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The Secretary
Ontario Securities Commission ("OSC")
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416 593-2318
comments@osc.gov.on.ca

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations Comments

To ensure transparent consultation of all views I agree to sharing my "unedited" communication and posting on the OSC website on an "as received basis" to allow any other contributors the opportunity to review my input on the issues before they comment, if desired. Should the OSC decide not to make this communication "public" I respectfully request that no material or references to my communication be made in any public releases by the OSC.

At the outset I am an individual investor not representing any consumer interest group. I am writing this communication based on my many dealings with the Ombudsman for Banking Services and Investments ("OBSI"), IIROC, OSC, and the financial industry ("firms / dealers") over many years of investing coupled with discussions with many investors over the years.

It is disconcerting that after approximately **twelve (12)** years after binding authority on the financial industry was initially recommended to the CSA the CSA's proposal states that "***nothing in this Notice or the decision to publish the Notice should be considered as an indication of whether such legislative amendments will be made in any jurisdiction***". Consequently, the potential exists that many CSA jurisdictions could potentially cherry pick what they want to implement, if anything, that could potentially result in a patchwork of ombudservice authorities in the CSA jurisdictions. **How that situation, if realized, would provide investor confidence in the Canadian capital markets is beyond my comprehension.** As an investor I would have expected that at a bare minimum, the CSA would have obtained some level of buy-in from all the respective jurisdictional legislators before the proposal was distributed for comments. Given the foregoing, why would any investor spend significant resources commenting on your proposal when in fact potentially the status quo will remain the same? Most importantly, how many more years will it take for a CSA proposal to be submitted for comment that has been vetted and agreed to initially by all the legislatures of the respective CSA jurisdictions, at some level, that provides comfort to all contributors that they are not potentially wasting their time?

Firms / dealers effectively hold compensation rightfully due hostage until silence of their actions is assured. OBSI binding authority on cases should not continue to permit this.

This proposal provides no guarantee that the OBSI will be granted binding authority which is long overdue. Binding authority by itself may potentially benefit some investors by way of financial quantum but it will still leave the existing power imbalance between retail investors and firms unchecked. It is absolutely necessary and long overdue that the **lack of investor issue and decision transparency coupled with restrictive firm GAG Orders** need to be improved by:

- Reducing the extent by which the OBSI anonymizes decisions and fact patterns to such an extent that readers can not determine the underlying issues.
- Eliminating the potentially abusive firm practice of enforcing very restrictive Non-Disclosure Agreements (hereinafter referred to as a "GAG Order(s) ") from investors for all issue resolutions and for all quantum amounts, no matter how immaterial.
- Ensuring that GAG Orders are only used when absolutely necessary for specific reason(s), applied judiciously, ensuring that the firm GAG Orders are not as restrictive.

GAG Order Discussion

From a financial investor / consumer perspective, my understanding / assessment is that the financial industry is primarily interested in two outcomes from any / all dispute resolution services being:

- Most importantly ensuring that the investigations and any decisions are subject to a firm GAG Order to:
    - Protect the financial industry reputation by keeping information hidden from the public (no transparency) and in that way serves and perpetuates the interests of the wrongdoers (financial industry).
    - Not publicly disclosing issue(s) / decisions reduces the likelihood that additional financial industry participants customers may challenge their issues, if similar, and also potentially receive financial compensation, which is really getting their own money back.
- Implement / perpetuate a robust process wherein the compensation paid to complainants will be as minimal as possible notwithstanding the stress that the complainants have in dealing with the issue(s). In that regard, ensuring that the process will not be binding and if binding ensure that the decisions will be open to additional reviews including potential judicial reviews.

The CSA was totally silent on the above points, which hopefully would improve investor outcomes and confidence in Canadian financial markets given:

- That some consumer groups have communicated their groups respective financial industry GAG Order positions to the CSA before this consultation paper was released.
- The extensive body of knowledge of negative investor outcomes associated with firm GAG Orders that eliminate issue transparency and as such may potentially negatively impact all investors.

Nothing was proposed suggesting changes in the firm GAG Orders process. **Consequently, the lack of transparency, that impacts all investors, will continue unabated along with the associated pain and agony of GAG Orders being retained.**

Please refer to the table below for some, not a complete list, of the potential benefits for the party requiring GAG Orders as a settlement condition, which most probably is why GAG Orders are so common across many societal contractual interactions:

Sexual assault behaviour can continue as the legal authorities and no criminal prosecution is involved.
Able to settle issues with lower financial quantum amounts being paid.
Uninformed customers will not file complaints, if possible.
Protects the reputation of wrongdoers from public scrutiny.
Reduces stress on the overloaded court system.
Allows profitable wrongdoing activities to continue.
Reduces the number of costly civil actions that also are disclosed in the legal system that can have reputational implications.

As stated above, restrictive firm GAG Orders are one of the biggest investor concerns. To provide some context, please refer to the table below for some investor comments with respect to firm GAG Orders:

The financial industry participant refused to provide us with a blank copy of the GAG Order that we were required to sign to receive a settlement, to discuss with our lawyer in advance of signing the aforementioned document even though a document clause clearly stated that we had an opportunity to seek legal advice before signing.
When sexual assault victim signs a GAG Order, they receive a bundle of cash to keep their mouth shut. When a financial assault victim signs a GAG Order, they get a fraction of their own money back. That isn't fair.
Why in the hell do I have to sign anything to get my money back?
This is how you treat a customer?
They wouldn't let me change a single word in their standard form document.
If I signed this, I'd be haunted forever.
For $1,500 bucks I'll retain my dignity.
I need the money. They've got me cornered.
I will go to Small Claims Court.
I cannot afford a lawyer they have me boxed in.
Have you ever seen such gall? With them for 15 years plus.
I cannot even warn my grandma and son.
They abused my trust, and they just can't stop.
Can they sue me? Cancel my mortgage? Credit card?
They gave me 10 days to sign or they would withdraw the lousy offer.
They suggested I engage a lawyer before signing- my claim was just $2,100.
I am gagged for all time -cannot even tell my psych!
I told a lot of people before I signed; am I in trouble?
I held my nose, but I signed it and now I am sick about it.

Consequently, I strongly encourage the CSA to conduct a critical analysis of firm GAG Order issues. Should the CSA still conclude after analyzing/assessing the extensive societal body of knowledge with respect to GAG Orders that GAG Orders, in some form, are still in the public interest, I listed some additional points (not a complete list and not in any specific order of priority) that the CSA should consider as part of any recommendations:

- The financial industry participant should not reveal the information in the case to persons other than those who directly participated in the resolution of the complaint. To be specific, the information cannot be disclosed to an affiliated company.
- The financial industry participant(s) should be required to advise the complainant if the complaint has been shared with any regulators or any and all other parties outside the firm with reasons supporting the basis for the referral.
- An additional clause in the firm GAG Order explicitly stating that any / all information disclosed to any / all third parties prior to signing the firm GAG Orders is excluded from the GAG Order which should hopefully assuage investors anxiety and not potentially impact complainants long term health.
- Firm GAG Orders should not be totally non-negotiable by the retail investor.
- Firm GAG Orders not being applicable / retracted in all situations wherein firms refused OBSI recommendations. This may not work although as the firms may opt for a judicial review depending on the process and we all know that retail complainants could not afford a judicial review and I can not envision any situations whereby complainants would file for a judicial review. Consequently, if the judicial review

process is not severely limited there is a possibility that firms may turn to that option with increased frequency which will potentially further disadvantage retail investors.

- All firm GAG Orders should have a reasonable expiration date, such as for example, two (2) years and should not continue and be binding upon the assigned Releasors, that their heirs, executors, administrators, beneficiaries, legal representative and assigns, and shall enure to the benefit of and be binding upon all the successors and assigns of the Releasees. The current expiration date is totally unreasonable when you consider small financial quantum settlements.
- Release letters / firm GAG Orders should either not include non-disparagement clauses or the language regarding non-disparagement should be weakened.
- All health care professionals, (for example primary care physicians, psychiatrists, psychologists) and clergy that assist with ensuring the mental health of their patients should be permitted recipients of the complaint information. This is important as signing firm GAG Orders could potentially negatively impact complainants' long-term health through ongoing stress that continues for years until they are deceased. There is no risk here as my understanding is that the aforementioned health professional's patient records and clergy discussions are privileged and confidential and are only accessible under a court order or with the complainant's consent.
- Any / all Human Rights Commissions and any / all provincial bodies are permitted recipients of the information.
- All complaints with financial quantum less than, for example, $50,000 are not subjected to firm GAG Orders.
- A spouse, common law partner, parent(s), grandparent(s), or adult children of all the parties are permitted recipients to the extent they are warned of the issues by the financial industry participant and/or its representative(s).
- Potentially excluding additional external bodies, except as required by law, which is also a highly restrictive application, that could use the data to advance consumer protection, especially in cases of systemic issues.
- Complaints involve money laundering, theft, forgery, terror financing or fraud should be exempted from firm GAG Order provisions.
- Firm GAG Orders being revised in all other situations by the OBSI and / or the CSA mandating that the firm GAG Orders include some of the points noted above.

What should be troublesome for the CSA and the entire financial industry is that investors potentially receiving small financial quantum settlements are walking away from financial compensation as the firm GAG Orders are so restrictive, they would rather sacrifice the limited financial compensation to be able to continue to share their stories with anyone they want, and to not worry the rest of their lives.

Firm GAG Orders are just another example of investor re-victimization for investors to get the funds they are owed which my understanding is in all cases their own funds as I am aware that punitive financial damages are never included by the OBSI as part of any financial resolution.

TWO Stage Process

The consultation paper mentions OBSI accountability numerous times, always pointing at the OBSI. The paper also references the fact that the CSA is going to provide more oversight of the OBSI. The CSA should look inward and ask itself if it should be held accountable for a weak OBSI and an even weaker Dealer complaint handling system. Given the paper is suggesting increased CSA oversight hopefully all the complaint handling shortfalls will be addressed.

To be frank the financial industry are / should be more knowledgeable about the process than an individual investor, like myself. I am confident had the financial industry not had so much power compared to retail investors the process would potentially be binding at the outset.

However, without performing a deep dive I still have some concerns, not a complete list, as I tried to limit my review to strategic points, as noted in the table below:

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5	OBSI to apply only the processes that are necessary and proportionate to each complaint.	What is still a black box for both the financial industry and more so the complainants are just what are the methodologies / processes / investigative tools / loss calculation tools / essential process test (to be defined by legislative amendments in local jurisdictions) that the OBSI will apply proportionate to the dispute (whatever that means) in determining any recommendations.
5	The CSA has sought to balance the need to address observed patterns, enhance fairness and improve efficiency for both firms and complainants that engage in the dispute resolution services of OBSI.	How can fairness be enhanced for complainants when GAG Orders and anonymizing decisions will still be used to hide the activity from the investing public?
7	It appears that complainants choose to remain engaged instead of pursuing other forms of dispute resolution or abandoning their case.	Complainants remain engaged as in the vast majority of cases there is no other dispute resolution available as court is both expensive and the Ontario court system is so backed up that resolution could take many years. A dispute resolution service is the **ONLY** alternative for most investors.
7	The identified ombudservice would be subject to coordinated oversight by CSA jurisdictions, including through harmonized orders that would include terms and conditions on the identified ombudservice. Harmonized orders governing the identified ombudservice, an enhanced CSA oversight program, and prior CSA approval of certain identified ombudservice procedures and documents, including changes to them, would apply.	Given that the OBSI is an **independent** Ombudsman I am also wondering just how the OBSI processes would be subject to coordinated oversight by CSA jurisdictions, which the CSA continues to develop, and which is expected to reflect certain existing oversight regimes such as those in place for self-regulatory organizations (SROs), clearing agencies and exchanges. That in and of itself reduces OBSI independence and associated credibility with retail investors. The proposed OBSI oversight by CSA is not proportionate to risk or need and could impact OBSI independence, especially considering that the OBSI has a solid track record of fairness and accountability. Maybe the CSA should also take a hard look at the financial industry accountability in their handling of client complaints.
7	Establishing that either the identified ombudservice or a complainant may file a final decision of the identified ombudservice with the court, making the decision enforceable as if it were an order of the court.	With binding decisions or final decisions why would complainants be required to file decisions with a court. OBSI should perform that service or be designated quasi-judicial. A complainant should never require legal counsel to make court filings in navigating an ombudsman process.

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8	It is possible that some CSA jurisdictions may not designate or recognize OBSI as the identified ombudservice at the same time, resulting in the status quo (e.g., OBSI making non-binding recommendations only) applying in those jurisdictions until OBSI were designated or recognized as the identified ombudservice.	So, what is being stated is that the OBSI may not have binding decision authority in some CSA jurisdictions. Is this an out for the financial industry to exploit? Approximately twelve (12) years and there still appears to be jurisdictional confusion as to whether the service will be binding across Canada. What are retail investors concluding as to CSA investor protection?
9	The scope of the decision-makers review would be limited to the specific objections raised by the parties and the decision-maker would apply the fairness standard.	Once again, the complainants, most probably being not as sophisticated as the financial industry will really not know what objections to raise as at this time the complainants most probably would be bound under the terms of the OBSI Consent Letter which prevents them from potentially sharing OBSI information with potential third parties to determine potential objections. The OBSI information could be shared if the third party also signs an OBSI Consent Letter but in reality, who is going to do that unless the third party are engaged by an investor on a professional basis which would probably be too expensive. If a GAG Order was signed which is probably not signed at this stage in the process that would further limit who complainants could discuss the issue with to legal counsel, which would be even more expensive. For investors this process would be very problematic.
9	The identified ombudservice would achieve a proportionate process by following a procedural threshold test under which the identified ombudservice would engage only in processes essential to achieving as efficient, quick, and understandable a process as possible in resolving disputes in a fair manner (the essential process test).	What is an essential process test? Do you really think that the average retail investor would understand the proportionate process either? Still more complexity for retail investor complainants to deal with.
10	Parties may also be able to apply for judicial review of the decision, where available.	I can not envision any situations whereby complainants would be filing for a judicial review. As such, this only helps the financial industry that could potentially be able to apply for a review of every decision and in that way potentially encourage the complainant to accept a lower financial amount to resolve the matter. A judicial review which could take years. To further assist retail investors and attempt to level the playing field where the financial industry participant has filed a judicial review, the OBSI resolution amount should if successful, be interest improved at say a 27% annual interest rate or alternately another high rate to ensure

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		additional process respect so that reviews do not become a standard part of the process. Financial industry objections to a OBSI decision should be focused on substantive procedural fairness issues and not wide open to frivolous / vexatious objections as a delaying tactic to wear down complainant or to discredit the OBSI. Objections should be limited to prescribed components; a full right of appeal would defeat goal of fast, fair, informal decisions. Full right of appeal is not appropriate for a financial ombudsman service and in effect defeats the purpose of the ombudsman.
10	A characteristic in the proposed framework that distinguishes it from international financial ombudservices is that the complainant would always be bound by a final decision made by the identified ombudservice, where the complainant triggered the review and decision stage. In contrast, in both the United Kingdom and Australia the complainant is bound by a final decision of the ombudservice only where the complainant formally accepts it.	Why the deviation in the CSA proposal requiring the complainant to be bound if the complainant triggered the review? That is not very investor protection focused as it appears to favour the financial industry. To be binding the final decision MUST be formally accepted by the complainant would offer more retail investor protection.
10	Additionally, once a final decision is rendered by the identified ombudservice at the conclusion of the review and decision stage, the complainant or the identified ombudservice would be able to file the identified ombudservices decision with a superior court as an order of the court, making it enforceable.	The OBSI binding decision should be enforceable without court filing as it should be considered quasi-judicial. If the financial industry requires a court filing the easy answer is for the regulator to suspend the firms license until the decision is enacted. A complainant should never need legal counsel in navigating an ombudsman process.
11	Ultimately, we anticipate that judicial review will be an additional means of ensuring fairness in the decision-making process.	A judicial review would not introduce any additional fairness for complainants. In fact, it would further disadvantage them. What is the purpose of a binding decision mandate if you are introducing the idea of judicial review that will most probably be considered by firms in high dollar value resolutions. Any review should go to a tribunal as opposed to the courts as the court process will never be used by complainants.
12	At the highest level, recognition or designation as the identified ombudservice would include a public interest requirement. Additionally, the harmonized orders would likely include obligations and requirements pertaining to risk identification, organizational structure and governance, including	In effect this is a takeover of OBSI. The CSA should show cause to justify such draconian measures over the ombudservices.

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	appropriate expertise and representation, fees, capacity building, reporting, and public transparency through publication of anonymized reasons.	

Given that the process is a two-stage process I envision that either the complainant and / or the financial industry will potentially move to the optional review stage most probably hoping for a better outcome as this stage will introduce adversarial processes in addition to OBSI inquisitorial processes. As a complainant I would be assessing / analyzing the new OBSI processes to determine the most optimal course of action which potentially could be referring all issues to the optional review stage. I am confident that the financial industry participants will also perform the same assessments. With that said, hopefully I never need the services of the OBSI ever again as using the CSA complaint handling system is indicative that core problems exist within the financial services industry.

Having two stages could potentially be problematic and even more expensive for the OBSI from an organizational perspective as my assessment is that effectively the OBSI will be operating two streams of reviews with potentially two streams of staff capabilities as opposed to running a robust one stage binding decision process from the outset. However, I remain confident that the financial industry will want additional avenues of appeal especially if the OBSI binding decisions are not in line with their expectations and in that regard will guarantee additional process stages.

In addition, absolutely critical to acceptance at the first stage of the two-stage process for both the financial industry and the complainant is that both parties must fully understand the calculation methodology applied by the OBSI. Case in point, I have no idea how the OBSI calculations were calculated years ago on my issue as the OBSI did not provide me with a written calculation methodology and the verbal explanation was far too complex for me to fully understand and at that time I was a CPA. Transparency is essential for an ombudservice.

One final point – the OBSI compensation limit should be increased to $500,000 to adjust for approximately twenty (20) years of regulatory and Board inaction.

Please feel free to reach out to me if you require any clarification or have any questions.

Rick Price