

CSA MANDATES EMDs JOIN THE OMBUDSMAN FOR BANKING SERVICES & INVESTMENTS

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New amendments require that all Exempt Market Dealers (EMDs) outside of Quebec use the Ombudsman for Banking Services and Investments (OBSI) as their sole provider of dispute-resolution services. On December 19, 2013 the Canadian Securities

Established in 1996 as an alternative to the legal system, OBSI works confidentially and in a non-legalistic manner to find fair outcomes to unresolved disputes about banking and investment products and services. The process is free to complainants with

“ ALL REGISTERED EMDs MUST ALSO BE MEMBERS OF OBSI IN GOOD STANDING BY AUGUST 1, 2014, INCLUDING HAVING FULLY PAID THE REQUIRED OBSI MEMBERSHIP FEES. ”

Administrators (CSA) published amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

THE OMBUDSMAN

OBSI is Canada's national independent dispute resolution service for consumers or small businesses with a complaint they cannot resolve with their financial services firm.

funding provided from a levy on all participating firms. If OBSI finds an error, misleading advice or other maladministration that has caused a loss to a client, it can recommend compensation up to a maximum of \$350,000.

While OBSI's head office is based in Toronto, it has staff working in all parts of Canada. OBSI believes that having this local expertise is key to its ability to provide effective dispute resolution to members all over the country.

Currently, all members of the Investment Industry Regulatory Organization of Canada (IIROC) and the



Mutual Fund Dealers Association of Canada (MFDA) are required to participate in OBSI through their self-regulatory organization's (SRO's) rules. With the amendments to NI 31-103 the CSA is expanding

a loss, it will recommend a settlement that aims to put the complainant in the financial position they would have been in had the error not occurred. We may also recommend compensation for inconvenience in the

“ ALL EXEMPT MARKET DEALERS (EMDS) OUTSIDE OF QUEBEC USE THE OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS (OBSI) AS THEIR SOLE PROVIDER OF DISPUTE RESOLUTION SERVICES. ”

OBSI's membership to include all Portfolio Managers, Exempt Market Dealers and Scholarship Plan Dealers outside of Quebec.

THE COMPLAINT PROCESS

When OBSI receives a complaint, the assessment team looks at the file to make sure it falls within its mandate. OBSI will also look for a final written response from the firm to the client, which allows it to start the review knowing the positions of both firm and client. OBSI will look at complaints where the client is either unsatisfied with their firm's final response, or at least 90 days have passed since the client first complained to their firm and the complaint remains unresolved. The client must raise the complaint with their firm within six years of when they knew or should have known of the problem. The OBSI staff, with a wide variety of experience and training in financial services, law, accounting, dispute resolution and regulatory compliance, review and investigate unresolved complaints from clients about banking and investment products and services.

During an investigation, OBSI will gather information from the parties and review the facts of the case. OBSI decisions are based on what is fair to both the client and the firm, taking into account general principles of good financial services and business practices, the law, regulatory policies and guidance, and any applicable professional body standards, codes of practice, or codes of conduct.

If OBSI believes that the facts of the case do not warrant further review, it will let the client know quickly (OBSI aims to resolve 80% of cases within 180 days). Relevant explanations are detailed for each decision; as is the recommended compensation. Alternatively, if OBSI concludes the firm has caused

appropriate circumstance, or non-financial actions such as correcting a credit bureau record. If OBSI concludes compensation is owed to the client, it tries to resolve the dispute through a facilitated settlement between the client and firm that aims to address the complaint quickly with a fair outcome to both parties.

If OBSI is not able to facilitate a settlement between the parties but continues to believe the client should be compensated, it will complete the investigation and prepare a draft investigation report. The OBSI will send a draft investigation report to the firm and to the client for a brief comment period. Following the comment period, OBSI will send the client and the firm a final report that details its recommendations. OBSI is neither a court nor a regulator, and does not fine or discipline firms or individuals. Its recommendations are not binding on either party but the overwhelming majority of complaints are resolved fairly.

While the OBSI does not handle matters that have already been through a court or an arbitration process, if a client is not satisfied with the conclusions, they are free to pursue their case through other processes including the legal system, subject to statutory limitation periods.

SIGNIFICANCE FOR EMDS

All exempt market dealers that become participating firms of OBSI are required by the CSA to participate in its dispute-resolution process in a manner consistent with firms' obligations to "deal fairly, honestly and in good faith" with their clients. All registered EMDs must also be members of OBSI in good standing by August 1, 2014, including having fully paid the required OBSI membership fees.

In making OBSI mandatory for all registrants, the CSA has also specified that firms should not make any dispute-

resolution service available to clients *in addition to* OBSI, and that this would be a serious compliance issue.

Fees for EMDs will initially be \$165 per Dealing Representative annually, an amount set in consultation with the CSA. This fee will be revisited after OBSI has a better sense of how many complaints it receives about EMDs.

EMDs should know that OBSI fees are set on the principle that no sector or category of member should subsidize another. Thus, firms captured by the amendments to NI 31-103 will pay the costs associated with resolving only their group's complaints, plus their proportional share of management and administration costs. They do not in any way cover the costs of others members, such as IROC or MFDA dealers.

Additional obligations are contained in NI 31-103 and OBSI's *Terms of Reference*.

NEXT STEPS FOR EMDS

OBSI has developed a membership kit for new participating firms, available on its website www.obsi.ca/en/resource-room/resources-for-firms. EMDs should familiarize themselves with OBSI's Terms of Reference and other documents found in the membership kit. You should also complete and return the Company Information Form. Following that, you will receive an invoice from OBSI for your membership fees. Upon receipt of payment your firm will be in compliance with the CSA's requirements and an OBSI member in good standing.

OBSI recognizes that there will be a period of transition as EMDs get used to having an external dispute-resolution body. OBSI will offer assistance that you need during this transition period.

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