

## NOVEMBER 12, 2012 ISSUE

### REACTION TO OCTAGON'S REFUSAL TO FAIRLY COMPENSATE CUSTOMER

On Friday, OBSI [announced](#) the refusal of Octagon Capital Corporation ('Octagon') to compensate one of its customers in the amount of \$181,339 as recommended by OBSI. We also made public a copy of our [investigation report](#), with some names and personal information edited to protect the identity of certain individuals involved. This was only the second refusal to compensate ever received by OBSI from an investment firm.

OBSI's only interest is in finding fair resolutions to complaints. However, a firm's refusal to compensate means that OBSI must publicize the refusal as well as our investigation's findings under the so-called 'name and shame' requirements of Section 27 of our [Terms of Reference](#).

By refusing to compensate its customer the amount she is fairly owed based on the facts of the case, Octagon chose not to fulfill its responsibilities to her. OBSI's announcement of this refusal resulted in significant negative attention on Octagon's behavior in this case and on its compliance deficiencies.

*The Globe and Mail* ran a [story](#), before we named Octagon, which picked up on our [newsletter](#) outlining the significant and extraordinary steps OBSI has taken to resolve certain complaints that were stuck at an impasse:

*The ombudsman said it tried to resolve the cases in question, but they remain at an impasse. In some instances, "firms simply have not agreed to compensate their customers for the firm's own mistakes, liabilities and compliance deficiencies," OBSI said. "Having exhausted all avenues to settle these complaints, OBSI is now preparing to publicize the refusals."*

The article was the top story on theglobeandmail.com for several hours on Thursday.

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Many media outlets picked up on Octagon's refusal to compensate, beginning on Friday and continuing through the weekend. The *Financial Post* and affiliate papers [reported](#) that:

*On Friday, OBSI said Toronto-based independent dealer Octagon Capital Corp. refused to compensate one of its customers \$181,339, as recommended by the Ombudsman whose investigation concluded that her investments were unsuitable. According to OBSI, the Octagon advisor was fined \$125,000 by the Investment Industry Regulatory Organization of Canada, but IIROC does not order compensation for clients.*

[Advisor.ca](#) reported that:

*A complaint was brought to OBSI recently by one of Octagon's older investors, who was primarily a low-risk investor. Despite her profile, it says her advisor had traded frequently in her accounts and often without her authorization. The securities he purchased were too risky, says OBSI, as he used margin and short selling strategies.*

In a second story, *The Globe and Mail* also [noted](#) that Octagon chose not to have the case reviewed as part of a one-time external review initiative:

*Before taking the steps of naming Octagon publicly, OBSI said it established an independent review, in which Octagon was given the chance to have a former commissioner of the Ontario Securities Commission provide an independent assessment of the file. "If OBSI had unfairly considered the facts of the case or our investigation findings were objectively flawed, the reviewer would say so in their report on the matter," the ombudsman said. "Octagon chose not to take up this offer."*

In that article, the *Globe* [interviewed](#) Ermanno Pascutto, Executive Director of FAIR Canada:

*[Pascutto] added that it's also up to the investment community to send its own message on business conduct. "If the system is going to work, there have to be significant consequences for that – reputational consequences and business consequences," Mr. Pascutto said. "It's up to the people, the stakeholders in the market to send a signal to any firm that's named and shamed that it's unacceptable business conduct, because it undermines confidence and integrity of the system."*

The *Toronto Star* ran a [column](#) that concluded:

*Something is wrong when a client is denied the recommended compensation after a rigorous investigation.*

*Investment Executive* also [reported](#) in depth on Octagon's refusal, which was still the top story on their website as of 11am EST Monday morning:



The screenshot shows the top portion of the Investment Executive website. At the top left is the logo for 'IE INVESTMENT EXECUTIVE'. To the right of the logo are links for 'Log in' and 'Career'. Below the logo is a navigation menu with items: 'News', 'Building your Business', 'Special Features', 'Multimedia Centre', and 'Partners' Place'. A red banner labeled 'Top Stories' is positioned above the main content area. The first story is titled 'OBSI outs Octagon for refusing to pay compensation' and includes a sub-headline: 'This is the first time the Omubdsman has publicized an investment dealer's refusal to compensate a client'. Below this are two other story titles: 'Canada to lead G7 in growth in next 50 years: OECD' and 'CPPIB reports Q2 return of 1.9%'. To the left of the main article is an image of two chess pieces, a white knight and a black knight, facing each other.

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For more information, contact:

Tyler Fleming  
Director, Stakeholder Relations and Communications  
[publicaffairs@obsi.ca](mailto:publicaffairs@obsi.ca)  
416-218-4244