

A followup to the Investor Town Hall: Reporting on our progress

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Introduction

The May 2005 Investor Town Hall started as an Ontario Securities Commission (OSC) initiative, but because the issues touched all our organizations, it quickly became apparent that we needed to work together to address them effectively.

Many investors are not aware of their rights or what recourse is available when they have a complaint. In many cases, there is a lack of trust in the system. This attitude results from frustrations that many investors experience when they try to access the system. Often, they find the complaints process confusing and difficult. As a result, some complaints fall between the cracks.

At the Town Hall, investors identified their priorities. These include a better explanation of the complaints process, fair and accessible restitution, and a voice in the regulatory process. The OSC published a summary of these issues in its June 2005 report, *What we heard: A report on the Ontario Securities Commission Investor Town Hall*. The report is available in the consumer section of the OSC website at www.osc.gov.on.ca.

We made a commitment at the Town Hall to follow up on the concerns we heard from investors. Since then, we have gathered and analyzed additional information in order to probe further into the issues. Each of our organizations immediately set to work to examine what we heard in the context of our own processes and interactions with investors.

We also struck a joint working committee of executives and senior management from each organization to facilitate the exchange of information and ideas for addressing the issues. Together, we explored the issues and started to shape solutions. Over a series of meetings, we identified and allocated responsibilities for implementing these solutions in each of our organizations. We will continue to meet and to monitor this process and to develop further solutions.

The purpose of this report is to describe our progress in addressing the issues—what we have done, what we are working on and what we plan to focus on in the coming months. We recognize that there is work to do, and we are committed to listening to the concerns of investors and to responding to the issues in an effective manner.

- David Wilson, Chair, Ontario Securities Commission
- Joe Oliver, President & CEO, Investment Dealers Association of Canada
- Larry Waite, President & CEO, Mutual Fund Dealers Association of Canada
- David Agnew, Ombudsman & CEO, Ombudsman for Banking Services and Investments



Major themes from the Town Hall

Overview

Held in Toronto on May 31, 2005, the Investor Town Hall attracted more than 400 people, primarily retail investors. A panel with representatives from the Investment Dealers Association of Canada (IDA), the Mutual Fund Dealers Association of Canada (MFDA), the Ombudsman for Banking Services and Investments (OBSI), the OSC and the Small Investor Protection Association (SIPA) listened to the experiences of investors who attended the event. We heard their concerns and answered their questions.

Panelists were asked 28 questions at the event. More questions were submitted through the Internet, or in writing before and after the event. Investors at the Town Hall underlined what they want in a regulatory regime—accountability, transparency, fairness and effectiveness. They made it clear that they want us to address the following concerns:

- the challenges they face when trying to navigate the complaints process
- the desire for timely and accessible restitution
- the shortened limitation period for civil actions by aggrieved investors
- the need for the OSC to consult more with investors

Our commitment

In the June 2005 Town Hall report, we committed to respond to these concerns by:

- developing ways to ensure the complaints process is comprehensible and accessible
- examining the avenues of restitution and trying to ensure they meet the needs of aggrieved investors
- conveying investors' concerns about the two-year limitation period to the Ontario government
- creating an investor advisory committee to help identify and address issues affecting investors, and to ensure the views of consumers of financial services are represented
- developing other vehicles, including future Town Hall meetings, to report to the public

The following pages describe how we are honouring these commitments.



Executive summary

Investors made their views known at the Town Hall, and since then our organizations have worked together to focus on the issues. We have made progress in some areas but we still have work to do.

Improved communications

- **More assistance and continuity for investors who contact our organizations.** Investors who contact us will receive better information, online, in person and in print, on their options for making a complaint and seeking redress. Transferring inquiries and complaints to the appropriate organization will be more seamless, making the process easier for investors.
- **More helpful and consistent investor communications.** Print and online communications will consistently reflect the range of options available to investors, in plain language. We have already implemented some improvements in this area and more will follow in the coming months.

Better access to information

- **Easily accessible information to allow investors to check the background of their dealer or adviser.** We are considering how we can best make disciplinary information about registrants publicly available through a central location or database. In the meantime, the OSC Inquiries & Contact Centre will help investors find the information they need.

Investor redress

- **More clarity on existing investor redress mechanisms (OBSI and IDA arbitration).** These mechanisms are accessible and operate independently of the industry. We will ensure that investors are aware of these services and how to access them.
- **Alternatives to address the shortened limitation period.** Proposed changes to the *Limitations Act, 2002* clarify that the limitations clock will pause while a complaint is being dealt with by an impartial third party such as OBSI. The IDA and MFDA have agreed to work on a requirement for their members that will set standards and timeframes for handling complaints. The OSC proposes to set similar standards and timeframes for firms that are not members of the IDA or MFDA. This will ensure that complaints are handled in a timely manner, which should also help address investors' concerns about the shorter limitation period.

Consultation with investors

- **An investor advisory committee.** The OSC established an investor advisory committee to provide advice and guidance on aspects of the OSC's work that affect retail investors.
- **More opportunities for investors to bring their concerns to the table.** This will include future Town Hall meetings at the appropriate time.

We discuss what we have done and what we are doing in further detail in the balance of this report.



Issue one: Navigating the process

It is clear that many investors don't know where to turn when they have a complaint. Investors at the 2005 Town Hall cited the following issues with the existing complaints process:

- difficulty navigating the process
- little followup by the regulatory organizations when investors make a complaint
- lack of transparency around decision-making in industry dispute resolution (OBSI and IDA arbitration)
- lack of a central registry to record disciplinary action against dealers and advisers, which creates a barrier to investors' due diligence

What we've done

We have examined the current system in terms of its clarity and openness to investors. We have also studied how to make our own internal processes more helpful and accessible. We need to improve on the quality of our responses and how we use our resources in this area.

- All our organizations have resources in place, including toll-free lines and websites, which offer information on the complaints process. Since the Town Hall, the OSC has updated its website and will be releasing its revised *Making a Complaint* brochure shortly. The IDA website and the MFDA website and complaints form have been updated to make the process more understandable. The MFDA has also taken steps to ensure its website is one of the top results when people search online for "mutual fund dealer," "mutual fund complaint" and similar terms. This will help investors quickly find the MFDA.
- The OSC Inquiries & Contact Centre worked with an external consultant to conduct focus groups with investors. The purpose of this research was to help us understand what investors experience when they call the OSC and what their expectations are. What we learned from these sessions is helping us update and improve our processes.
- The OSC, IDA and MFDA have implemented changes to allow the OSC to transfer investor calls directly to the IDA and MFDA. This will make it easier for investors to get to the appropriate organization. OBSI also makes direct telephone transfers to many member firms.



Issue one: Navigating the process

What we're working on

Our organizations are working to further improve the way we communicate with investors about their complaints and to provide better information to investors. We are focusing on the following areas to help investors understand and navigate the complaints process:

Helping investors navigate the process

- We are jointly revising our investor communications to ensure consistent and helpful messaging about the complaints process, in plain language. Changes will be implemented by September 2006.
- The OSC Inquiries & Contact Centre is training staff to provide more assistance by helping investors understand the options available to them when they have a complaint, providing contact names and numbers when referring investors to the organization that can best help them, and providing continuity throughout the process.
- We are working to share best practices and training opportunities for investor service representatives in the areas of written communications and customer service. Training is currently underway and this initiative will be ongoing.
- Our organizations are planning further updates to our websites in 2006.
- In addition to our own processes, we are studying the complaint-handling process at the firm level (i.e. at the level of the financial services provider). Our goal is to identify the steps we can take to improve the timeliness of that process and to ensure that investors are made aware of their options for dispute resolution. We think firms need to communicate better about their processes, including advising clients about other options if they're not satisfied with the firm's response. We are considering how best to ensure improvement in this area. In the meantime, we will encourage firms to improve the clarity and consistency of their communications with investors regarding their complaints, the firms' complaint-handling processes and the process for escalating unresolved disputes.
- We are considering a requirement for firms to identify a designated "client complaints officer" as the main contact to receive and to deal with investors' concerns and complaints. This would make it easier for investors to address their complaints at the firm level.



Issue one: Navigating the process

Transparency

- OBSI currently publishes information about the number of investment-related complaints it reviews, the types of issues involved and the names of firms subject to its investigations. It also publishes select case studies on a “no names” basis to illustrate its decision-making and to provide guidance to consumers and the industry on a variety of issues that are frequent subjects of dispute. OBSI case decisions are provided to the parties involved but are otherwise confidential. OBSI believes that it would significantly change the process if it published its recommendations in full. The process would become more formalized, firms’ legal departments would be more involved and more time would be taken up with procedural matters. OBSI is preparing a guide to help investors better understand its dispute resolution process, detailing procedures and policy approaches for its independent complaint handling and review. Once completed, the guide will be available on the OBSI website.

Developing a central registry

We recognize the need for a publicly available central database for registration and disciplinary information. Currently, select information is available from various sources through different access points:

- The OSC provides online public access to information about dealers and advisers who are registered in Ontario, including terms and conditions of registration. Enforcement proceedings are published semi-annually in the Canadian Securities Administrators’ (CSA) *Report on Enforcement Activities*. Investors can also search Enforcement proceedings on the OSC website.
- The IDA provides online public access to disciplinary information about its members from 1997 onward. IDA member registration status and disciplinary information prior to 1997 is available on request. Investors can search enforcement proceedings on the IDA website.
- The MFDA provides online public access to disciplinary information about its members from 2004. Investors can search enforcement proceedings on the MFDA website.

It would be useful to have all of this information consistently available to investors in one place.

- As a group, we plan to study the feasibility of making registration and disciplinary information available to the public through a single access point.
- In the meantime, the OSC Inquiries & Contact Centre can help people find the information they are looking for.



Issue two: Accessible and timely investor redress and restitution

Investor redress

At the Town Hall, we heard that many investors are not satisfied with the mechanisms available for getting their money back. The demand for an improved investor redress process is driven partly by a perception by some that there may be too much industry influence in existing mechanisms, such as OBSI and the IDA arbitration program.

Going to court to seek restitution does not always provide a viable alternative because the process is costly and time consuming. Maintaining and enhancing an independent and accessible redress system for investors is an important priority. We believe that OBSI and the IDA arbitration program are vital parts of that system. We are using what we heard at the Town Hall to further improve these mechanisms and, where possible and practical, to broaden their application.

There is often confusion about different terms associated with investor redress, including compensation, restitution and disgorgement. In fact, the legal meanings of each of these words are quite different. We understand, however, that these distinctions are less important to investors, who simply want to recover their financial losses.

Compensation, restitution and disgorgement

Compensation is a more general term that involves some form of recovery to a person who has suffered a financial or other loss.

The aim of **restitution** is to restore a person to the position they would have been in if not for the improper action of another.

With **disgorgement**, the focus is not on restoring the loss, but rather on ensuring that the wrongdoer is deprived of any illegally obtained amounts. This might include fees earned from selling an investment or profits realized from the illegal activities. In this case, the wrongdoer would generally be ordered to pay this money to the regulator or to the government.

Under certain circumstances, a regulator may be able to direct this money to those who have been harmed by the misconduct. However, the amounts of money directed will not necessarily result in restitution in the legal sense, equal the total losses or make the victims whole.



Issue two: Accessible and timely investor redress and restitution

Restitution is not traditionally a function of securities regulation. This is why most regulators do not have specific authority to order restitution. The following is a brief overview of what our organizations can do in terms of ordering or facilitating payments by wrongdoers:

Regulatory enforcement proceedings

- Where there is a breach of Ontario securities law, OSC hearing panels can impose various sanctions, including an order for payment of a monetary penalty (up to \$1,000,000) or disgorgement of illegally obtained amounts. In certain circumstances, this money may be allocated to victims (see discussion below).
- IDA hearing panels have broad authority to sanction a person or firm who has violated IDA bylaws, rules or policies. This includes fines, suspensions and lifetime bans from working in the securities industry. In narrow circumstances, an IDA panel may also consider ordering that clients be reimbursed for their losses (see discussion below).
- MFDA hearing panels have broad authority to sanction a person or firm who has violated MFDA bylaws, rules or policies. This includes fines, suspensions and lifetime bans from working in the securities industry.

Complaints process

- OBSI can recommend that an OBSI member make payment to a complainant up to \$350,000.
- Through the IDA arbitration program, an independent arbitrator chosen by the parties to a dispute can order an IDA member or registered representative of the member to make a payment to the client in an amount up to \$100,000.

In some cases, regulators have been able to get money back for investors when a regulatory infraction has been established. Where certain circumstances exist, regulators may order or approve the distribution of money to investors harmed by the misconduct. These circumstances include when funds are available, when harmed investors can be identified, when the investors' loss is attributable to some degree to the misconduct, and when funds can be easily and efficiently allocated and distributed.

An example is the OSC, IDA and MFDA settlements from the 2003/04 mutual fund probe into frequent trading and market timing. This resulted in certain fund managers, mutual fund dealers and investment dealers distributing a total of \$229 million to harmed investors following the approval of distribution plans in June 2005.

Similarly, the OSC and MFDA, with the support of the IDA, resolved certain regulatory issues relating to Portus Alternative Asset Management Inc. by imposing terms and conditions on dealers and advisers who sold the product. These terms and conditions provided for the return of approximately \$12 million of referral fees to clients of these dealers and advisers. The regulatory and court cases against the principals of Portus have not yet been heard.



Issue two: Accessible and timely investor redress and restitution

In cases where the OSC can prove that Ontario securities law has been violated, the OSC may apply to the court for a restitution or compensation order in favour of aggrieved investors or other third parties. The circumstances in which a court may make this type of order are similar to those previously mentioned for regulators. A recent example of this type of application is the case of Richard Ochnik and 1464210 Ontario Inc., where the OSC has asked the court to order that money they raised illegally be recovered for restitution. This application is scheduled to be heard by the Ontario Superior Court on August 1, 2006.

Limitation period

We also heard that investors are concerned that the length of time they have to seek redress through legal action has been shortened because of recent changes to Ontario's *Limitations Act, 2002*.

The complaints process in the securities industry is structured so that investors must first follow the internal complaints process at the firm level. If an investor cannot resolve their issue directly with the firm, they have the right to escalate the complaint to OBSI (if they are dealing with a firm that is an MFDA or IDA member) or to use the IDA arbitration program (if they are dealing with a firm that is an IDA member). Clients of firms that are not members of the IDA or MFDA do not have access to OBSI or arbitration, and we have identified this as a matter to be addressed.

Investors at the Town Hall were frustrated by delays in complaint handling at the firm level, which they perceive may be used to exhaust the time limit for taking legal action.

What we've done

- We provided our input on the limitation period to the Ontario Attorney General. In particular, we highlighted how investors have been affected by the shortened limitation period. The government had the benefit of this input as it drafted and introduced amendments to the *Limitations Act, 2002* under Bill 14. These amendments:
 - clarify (for the purposes of pausing the limitation period) that a person or entity that provides resolution of claims or assistance in resolving claims on an impartial basis is an independent third party, no matter how it is funded. This proposed amendment is intended to settle any doubt that the limitation clock is paused when an investor makes a complaint to OBSI.
 - allow potential litigants to agree to suspend or extend the limitation period (to promote out-of-court settlements)
 - give parties acting for business purposes the flexibility to set their own limitation periods

The amendments have not yet been passed. Following second reading, Bill 14 was referred to the Standing Committee on Justice Policy.

- All our organizations have updated our investor information on the complaints process to include discussion of the applicable limitation period in Ontario.



Issue two: Accessible and timely investor redress and restitution

What we're working on

We are working to broaden investors' awareness of and comfort with existing services. We are considering ways to expand the availability of OBSI, for example, by requiring that all Ontario registrants (not just IDA and MFDA members) participate as members of OBSI. We are also working to enhance investors' awareness and understanding of the IDA arbitration program, which is an option for investors who are not satisfied with an OBSI recommendation.

OBSI

OBSI investigates unresolved complaints against financial services providers that are OBSI members, including banks, investment dealers, mutual fund dealers and mutual fund companies. It may recommend compensation up to \$350,000. OBSI was put in place in 2003 as an impartial and free alternative to arbitration and the court system, and is governed by an independent board of directors. All IDA and MFDA members are required to participate in OBSI.

While OBSI recommendations are non-binding, firms have an incentive to comply, or be subject to publicity highlighting their failure to do so. To date, none of the now more than 600 member firms of OBSI has rejected a recommendation. The non-binding nature of the recommendation also applies to the investor. This means that if an investor decides not to accept an OBSI recommendation, they may still take legal action.

IDA arbitration

The IDA arbitration program is run by ADR Chambers, an independent provider, and is available to clients of IDA members. This dispute resolution system was created as an alternative to the court system for disputes up to \$100,000. There is a cost to use this system. In addition, arbitration decisions are binding. For this reason, the parties often retain legal counsel. However, the process is generally faster and less expensive than the court system. There has recently been a marked decline in use of the arbitration system, primarily because OBSI offers a free alternative, which is also less formal and therefore may not involve legal representation.



Issue two: Accessible and timely investor redress and restitution

We are developing a more consistent, harmonized approach among our organizations to help investors better understand and access these mechanisms:

- We have discussed ways to improve the internal complaint-handling process at firms. The IDA and MFDA have agreed to work on a requirement that would:
 - set standards and timeframes for complaint handling at firms
 - ensure clarity of communication by firms with investors/complainants, especially regarding the complaint-handling process at the firm level
- The OSC proposes to set similar standards and timeframes for firms that are not members of either the IDA or MFDA.
- In the meantime, the OSC, IDA and MFDA plan to publish a notice by the end of this year to communicate their expectations to firms.

The work we are doing is complementary to the recommendation of the Standing Committee on Finance and Economic Affairs in its *Report on the Five Year Review of the Securities Act* that the Government work with the OSC to establish a workable mechanism that would allow investors to pursue restitution in a timely and affordable manner.



Issue three: More consultation with investors

The Town Hall was a significant step forward, allowing us to engage in public dialogue with retail investors, a process that needs to continue. Participants appreciated the opportunity to voice their concerns and emphasized their desire to see more Town Halls in the future.

All our organizations benefit by hearing directly from investors, and it is clear that retail investors want to have a voice. We will continue to work together to try to ensure that the views and interests of retail investors are properly reflected in securities regulation.

What we've done

The OSC established the Investor Advisory Committee (IAC) in November 2005 to enhance consultation with investors. We started with extensive discussion with SIPA, Canada's Association for the 50 Plus, the IDA, the MFDA, OBSI, and present and former OSC Commissioners. We then conducted a rigorous search to find suitable candidates for the committee.

IAC members have investing experience, knowledge of the issues affecting retail investors and a strong interest in improving the integrity of the capital markets. The committee includes three private investors, two representatives of consumer organizations, two consultants, one lawyer, a journalist and an academic. The Chair of the committee, Eric Kirzner, is a respected professor. He has chaired similar bodies in the past for the TSX, and brings extensive industry and investor knowledge to the role.

The IAC's mandate is to provide the OSC with:

- investor input and feedback, and raise issues and concerns, thus expanding the stakeholder perspectives currently available
- observations, advice and recommendations to the OSC in meeting its public interest and regulatory mandate
- advice and guidance on any aspect of the OSC's work that affects investors, including complaint-handling and compliance practices

The IAC plans to hold half-day meetings four to five times a year. One or more of the OSC Chair, Vice-Chairs and the Executive Director attend the meetings and hear the committee's recommendations directly. Representatives of the IDA, MFDA and OBSI may be called upon periodically as observers or resources to the committee, as appropriate.



Issue three: More consultation with investors

At its first meeting in January 2006, the committee decided to structure its input along two consecutive streams: preventative issues (e.g. investor education) and reactive issues (e.g. dispute resolution). At its second meeting in March 2006, the committee received an update on the CSA Registration Reform Project¹ and an overview of the complaint resolution process at IDA member firms. It also provided feedback on the proposed changes to the OSC *Making a Complaint* brochure. At its third meeting in July 2006, the committee discussed dispute resolution, with representatives from the OSC, IDA, MFDA and OBSI in attendance.

What we're working on

- Upcoming IAC meetings will involve consultation with various OSC departments (Investment Funds, Corporate Finance) on proposed policies that will affect retail investors.
- A survey of the Chair and members of the IAC will be conducted in 2007 to evaluate the OSC's support and assistance to the committee, to collect their views on opportunities to improve committee operations and to get their recommendations for the future.
- All our organizations will work together to develop continuing opportunities for investors to have their concerns heard, including future Town Hall meetings at the appropriate time.

¹ The CSA established the Registration Reform Project to harmonize, streamline and modernize the registration regime across the country. The objective is to create a flexible regime leading to administrative efficiencies and a reduced regulatory burden. The CSA expects to publish National Instrument 31-103 for comment near the end of 2006.

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