



**SIPA**

SMALL INVESTOR PROTECTION ASSOCIATION

**A Voice for Small Investors**

May 27, 2011

Mr. Tyler Fleming  
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Re: Consultation Paper - Suitability and Loss Assessment Process

Dear Sir;

We are pleased to offer our comments in response to your consultation paper on your dispute resolution process. We believe the role of an Ombudsman is valuable and should provide a sound mechanism for resolving disputes. However, as you already know SIPA has been concerned about the length of time taken to resolve disputes and the lack of clarity on how OBSI "stops the clock" for limitation periods amongst other things..

In general your approach to suitability and loss assessment seems reasonable however we have continuing concerns regarding several aspects of your approach:

- Know Your Client Forms - The Know Your Client forms may not accurately reflect the true situation. The client may not be aware of the contents, or the KYC may have been created to match up with the account. Many small investors have claimed that they had not seen a completed KYC or that the signature on the KYC was not theirs.
- Suitability - Suitability is ill defined and clients and dealers may have a different understanding of the term. A product that may be "suitable" for some may not be "suitable" for others. When a compliance officer says "everything on the shelf is suitable" it indicates there is an issue.
- Mitigation of loss - All small investors trust their so-called "financial advisor". Most believe he has a fiduciary duty because they are trusting him with their life savings. Most trust his advice and are unaware of the suitability of investments. Most are unaware that they should try to mitigate loss or what they could do, particularly if they are told to hang in for recovery. It seems unrealistic to expect any small investor that depends upon their so-called "financial advisor" to guide their investments would suddenly be able to decide what action to take to mitigate loss.
- Elements of loss - When small investors experience significant loss due to wrongdoing, the damage is often far greater than the monetary loss. The impact of a life altering event like significant loss to life savings may mean the investor is no longer able to work, or suffer from medical issues. It would seem that additional monetary compensation should be provided for these issues.
- Industry agreement to OBSI recommendations - How can we consider OBSI recommendations to be fair and objective if it is necessary for industry participants to agree before releasing the recommendation? Why can't OBSI make their recommendations and release them to investors and industry at the same time. Either



party is free not to accept the recommendation and OBSI should be free to report the recommendation and agreement or lack thereof.

When OBSI was first established and stated that the objective was to make victimized investors "whole again", it seemed like a worthwhile institution. However, although the Ombudsman claimed that 100% of OBSI's recommendations were accepted by industry, it soon became apparent that the recommendations were negotiated with industry and compromised before being presented to the victims. Nevertheless it presented the possibility of a quicker resolution than civil litigation.

The OBSI prerequisite of victims proceeding through the industry process coupled with the lack of clarity on OBSI "stopping the clock" of the reduced limitation period has prevented SIPA from continuing to routinely recommend to victimized investors that they approach OBSI. It would seem appropriate that investors should be able to approach OBSI 90 days after becoming aware of an issue and OBSI being able to immediately open a file and "stop the clock" without further delay or approval by industry.

It would be most unfortunate and unacceptable if the investment industry is able to further erode OBSI to make it less effective as a means of dispute resolution for investors by forcing the SROs to rescind the requirement for all members to use OBSI services.

I have reviewed Ken Kivenko's submission which includes supporting the SROs requirement for all members to make OBSI services available for investment disputes. I fully support his comments.

Yours truly

Stan I. Buell