

## OSC Investor Advisory Panel

Eleanor Farrell  
Director, Office of the Investor  
Ontario Securities Commission  
20 Queen St W.  
Toronto, Ontario  
M5H 3S8

February 12, 2014

Dear Eleanor,

The IAP fully supports the role and mandate of the Ombudsman for Banking and Investment Services (OBIS) and therefore applauds the decision by the Canadian Securities Administrators (CSA) to expand OBIS's mandate to include Exempt Market Dealers and Portfolio Managers.

In our previous submissions and letters to the Commission, we have urged Canadian regulators to immediately address OBIS's inability to enforce its recommendations for restitution. We called for an immediate regulatory review by the relevant regulators of all rejected recommendations for restitution and prompt regulatory action to ensure firm compliance. The CSA has not responded to our recommendations, nor have they addressed the urgent matter of restitution in the new Rule. Since OBIS cannot enforce its restitution recommendations and firms are free to reject or accept them, Canadian investors are forced to turn to restitution through the courts, a time consuming and costly process. Our investor protection regime must provide access to timely, independent and free financial redress. Canadian regulators cannot continue to ignore this clear and pressing need.

The inclusion of EMDs and PMs in OBIS's mandate will result in a doubling of firm membership for OBIS, resulting in potential workload, staffing and funding stresses. The absence of CSA EMD-specific complaints data makes it particularly challenging for OBIS to accurately predict future workload, staffing and funding needs.

The regulators have also taken on new responsibilities. Through the newly formed Joint Regulators Committee, they are now responsible for oversight of OBIS. They have assumed OBIS's former responsibilities for identification and investigation of systemic issues. They will also be engaged in ensuring effective integration of these CSA registrants into this new complaint handling and restitution system. These new responsibilities raise some issues.

Systemic issues (defined as either complaints within a firm or multiple issues across the industry) are a major problem for the Canadian investor. Clearly, individual investors are ill equipped to identify or even be aware of such occurrences and so they rarely know of their right to claim financial compensation for the financial harm that results from systemic activities. Where there are incidences of systemic issues, regulators do not require firms to notify clients who may have been harmed by these practices. A regulatory body that condones or permits the practice of suppressing information of

wrongdoing, thereby intentionally hiding from those who may have been injured the information they would need to seek redress and restitution, is not only **not** providing protection, it is causing harm. This is contrary to the fundamental purpose of investor protection and contrary to the definition of a fair market.

Now that OBSI no longer has the mandate to investigate and recommend compensation for systemic failures, compensation for these wrongdoings will depend on the regulators or, as is likely, failing that, on the individual consumer who can only pursue litigation through the courts. This is clearly unfair.

The IAP calls upon the CSA to clarify and explain how they and the SROs will meet their new obligations, following referrals to them by OBSI, to identify, investigate and compensate investors who may have been harmed by systemic failures. We ask the CSA to publish the new procedures and processes that they and the self-regulatory organizations intend to put in place for the handling of all systemic issues referred to them by OBSI.

We would also appreciate learning more about the CSA implementation plans to

- ensure EMD and PM awareness of and compliance with their new regulatory requirements to cooperate fully and promptly with OBSI;
- support, communicate and monitor CSA registrant compliance with the new client complaint handling standards; and
- monitor, in these early days of mandate expansion, through the Joint Regulators Committee OBSI's ability to fund and manage its new workload so that it maintains its ability to meet cycle times and handle investors' complaints promptly and effectively.

We look forward to further discussions with you and your OSC colleagues on these important issues of investor protection.

Yours truly.

Investor Advisory Panel