a annual complainant satisfaction survey and publicly disclose the results and attendant corrective action plans. This is one key element in demonstrating accountability to stakeholders for a sole source provider of dispute resolution services.

### **Other Issues for comment**

1. Would the time limit on complaints be more appropriate if it was counted from the time when the trading or advising activity that it relates to occurred, rather than from the time when the client knew or reasonably ought to have known of the trading or advising activity? **Response: For retail investors , especially the elderly, this is impractical and unfair.**

2. OBSI's current terms of reference require a complaint to be made to the ombudsman within 180 days of the client's receipt of notice of the firm's rejection of their complaint or recommended resolution of the complaint, subject to the ombudsman's authority to receive and investigate a complaint in other circumstances if the ombudsman considers it fair to do so. Should NI 31-103 include a deadline for clients to bring complaints to it? If so, is 180 days the appropriate period? **Response: Six months ( 180 calender days approx) has worked reasonably well although seniors' groups may wish an extended period.**

3. Earlier this year, OBSI had proposed several changes to its processes for calculating losses in suitability-related cases. Most of these changes appear to represent victories for

OBSI's critics in the investment industry; this despite the fact that an independent review found that OBSI's existing processes are just fine. Among other things, OBSI plans to start using common indices as benchmarks to calculate losses instead of actual investments. In most cases, these calculations will factor in fees and trading costs. OBSI will assess interest charges only in cases in which it is recommending compensation, not when it has facilitated a settlement. In July, FAIR Canada expressed concern that OBSI had acted under pressure after two banks resigned as Participating firms. <http://faircanada.ca/top-news/fair-canada-concerned-about-industry-pressure-on-obsi/> We recommend that the CSA review these changes to ensure they are fair to Main Street.

## **Oversight**

The lack of regulatory oversight over OBSI has in the past led to a crisis. We recommend, especially now that OBSI has monopoly status over all CSA dealers, that the CSA take on the responsibility of oversight and liaison. For the period beginning with the acceptance of these proposals and for 2 years following, we recommend that the OSC's **Office of the Investor** be charged with this responsibility. After that, the oversight could be provided by other Commissions on a rotating basis. OBSI should not be treated as an orphan. Its detractors are powerful dealers and banks with high levels of influence.

We also believe the five year old FRAMEWORK for COLLABORATION should be updated to reflect contemporary thinking on dispute resolution services and recent experiences. We recommend ISO 10003 *Quality management -- Customer satisfaction -- Guidelines for dispute resolution external to organizations* be incorporated by reference. We would be more than willing to assist on a gratis basis with the update.

We commend the CSA for supporting OBSI. We add parenthetically that when RBC (banking) and Toronto-Dominion Bank walked away, they took their banking complaints to a private firm. And instead of forcing them back into the fold, Mr. Flaherty allowed other banks to follow suit. Mr. Flaherty's inexplicable undermining of OBSI is uncharacteristic of the Conservatives who valiantly fought for a national securities regulator. For financial consumers who feel they have been wronged, the Federal approach is a sham, as no contracted complaint service provider will bite the hand that feeds it. If speed and cost were really the problems, as the industry asserts, then removing independence is certainly not the solution. We hope the CSA's principled stance will help reverse the Government's approach to dispute resolution.

Do not hesitate to contact us should there be any questions about our submission.

We consent to the public posting of this Comment letter.

Sincerely,

Ken Kivenko P.Eng.  
President, Kenmar Associates  
(416)-244-5803  
[kenkiv@sympatico.ca](mailto:kenkiv@sympatico.ca)

cc

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Superintendent of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Nunavut