

Sent Via email

February 23, 2016

Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints

To: Deborah Battell dbattell@gmail.com Independent Assessor
 c c Mark wright mwright@obsi.ca

I am delighted to present to you some ideas for improving OBSI .

Time to respond : Retail investors often hear of a consultation late in the game and need time to prepare. I suggest an absolute minimum time to respond to a consultation in future of 90 days. I suspect trade Associations could also use more time in order to consult with members.

Board Nominations: Securities regulators nominate Board candidates but the banking nominees comes from a registered lobbyist ,the CBA . For consistency, the bank nominee should emanate from OSFI/FCAC. This would also have much better optics. As an aside , any Board member representing a firm that has rejected an OBSI recommendation should be expected to resign. The perception that leaving him/her on the Board is injurious to the OBSI brand and is a turn off for investors.

Board Composition : The 2011 “Khoury Report “ recommended the representation of a retail investor voice on the board of Directors. The suggestion recommended 3 investor reps, 3 community reps and 3 industry reps plus an independent Chair. The Board did not accept this recommendation for investor participation . I present here a proposed specification for the investor Reps. should the Board decide to accept the Khoury Report suggestions.

In addition to the general qualifications befitting a director we would add the following unique characteristics:

- **Credibility amongst investor advocate stakeholders** - including:
 - A track record for advocating for fairness in investor protection for Canadians
 - Ability to work with the OBSI Consumer and investor advisory Council, investor protection groups, seniors associations etc
- **Knowledge of industry complaint processes** – including:
 - An understanding of the role of an independent financial ombudsman in modern society
 - Familiarity with key standards and principles for fair dispute resolution and restitution such as ISO.10003
 - Financial literacy/ analytical skills sufficient to evaluate OBSI/industry loss calculation model(s)
- **Credibility with industry stakeholders** -including
 - Knowledge of the Canadian financial sector and retail services/products
 - Knowledge of applicable Canadian law and regulation
 - A understanding of the underlying issues related to KYC ,risk profiling practices and

suitability assessment

Further, investor Reps should possess the following personal attributes:

1. Can clearly articulate the primary issues adversely impacting fair complaint handling/investor restitution
2. Demonstrated willingness and capability to take independent positions that may be in opposition to OBSI decisions and policies when retail investor interests would be better served.
3. Able to walk the fine line between being co-opted into an industry-funded group and thereby silenced, and being a strong implacable retail financial consumer advocate who manages to stimulate change in OBSI policies and practices.

OBSI Confidentiality requirements and potential conflicts of interest provisions of a director of OBSI should not prevent such individuals from independently advocating and writing on a number of key issues.

Prohibit use of “ internal Ombudsman”: Bank -owned dealers steer complainants to their own “ internal ombudsman “ thereby potentially blocking a number of investor complaints from ever reaching independent OBSI. The UK Financial Conduct Authority prohibits a two-stage dispute resolution process and have provided solid rationale for that action. The CSA should work with banking regulators to eliminate this deception.

Low ball offers hurting OBSI : The current system is dysfunctional . If an investment dealer is able to negotiate a settlement with a complainant lower than the OBSI recommendation then the dealer is shielded from Name and Shame and OBSI considers the file closed. I expect these low ball offers are intimidating and likely result on cents on the dollar restitution . Allowing “ low ball” restitution and the associated confidentiality agreements ruin the reputation of OBSI and likely cause some complainants to ignore it. OBSI must change its process without delay or its remaining credibility will be dissipated.

Establish a cycle time standard : Like banking issue complainants , retail investor complainants need and deserve a defined cap on the expected time to resolution before they commit to using OBSI. A 120 day standard would appear to be consistent with other jurisdictions and with the standard used for banking complainants (FCAC defined) . This could include a provision for rare cases where the 120 day standard may be exceeded . A standard where 20 % of complaints can take more than 6 months to resolve is no standard at all .It is an embarrassment to Canada.

Seniors Initiative : The Board should establish a seniors initiative so that investigators are trained and processes developed to ensure complaints from seniors are fairly investigated. According to OBSI statistics, seniors account for a disproportionately high percentage of complaints so the issue is critical and can only grow in the future.

The Consumer and investor Advisory Panel : This Panel is supposed to act as the voice of the financial consumer. Its activities are however shrouded in secrecy. The public must be made aware of what it has communicated to the Board . It should also publicly disclose any research reports it has issued. Such transparency is essential to maintain credibility. Additionally, it should issue an Annual

Report in the same way the OSC IAP does.

Deal with Hardship cases: OBSI should establish a fast track system to expedite the investigation of cases involving vulnerable complainants .

Independent review Interval: It is ridiculous to allow 60 months to pass before OBSI is reviewed again. The industry is undergoing unprecedented change and so is OBSI. There is no need to harmonize with FCAC requirements for investments.

Establish a complaints system for Investors: A system is needed for financial consumers to complain if they feel an OBSI investigation is flawed or they have been treated poorly by OBSI.

Quarterly Complaint statistics and other information : OBSI should issue a quarterly report with complaint statistics, key issues , disclose any systemic issues it has uncovered and reported to the JRC for action and report on any industry process improvements it has recommended resulting from root cause analysis.

Strategic plan : I recommend that the annual strategic plan be exposed to public comment and the final version be publicly disclosed on the OBSI website. I add parenthetically that the website's navigatability be reviewed from a consumers perspective.

IIROC Report : The 2015 IIROC compliance report raises an issue. :In its report, IIROC noted that some client account agreements include exclusionary/limited liability clauses. IIROC says that in certain case that they "appear to violate the spirit of IIROC rules regarding the standards of ethics and business conduct required of firms and their registered employees. In addition, the IIROC Notice says that may also violate the rules requiring dealers to participate in alternative dispute resolution programs. I urge the OBSI Board to follow up on this matter before it gets out of hand. A good Outreach problem may reduce the chance that access to OBSI would be blocked but the prevailing approach is ineffective and needs major improvements.

I hope this is information useful to you.

Please free to contact me if you require more information.

This letter is approved for public disclosure on the OBSI website.

Ken Kivenko P.Eng.

Investor Advocate

REFERENCE: *A Blueprint for the evaluation of an Ombudsman's office:* Doctoral thesis
Would be interesting to test ADR banking ombudsman and the Banks internal " Ombudsman " against these criteria. <https://www.icann.org/en/system/files/files/blueprint-for-evaluation-of-an-ombudsman-nov08.pdf>