SIPA
SMALL INVESTOR PROTECTION ASSOCIATION

A Voice for Small Investors
Seeking Truth and Justice

February 19, 2016

Ombudsman for Banking Services and Investments (OBSI)
401 Bay Street, Suite 1505
P.O. Box 5
Toronto, ON M5H 2Y4

Re: Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints – Submitted by e-mail

To: Deborah Battell dbattell@gmail.com

CC: Sarah P. Bradley (OBSI) ombudsman@obsi.ca
Mark Wright mwright@obsi.ca

The Small Investor Protection Association (SIPA) is pleased to submit our comment on the Independent Evaluation of OBSI.

SIPA was founded in 1998 as a volunteer organization in Markham, Ontario, and incorporated as a national non-profit organization. Since then SIPA has dialogued with regulators, made submissions and presentations to regulators and Governments including the Senate Standing Committee on Banking Trade and Commerce, and the House of Commons Finance Committee. Since then SIPA has participated in many round table discussions and has participated in the OSC Investor Advisory Panel and for a time on the board of FAIR Canada.

In 2004 SIPA prepared a SIPA Five Year Report - *"The Small Investors' Perspective of Investor Protection in Canada"* - February 27, 2004. This report clearly outlined the situation as we understood it at the time and was based upon experience and interviews with many hundreds of small investors. Sadly the issues impacting small investors adversely at the time are still in play and are some cases are worse. For example the limitation periods have been reduced and two years is not sufficient time for small investors who suffer life-altering loss due to industry deception and wrongdoing to determine what the problem is and how to best tackle it.

Small investors at large place their trust in their "Financial Advisor" not knowing that he is simply a commission driven sales person without legal requirement to look after the client's best interests.

SIPA is supported by many volunteers and now has our SIPA Advisory Committee of volunteers who provide a capability of providing detailed commentary on particular issues. We have a website at www.sipa.ca maintained by a webmaster and publish a bi-monthly newsletter the SIPA Sentinel. Our priority is to raise investor awareness so they know with what they are dealing. We believe small investors are being deceived in many ways into believing the regulators afford protection and that "Financial Advisors" have a fiduciary duty and are worthy of trust.

When small investors are victimized by industry fraud and wrongdoing they do not know where to turn when the regulators are no help. The Ombudsman process should provide and fair and just evaluation of the harm that is done to investors and should be able to make just recommendations that industry would be obliged to accept. Unfortunately that is not what happens.

Our comments on the independent evaluation of OBSI have been prepared by Andrew Teasdale who is a member of the SIPA Advisory Committee.

Andrew is a Financial Economist (*BA Honours Economics*, University of Newcastle Upon Tyne, UK) and an Investment Planning and Asset Management expert with 24 years experience in the financial services industry. He has worked with and within the financial services industry to various levels of financial and operational responsibility; in the late 1980s as a consultant with Ernst & Whinney/Ernst & Young (London, UK) with responsibility for economic, securities and market research for their private client portfolio management services; as a founding partner and investment director of a UK investment counselor; as a director and joint venture founding partner of an investment services and software company with responsibility for systems development and economic, market and fund research for up to 20 firms of financial advisors; as a director and founding partner of a European internet financial services venture.

Andrew became a Canadian resident in late 2003 and since 2006 he has focused his consultancy on competitive market (in particular issues affecting consumer relationships with the financial services industry) and regulatory issues in the Canadian retail financial services market place, on the significant global financial, market and economic imbalances and portfolio related issues associated with the new breed of financial services' products.

His TAMRIS Consultancy has provided expertise, opinion and perspective to the Canadian press (National Post, Globe & Mail, Toronto Star, and The Bottom Line), independent research to consumers and financial marketing research organizations, the Canadian government, as well as expert opinion for legal issues regarding suitability and due service processes.

In Canada he has the CIM designation and a CFA designation.

SIPA is pleased to have Andrew as part of our team and hope that you will find our submission helpful in your evaluation of OBSI with regard to investor complaints.

SIPA grants permission for public posting of our comments.

If SIPA can be of further help please contact us.

Yours truly,

Stan Buell
President

SIPA Submission

February 19
2016

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

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SIPA Submission:"Request for Comment on the Independent Evaluation of the Ombudsman For Banking Services and Investments"[1]

The following provides our comments into the 2016 Independent Evaluation of the Ombudsman for Financial Services. The basic framework for this evaluation is noted in the "Request for Comment[2]" and is noted briefly below:

> "The independent evaluation will consider whether OBSI is operating in accordance with its obligations under the MOU[3] as well as whether any operational, budget or procedural changes would be desirable to improve OBSI's effectiveness.... The MOU provides for securities regulatory oversight of OBSI to ensure OBSI continues to meet **standards set by the CSA** as well as a framework for cooperation and communication via the OBSI Joint Regulators Committee (JRC) which includes representatives from the CSA, IIROC and the MFDA."
>
> "The extent to which OBSI meets international benchmarks for industry-based dispute resolution (based on the British and Irish Ombudsman Association criteria and the Benchmarks and Key Practices for Industry-based Customer Dispute Resolution developed by the Australian Government)."

In the 2011 Navigator Report the authors felt it necessary to address key issues that were not adequately addressed by the structure suggested by the joint forum guidelines, and we shall do likewise in this submission.

From the review guidelines we note specifically the absence of the following:

A. An assessment of the operational frame of reference in which OBSI operates, in particular the relationship between regulation and advice standards: an ombudsman operates within a frame determined by regulation of standards and good practices themselves, with the former at times lagging the other; the interplay between the two, regulation and best practises, are key to the health and good standing of an ombudsman and consumer confidence in both the regulatory framework and complaint process. The OSC is currently conducting a review into best interest standards and commission free advice. Regulators have also recently implemented the CRM initiatives designed to improve disclosure of industry relationships, costs, conflicts of interest and asset performance. Canada's regulatory standards lag well behind those of other jurisdictions with robust ombudsmen models.

B. Specific comment with respect to outstanding issues from the 2011 review, especially the withdrawal of powers to investigate systemic issues, the power to make binding settlements and aversion to fully embracing consumer advocate interests on the OBSI board.

C. The removal of systemic investigation powers without consultation and the removal of segregated funds from OBSI's scope contrary to good practise and we feel good governance (no consultation), transparency and fairness and would direct these comments likewise to the removal of systemic issues.

D. An analysis of the function and remit of the Joint Regulatory Committee especially with respect to recommendations made in the 2011 Navigator report with respect to regulatory

[1] https://www.obsi.ca/en/download/file/625
[2] https://www.obsi.ca/en/download/file/625
[3] https://www.obsi.ca/download/fm/273

support of the OBSI. We note especially that in section 7.1 of the 2011 review, point 1e (vi) on page 39, dealing with sound relations with regulators and oversight by them, that "OBSI has, at board and at management level done everything that could be expected of it to meet this guideline". Oversight by regulators of OBSI was not an issue but regulatory support of investment loss calculation and intervention with respect to refusals to accept OBSI recommendations were. We have some reservations that oversight may have more to do with monitoring and containing OBSI with respect to the many divisive issues noted in the Navigator review affecting its relationship with the industry and regulators. We also note a transparency issue with respect to this relationship.

E. Low ball offers: concerns are noted in the 2014 annual report. This raises numerous issues of fairness, of credibility, of confidence, of integrity of process, transparency etc. Phil Khoury of Navigator in particular raised "slippery slope" concerns that would lead to low ball offers. These offers alongside naming and shaming cloud the otherwise positive statistics on successful case resolutions.

We are also interested in any material changes in methodology and process since the last review, especially with respect to investment loss calculations, given the considerable pressure the OBSI has been under.

Operational frame of reference

The evolution of financial ombudsmen is inextricably tied to the changing landscape of financial services regulation and good practises. How financial ombudsmen are treated, in terms of their operational independence and the standards they reference to perform their assessments, is an issue of public interest affecting confidence in the financial services industry and its regulation.

The complaint process is a veritable isthmus between financial services and confidence and trust in the system. Its integrity should not be the hegemony of any one party and especially the more powerful, influential financial services industry. Indeed, its interest, the public interest should also rise above that of the regulators and, this we feel, is one the many rubs affecting the OBSI of late: the public interest, while represented to some very great extent in the OBSI is we believe posited on a slippery slope and for some, at the start, the slide may be hardly noticeable.

The Navigator report points out that financial services ombudsmen have been relatively recent entrants into the financial services frame and that in many countries, including Canada, they had been initially introduced in response to threat of government intervention on behalf of consumer protection.

Part of the conflict we have seen between the OBSI and the industry is due in large part to the increasing independence of ombudsmen and the development of their public interest role while their industry roots disappear. The importance of this public interest role is something that has eluded the industry and, judging by their actions, quite possibly our regulators too. To quote the 2011 Navigator report in response to the rhetorical "why the heat?":

> "We think that the principle underlying reason is that industry are very uncomfortable and resistant to the evolving public interest role for OBSI[4]"

Over the last 15 to 20 years there has been much change in financial services regulation, specifically with respect to raising the standard of advice, the definition of service provision, the accountability of advice and the level of professionalism and training behind the provision of advice. It is no surprise that the rise and evolution of financial services ombudsmen has accompanied this change. In this

[4] https://www.obsi.ca/en/download/fm/46/filename

context we must see the role of financial services ombudsmen, while not as regulators[5] per se, definitely as entities inextricably linked to improvements financial services regulation and standards.

At a time when improving global financial services standards, regulation and complaint processes are making great strides in the public interest, Canada's regulators have sought, outwardly at least, to reduce the OBSI's powers and have, in our opinion, failed to deal adequately with refusals to compensate and low ball offers that are damaging to trust and confidence in the system. The OBSI should be gaining in stature as the fairness of our financial services evolve, not shrink or bow to industry interests.

As Deborah Mcfadden stated in her submission to the current evaluation "*when I asked to have my complaint forwarded to OBSI the first words out of the firm's dispute resolution officer's mouth was "We do not have to follow OBSI's recommendation*"". Low ball offers, naming and shaming and a general apparent disrespect for independent, impartial dispute resolution in Canada is a critical issue. Lack of confidence is one thing, disrespect for the natural integrity of a critical institution another.

The Ombudsman Association, previously the British and Irish Ombudsman Association, note that the key objectives of an ombudsman are **a)** to formulate and promote standards of best practise and **b)** to encourage efficiency and effectiveness. They also state, in their Good Complaint Handling Guide, that over and above their primary role "*of looking into complaints in a proportionate and impartial manner, and bring matters to a fair and reasonable conclusion*" **was "*to identify*** *how organisations can improve the way they do things and reduce the likelihood of similar complaints arising in the future*[6]". Promoting standards of best practise and identifying issues within organisations cannot be executed without implicit regulatory support of those standards and processes. While regulators are not above the public interest, an effective ombudsman depends on the integrity, relevance and objectivity of regulation. Their interests should conjoin and so should their actions.

The introduction of more advanced international ombudsmen standards into a Canadian market place, where we believe there are systemic issues with respect to the quality of investment advice and the resolution of complaints with respect to such, will cause friction. That is unless regulation supports the advancement of good/best practices and industry accountability for its advice and services. Industry in Canada has sought to defend long established minimum suitability standards that revolve around the transaction as opposed to the holistic portfolio whole. It is critical that any independent review of the OBSI be aware of this fundamental divide in standards.

We believe that a key reason for the removal of the limited power to investigate systemic issues at the firm level, inter alia, was because OBSI's good practise benchmark was judging complaints at a higher standard than minimum industry standards, the distribution culture and the internal complaints process could withstand.

So the conflict for the OBSI comes from being bound at one side by regulatory standards and the other by the good practise benchmarks used by ombudsman for evaluation. Good practise benchmarks come from established asset management/portfolio construction and wealth management/financial planning component disciplines. But good advice does not necessarily need to be complex or heavily sophisticated. The CSA is aware of this divide and has been, at the very least since 2004, and no assessment of Canadian regulatory standards is complete without a review of the Fair Dealing Model Consultation and the subsequent Registration Reform Project Working Group documents. OBSI's dilemma, noted in the 2011 report, is largely the progeny of regulatory dithering for a decade or more.

[5] In the 2011 Navigator review :"some the regulators echoed industry concerns about the OBSI becoming a "quasi-regulator"

[6] http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf

The disciplines from which good/best practise benchmarks derive have, over the last few decades, become increasingly well defined and is likely one of the key reasons for the increased interest in best interest standards amongst regulators and governments.

Logically for an ombudsman to work effectively, both regulation and objective standards of good practise should be part of a common public interest objective. Where good practices deviate from those regulated and accepted by regulators as satisfactory minimum standards, the public interest objective of financial ombudsman is likely to conflict with the industry and its standards. An ombudsman in this case is also less likely to receive support from its regulators. Clearly support from an industry's regulators can come in many forms, the most important of which is the promotion of higher standards of care, advice and accountability. Regulation currently lags behind the imperatives of OBSI's natural public interest remit.

The office of the Ombudsman has been referred to as a "Canary in the coalmine"[7], and to paraphrase, if the area in which it operates is healthy (regulation and standards are appropriate and those it oversees adhere to them) then its future health is likewise good.

Canada's financial services ombudsman is not a statutory body and depends on industry support for its continued operation but if standards of practise and regulation conflict with good practise and the achievement of best practises we are likely to see risks to the proverbial canary. This is what we believe was recorded by the 2011 Navigator review. We believe that a statutory authority is the optimal authority for an ombudsman in an area of such importance as it is the only structure that places the ombudsman within an accountable public interest context.

Ergo conflicts between regulation and objective standards are likely to lead to issues with financial services ombudsman. Canada's securities regulators formally acknowledged the gap in regulation of financial advice way back in 2004 with the FAIR Dealing Model and likely much earlier. But it has yet to really do anything about this. Most of its regulatory energy has been spent improving disclosure not investment processes.

Canada needs to decide whether it wishes to impose objective good practises on the financial services industry, practises that are in the public interest, or whether it wishes to continue to regulate the advisory segment of the industry as if it were little more than consumer initiated investment transactions.

Relationship between the UK FCA and the FOS

The following is drawn from the MOU between the UK Financial Conduct Authority and the Financial Ombudsman Service Limited and illustrate the importance of a solid regulatory base underpinning an ombudsman's operational independence and objectivity:

Under the Financial Services and Markets Act 2000 (FSMA):

(a) The FCA operates as the financial conduct regulator.....its operational objectives include: securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the market for regulated financial services.

(b) The Financial Ombudsman Service Limited's main role...is to operate a scheme to resolve disputes, as an alternative to the civil courts. The scheme's statutory objectives are to resolve disputes quickly and with minimum formality on the basis of what is fair and reasonable in all the circumstances.

[7] Fundamental Elements of An Effective Ombudsman Institution , Dean M. Gottehrer

(c) The FCA discharges its objectives by setting standards that regulated firms must meet and taking action where such firms may be breaching those standards. The FCA does not investigate individuals' complaints against the firms it regulates and cannot deal with a complaint on behalf of individual consumers. This is the role of the Financial Ombudsman Service (ombudsman service).

Critically the FCA operational objectives provide the necessary supporting platform for the FOS to deal impartially and independently with complaints.

Industry complaint standards versus good practice

In its document "Process for Assessing Investment Suitability and Compensable Losses"[8] the OBSI touches on key difference between minimum standard industry processes and those practises followed by the OBSI.

> **"One comment that we frequently hear, and which came up at the IIROC consultation session, was that OBSI should never go "beyond the KYC"** ('Know Your Client form') during our investigation**. Some industry stakeholders are of the view that it is a signed contract, and that if a investor didn't understand or agree with its contents they shouldn't have signed it. It is then stated that if an investor signed it then they bear full responsibility for any losses**. The KYC document is an important piece of evidence, but it is not a contract. ... When the KYC information is in dispute or there's an obvious disconnect between the information on the form and the investor's personal and financial circumstances, we want to understand things like how the information on the form was gathered and documented, what the investor and advisor discussed, what the investor understood about the terms on the form, and how the form was presented and reviewed before it was signed. There may also be additional information or evidence that we need to consider to substantiate or refute what the parties tell us. After considering the evidence, process and circumstances of the complainant, we can form a view about whether the KYC form was reasonably accurate and reliable."

The industry appears to be confused between the way current regulation and the courts interpret investor responsibility for transactions under the advisory relationship on the one hand and the ambit of the OBSI to assess advice based on good practises as noted in the Ombudsman Association's guide to good complaint handling. These are benchmarks (good practises) the current evaluation is supposedly meant to be benchmarking against. Unfortunately the assessment of the divide between good practise and accepted minimum practise may be outside of the Evaluator's mandate and it may well be an important omission.

While we believe very strongly that best interest standards should apply to advice based relationships it is incorrect to believe that advice based relationships under current regulatory standards cannot be held to good practise standards by the OBSI. Indeed there is nothing in regulatory communication by the MFDA, IIROC or indeed the CSA that would suggest that.

Here are a set of comments from the TOR and loss calculation consultations that highlight this conflict:

> "We believe the use of notional KYC and the development of notional portfolios should only be applied in extreme cases or when advisors have a legal fiduciary duty..."[9]

> **"Suitability Complaints are not a matter of "fair and reasonable"** as the Ombudsman Office states ... However, **when Suitability is based on whether rules, laws or regulations**

[8] https://www.obsi.ca/assets/process-for-assessing-investment-suitability-and-compensable-losses-1427995649-4ab32.pdf
[9] https://www.obsi.ca/download/blog/323

are broken no perception of bias can be asserted. **Until the Ombudsman Office starts to apply such a standard (instead of "reasonable and fair") in its process there will be a lobby by certain IIROC** Members and others to opt out of any services provided by the Ombudsman.....By the Ombudsman Office reaching a Conclusion that the signed client KYC is not to be used to determine KYC in an assessment is a slippery slope."[10]

"The KYC Review also involves far-ranging interviews that appear to go beyond the dealer's KYC process and the question of whether the dealer made a reasonable assessment of the client's "KYC facts" as a foundation for assessing the suitability of advice."[11]

"In the case where the advisor has satisfied their KYC obligations, OBSI should not assess information that was not available to OBSI at the time the relevant suitability assessment was made. If OBSI determines that the KYC information on record for an investor did not reflect the investor's actual circumstances at the relevant times, it should provide the reasons for such determination"[12]

"We strongly agree with the Investment Funds Institute of Canada's comment that in cases where advisors have satisfied their KYC obligations, OBSI should not assess information that was not available to the advisor at the time the relevant suitability assessment was made. This creates an unfair judgment of an advisor and of the dealer"[13]

"PSC believes that complaints using its self determined standards of what is "fair" . PSC believes that complaints should be evaluated using the legal standard applied by the courts regarding whether liability exists and, if so, in what amount. "

While OBSI comments that it "typically need not consider whether the relationship between the investor, advisor and the firm is fiduciary in nature", the distinction between duty of care and fiduciary duty is clearly recognised by both regulatory and legal principles. Specifically, in an Ontario Court decision, it was clarified that **"** the duty on behalf of a broker will vary from that of an order taker to that of a fiduciary depending on the specifics of the relationship. This is what has been referred to as the "continuum" or the "spectrum"". Under a standard of a duty of care, "so long as the broker applies the skill and knowledge relied upon and advises fully, honestly and in good faith, the broker has discharged his obligation and is not responsible if the transaction proves unfavourable".[14]

The industry disagreement with respect to the application of good or best practices to complaint resolution is fundamental to the problems that have been plaguing the OBSI and are under pinned by the absence of regulators in this argument. The disagreements clearly highlight systemic issues in the industry's complaint process and the standards that are applied to complaints. The fact that many of the industry criticisms are from their legal representatives should also raise issues of concern and we note that some of the submissions have been from their so called "internal ombudsmen".

We see here yet another reason behind the removal of OBSI's systemic investigation powers: the conflicted interests within the internal complaint process is a key systemic issue standing in the way of fair and objective assessment of investor complaints. Again Canada's regulators have done little to assuage these conflicts and to lay down clearer principles of suitability and complaint handling. Change seems to take forever.

[10] https://www.obsi.ca/download/blog/315
[11] https://www.obsi.ca/download/blog/325
[12] https://www.obsi.ca/download/blog/380
[13] https://www.obsi.ca/download/blog/383
[14] https://www.obsi.ca/download/blog/378

While we believe that the CRM model[15], instituted to advance the definition of advisory based services, falls short of standards of accountability and responsibility we would like to see, we nevertheless believe that they are sufficient to support the introduction of good practises with respect to wealth management solutions. Any industry aversion to instituting good practises runs contrary to the public interest even under current regulation.

> "As per Dealer Member Rule 1300.1, **a client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account's current investment portfolio composition and risk level** must be considered when assessing the suitability of orders and recommendations.... Dealer Members are reminded that the factors set out in Dealer Member Rules 1300.1(p) and (q) are not exhaustive.."[16]
>
> It is advantageous to clients, Dealer Members and the industry as a whole, as well as **consistent with good business practices**, that Registered Representatives and Dealer Members conduct more holistic suitability reviews. In other words, Dealer Members are encouraged to adopt best practices which would not only allow them to comply with the current order / recommendation-triggered suitability assessment requirements set out in IIROC Dealer Member Rule 1300.1, but also assist in the ongoing maintenance of a suitable client portfolio. "

What we believe we are seeing with respect to the low ball offers, the naming and shaming, the removal of systemic investigative powers, the removal of segregated fund assessment and the lack of consumer advocate involvement is a crisis in the industry's complaints process: a deconstruction of OBSI's authority and power and ability to satisfy its public interest mandate. **Ask yourself this? Who benefits the most from the changes made and the changes that have not been made?** The logic is disturbing and simple if you stop to think about it.

We believe that at the industry level clients are being assessed at ridiculously low standards of suitability and that this poses a severe crisis of confidence and trust in industry/regulatory framework.

We have seen no communications from regulators, CSA or SROs with respect to these complaint process issues and would have expected such of systemic issue monitoring was a high regulatory priority.

We also note an Investor Advisory communication[17] regarding the CSA's audit of IIROC's complaint handling:

> *"The CSA's 2014 audit of IIROC's own complaint handling identified serious concerns with investigation practices specifically with regard to suitability and supervision violations....Recently, some IIROC firms have rejected OBSI client compensation recommendations and OBSI has also reported increasing numbers of low-ball offers. IIROC cannot continue to sit silent and inactive as some member firms defy OBSI, leaving clients with no recourse except to go to the courts for compensation."*

Finally, we note with respect to industry criticism of OBSI jurisdiction and process that there have been numerous legal challenges to the Australian Ombudsman and that these have been unsuccessful[18].

[15] http://www.iiroc.ca/Documents/2012/afeb247c-7359-4843-b246-880596386784_en.pdf
[16] http://www.iiroc.ca/Documents/2012/d21b2822-bcc3-4b2f-8c7f-422c3b3c1de1_en.pdf
[17] https://www.osc.gov.on.ca/documents/en/Investors/iap_20150929_comments-iiroc-strategic-issue.pdf

The 2011 Navigator report

The 2011 Navigator report[19] pulls no punches noting numerous issues: fractures on the board, including breaches of fiduciary duty by board directors; overt hostility on behalf of industry towards board and independent chair and pressure on industry appointed directors to advocate for industry; confusion and uncertainty amongst stakeholders including regulators; the failure of the OBSI to meet its key independence[20] criteria; industry resistance to systemic investigations, deteriorating industry compliance and aggressive negotiating tactics including refusal to comply; **the absence of** s**trong regulatory engagement**, binding powers and compulsory membership (banking); opposition to the investment loss calculation methodology used by OBSI; the lack of organised effective consumer pressure

Critically The OBSI did not meet key independence criteria owing to public collapse of support from industry, funding constraints. We note that one of the present industry board members is from a company that has likewise refused to comply with OBSI findings[21]. Independence is discussed further in the Independent Evaluation and key issues section.

Navigator's key recommendations were as follows

- To seek endorsement by regulators and acceptance by the industry of the basic loss calculation framework, a methodology it found to be "competent, consistent with and fairer than (and more accurate) than those used in other jurisdictions":
    - To date we see no overtly substantive regulatory support of the loss calculation framework: name and shaming continued till 2015 and low ball offers circumventing the process appear to be endemic – note the Chair's comments in the 2014 OBSI annual report regarding low ball offers and the presence of the board of senior officers from companies refusing to comply with OBSI findings. This recommendation has not been overtly met. Industry pushback extends well beyond the headline refusals to compensate.
- To establish a Joint industry /regulator standing advisory panel, independently chaired for dealing with technical aspects of complaint handling. Panel expertise should include an independent academic and a suitably qualified investor advocate.
    - A joint industry/regulatory committee has been established but no sign of independent academic or investor advocate. The committee's ambit has extended to governance and operational matters and appears to be more a formalisation of functions that were according to the 2011 Navigator report[22] being comfortably met. This recommendation has not been fully met.
- Seek agreement of government and regulators to make membership of OBSI by all banks and investment firms compulsory:

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18 http://www.fos.org.au/custom/files/docs/corporate_governance_litigation_overview_legal_cases_involving_fos_and_its_predecessors.pdf

19 https://www.obsi.ca/en/download/fm/46/filename/2011-Independent-Review-1426030496-60d22.pdf

20 "Independence is the bedrock on which the other fundamental characteristics rest." From Fundamental Elements of An Effective Ombudsman Institution, Dean M. Gottehrer1, Former President, United States Ombudsman Association

21 https://www.obsi.ca/en/news-and-publications/refusal-to-compensate/richardson-gmp

22 Section 7.1 of the 2011 Navigator review, point 1e (vi) on page 39.

- This recommendation has been partly met.

- The establishment of limited appeals mechanism for OBSI decisions:
    - This was to be limited to matters with arguable errors or omissions and would have involved a cost based appeal fee for the industry. A tripartite panel (legally qualified chair, knowledgeable industry representative and consumer investor advocate) or single appeal ombudsman. A mechanism was set up but apparently only one industry participant has taken this option up. We would appreciate some feedback on this but it looks as if this recommendation has not been adequately met.

- Agreement to provide OBSI with binding powers
    - There has been no further mention of this as far as we know and nothing noted in the OBSI/JRC annual reports. This recommendation has not been met.

- That the OBSI board be restructured to include an independent chair, 3 investor advocates, three industry representatives, 3 community directors and (Recommendation 9) the involvement of all directors in decisions as well as a clear board charter obliging acting in best interests of the corporation and not their constituents:
    - There remains absent a clear consumer voice and for the last few years little or no public communication from the Consumer and Investor Advisory Council despite what we know to be quite significant activity commented on in the 2014 Annual Report. No mention of the consumer advocate positions has been made. This recommendation has not been met and no public comment made or consultation undertaken. This recommendation has not been met. TOTAL SILENCE ON THIS ISSUE!

- Establishment of annual regulatory oversight of funding /budget decisions – regulators not to set budget but to have insight as to adequacy.
    - We presume this is handled by the JRC and note that OBSI's 2014 Annual Report states that funding levels are adequate. We would like to see more detailed analysis of funding needs as explanations of funding needs also provide additional insight into structure, planning and structural issues within the organisation.

The Navigator report also commented specifically on industry criticism that "OBSI is going beyond regulatory standards....that OBSI is failing to attach adequate responsibility to the investor... that OBSI's methodology is too inflexible" The report noted that criticisms themselves were not unusual but "the wholesale spread of criticism and the degree of emotional heat behind them" were. These comments were followed up in industry submissions on consultation on loss calculation methodology. As discussed, we do not believe that the OBSI were going outside of industry standards and that good practises are compatible with current regulation. They are just not compatible with the preferred culture and profit imperatives of the industry. Industry would prefer that the light does not shine on their practices. This is why we have defined the public interest and why ombudsmen bodies exist.

The Navigator report appeared to lay a significant portion of the blame on the lack of regulatory support for the Ombudsman and we feel that this intuition is correct:

> **"Absent a clear regulatory signal to the contrary, industry's continued criticism and pressure may ultimately leave OBSI with nowhere to go but to make a series of backward-stepping compromises. ...the methodology is a lightning rod for industry criticism...the real issue...is the evolving role and independence of OBSI**".

Removal of powers to investigate systemic issues

In the "Approved Amendments to OBSI's Terms of Reference and Board's Response to Stakeholder Comments"[23], of December 2013, the power to investigate systemic issues was formally removed from the OBSI TOR without consultation.

> "To align with regulatory requirements on the banking side of OBSI's mandate, and **regulatory expectations** on the investment side, OBSI will no longer investigate systemic issues. These are issues that are discovered during the investigation of an individual complaint that OBSI believes may have affected or have the potential to affect a large number of consumers at the same firm and caused financial harm. OBSI **will continue to report both publicly and to regulators on general trends and themes we see in the complaints we investigate**. OBSI will also report to the appropriate regulators any potential systemic issues identified during the review of individual complaints, if so directed by those regulators."

The removal of the ability to investigate systemic issues severely impairs public confidence in the OBSI to address issues affecting consumers across the financial services industry. It also severely limits its scope and questions its operational independence from regulators and industry. A progressive regulator, keen on treating customers fairly and of enforcing the integrity of intent of its regulators, should have been very hard put to have pushed for this decision. It therefore raises issues with respect to the public interest intent of regulators and the way in which it was removed without consultation. What indeed were "regulatory expectations"?

The 2011 Navigator report noted that there were a number of investigations into systemic issues, none of which appear to have since seen the light of day. The most recent Joint Regulatory Committee annual report makes the following limited claim of action:

> "**Systemic issues**: Given the removal of the investigation of systemic issues from the OBSI TORs, the MOU provides for reporting by OBSI's Board of issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients. The JRC is in the process of establishing a protocol to define potential systemic cases and to set out a regulatory approach to address these issues when reported by OBSI.[24]"

We believe the main reason for the removal of systemic issue investigation is more to do with the gap between current regulation of minimum standards with respect to the transaction and the wider representation of services made by the industry – these wider services imply a higher level of accountability and responsibility with respect to the integrity of processes and disciplines under pinning the provision of investment planning and management advice. Many actually refer to what they provide as being in the client's best interests even though they operate under no such regulatory requirements.

Canada's regulators are currently, and extremely slowly, reviewing best interests standards as well as considering the efficacy of removing commissions from certain products. The CSA along with its self regulatory organisations are also in the midst of implementing enhancements to regulation of the transaction via the Client Relationship Management regime and systemic investigation powers may well conflict with the perception of regulatory success in this area.

Whereas OBSI's responsibility is to benchmark advice to good practices, the current remit of the industry is to a much lower standard. **The boundaries of good practice inadvertently border on the standards and processes of best interest standards** (good practises should be tangential to all

[23] https://www.obsi.ca/download/fm/147
[24] https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20150319_31-340_obsi-annual-report.htm

services offering financial and investment planning advice), **although to a much lesser degree for reasons that we will not develop here**. These issues are well known by the CSA and are clearly referenced in the OSC's 2004 Fair Dealing Model consultation[25]. There is therefore no incompatibility between good practises and current regulation of the advisory segment.

The following excerpt from the Working Committee reports into the Fair Dealing Model, although some 10 years out of date, is a good illustration of this divide and the culture behind it:

> "Client relationships are currently governed by common law, the civil code in Quebec and statutory and SRO requirements regarding KYC and suitability rules. **These rules are account and transaction-by transaction focused. As a result of this regime, a portfolio view of the relationship and suitability in the context of the total portfolio is not fostered.** With respect to this point, the WG agreed that the focus on the entire portfolio of the client as opposed to individual accounts would be desirable but not required. The practical implications of implementing such a structure would be significant, especially due to the range of client types and portfolio sizes which vary from firm to firm and client to client. The WG acknowledged the costs to support such a regime could have a significant impact, particularly on smaller firms. The impact on larger firms would also be significant due to the volume issues that they would face"

There is clear regulatory precedent though, on a global basis, for the improvement of standards of advice and that this is clearly in the public interest. The evolution of enhanced regulation and independent external dispute resolution is well defined. The OBSI's power to investigate systemic issues was a clear threat to the regulatory status quo and the current transaction/product distribution culture of today's advisory component of the financial services industry. We are not dealing with one regulator, but a securities regulator and its SROs.

But the issues experienced by OBSI, and the regulators' reaction to these issues, were always more than just about the divide between good practises and what the industry is allowed to do, it was about a developing crisis in regulation in Canada.

The slow pace of reform in Canada had been long overtaken by preparation for improvements in standards and process abroad and eventually by its implementation in an increasing number of countries. The evolution of the Ombudsman model had also likewise progressed beyond the frame of Canadian regulation and financial standards. **The conflict between OBSI and minimum industry standards was heightened by the conflict between the development of international ombudsman standards and regulation and that taking place in Canada**. A key conclusion from this analysis is that Canadian EDR standards, for reasons of industry culture, history and structure, are incompatible with global best practises.

That said, and while we are firmly in favour of introducing best interest standards, we see no conflict between the objective of good practices and the investigation of systemic fissures contrary to good practises and an enhanced current regulatory regime. We recommend that powers to investigate systemic issues are added back to OBSIs powers if not for the simple fact that the success of the limited intent CRM project is itself dependent on good investment practises. The public interest should override!

We do not believe our regulators have fully thought this through and we see no transparency or accountability with respect to emergent and existing systemic issues communicated public by the JRC. The JRC itself and the transfer of powers to our regulators is retrograde step impairing the accountability and transparency of financial services in Canada. We would also point that regulatory communication on key issues (note best interest standards) has been extremely light and the

[25] http://www.osc.gov.on.ca/en/14286.htm

standard of accountability that attach to Canada's regulators are well below those of its international counterparts. The JRC risks becoming a structure where the higher global standards of the OBSI are swapped for the lower standards of the CSA and its regulators. We feel this is step back with respect to the issue of transparency at the very least.

Indeed, even industry associations have questioned the CSA's ability to effectively handle systemic issues and question their importance disappearing into the dark slow moving morass of these organisations:

> " One potential negative impact of the circumvention of an institution's internal escalation process is that a systemic issue may not be revealed until the OSC notifies the institution, or even until the OSC completes its investigation which could take a long time. In the interim, clients would be negatively affected."[26]

We note that in the OSC's Statement of Priorities there is no mention of systemic issues in the advisory market place. The only references made are to the capital markets and derivatives in particular. Mention is made in the 2014 Statement of Priorities[27] of the JRC and its MOU with OBSI and of a) "that mutual fund investors often have little knowledge about what they are buying" and b) "that suitability can be a problem and investors often have no understanding of the risks they are facing". Discussion of the Mystery Shopping exercise[28] which was reported on in September 2015 as well as research into mutual fund fees was also made. The Mystery Shopping exercise progressed no further than the initial investor meeting with actual transactions or strategies implemented and OBSI as far as we know do not specifically rule against trailers in their good practise benchmarks, so we see little guidance as to how the CSA is addressing OBSI's previous systemic risk mandate.

Statements regarding recent developments in the current SOP with respect to amendments to National Instrument 31-103 and its companion policy and the MOU with OBSI were also mentioned, but no mention of monitoring of systemic issues[29].

Looking at the IIROC 2014/15 Annual Report[30] no mention is made of the OBSI, and while there is mention of systemic risk as an area of upcoming focus, there is no explanation as to whether this capital market related or advice/transaction related. No mention of systemic risk/OBSI can be found in the 2014 Annual Enforcement report[31] or in the Annual Consolidated Compliance report for 2014[32] although numerous issues were noted that are indeed systemic.

> "The results of the review show that some Dealer Members were not collecting precise KYC information but rather, were assigning clients to one of a small number of investor profiles, based on general client information collected. The review also confirmed that, while the information collected relating to the client's current financial situation and investment knowledge was sufficiently thorough in most cases, the depth and quality of information collected regarding the client's investment objectives, investment time horizon and risk tolerance was much more varied"

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[26] https://osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20150504_15-401_canadian-bankers-association.pdf
[27] http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20140626_11-770_sop-fiscal-2014-2015.htm
[28] https://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf
[29] http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20150618_11-772_notice-statement-of-priorities.htm
[30] http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=B203B6F71AFF484B909DF5CACDB19B8F&Language=en
[31] http://www.iiroc.ca/Documents/2015/2034969d-b1ad-4f69-b060-4d2d1a38830a_en.pdf
[32] http://www.iiroc.ca/Documents/2015/a2470ccd-819b-4165-b82a-8004b6e1a8c9_en.pdf

> "...examiners continue to observe written internal control policies that are inadequate, in that they inaccurately or insufficiently describe the policies and procedures in effect at the Dealer Member. Often Dealer Members' written procedures are copied, nearly verbatim from the minimum requirements set out in Rule 2600, Internal Control Policy Statements 2 through 8, with little substantive description of processes specific to the individual Dealer Member, no description of who is responsible for performing the procedures, or how the firm evidences performance and supervision."

As the Ombudsman Association in its guide to Good Complaint Handling[33] explains, the role of the ombudsman is to "*formulate and promote standards of best practise*", of "*complaint resolution leading to positive change*", of identifying how "*organisations can improve the way they do things and reduce the likelihood of similar complaints arising in the future*.", "*to feed back information and relevant systemic advice*" and of "*feeding the outcome of systemic findings into best practises*". The absence of a role with respect to systemic issues narrows the scope and effectiveness of the OBSI.

We therefore express concern that the power to investigate systemic issues is tied to some extent to industry push back against the OBSI's investment loss calculation methodology and the refusals to comply with OBSI recommendations, as well as possible concerns over conflict that its focus on good practices would have on the more limited scope of the CRM. This is all at a time that the CSA decided to review advice standards in general as well as trailer fees. We would also point out that the CRM project timelines have also been pushed back on numerous instances and that OBSI changes have quite likely also been made in consideration of the workload involved in the CRM upgrade.

It is extremely difficult to rationalise the decision to withdraw systemic investigative powers in a frame in which the public interest is front and centre. Systemic issues are more likely to appear during periods of regulatory change, with respect to standards and rules, and this is likely a key vitiating factor in the decision. What we lack is an explanation and a rationale, or indeed a time frame and plans for the future with respect to the evolution of the ombudsman with respect to key issues affecting its independence, its scope of services and other key fulcrums of its mandate. We lack accountability, we lack transparency and these are also systemic issues.

Removal of segregated funds from OBSI purview

In the "Approved Amendments to OBSI's Terms of Reference and Board's Response to Stakeholder Comments"[34], of December 2013, the power to assess segregated funds was formally removed from the OBSI TOR without consultation.

> "To align with current regulatory expectations of OBSI's jurisdiction, the definition of a "Participating Firm" is being modified to specify that insurance affiliates of OBSI participating firms do not fall under our jurisdiction. As a result, OBSI will refer the investigation and analysis of segregated funds to the Ombudservice for Life and Health Insurance (OLHI), the ombudsman for the life and health insurance sector, which manufactures segregated funds and distributes them through licensed agents. Section 2(a) and former Section 11: "

We note further from "Approved Amendments to OBSI's Terms of Reference and Board's Response to Stakeholder Comments"[35], of December 2013:

> "change was made necessary after several participating firms began to object to OBSI investigating complaints involving segregated funds sold through their insurance affiliates, arguing they were outside of our jurisdiction. To determine regulatory intent, OBSI pursued

[33] http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf
[34] https://www.obsi.ca/download/fm/147
[35] https://www.obsi.ca/download/fm/147

the matter with securities and insurance regulators at all levels. We were told that, indeed, segregated funds are not regulated by securities regulators and could therefore not be within the scope of any rule that the securities regulators might make with respect to OBSI, necessitating a clarifying change in our Terms of Reference." [36]

We disagree that because a segregated fund is outside the jurisdiction of the CSA or its SROs that it should be outside of the OBSI's mandate. There are well defined arguments as to why a segregated fund investment can easily be analysed within a portfolio construct and why excluding a segregated fund allocation can make analysis unnecessarily complex and irrelevant. The removal of segregated fund investments from the OBSI mandate is also not compatible with good practise. It can only lead to bad practise. It is a breach of a fundamental ombudsmen principle. We also note that with respect to an investment loss calculation that an insurance company would not be in the loop and would be unaffected by any investment loss deliberation. OBSI seeks payment from the firm, not the advisor and certainly not the product manufacturer. The reasons given by the OBSI and the regulators make no sense!

There is precedent in the UK between the Pensions Ombudsman and the Financial Ombudsman Service for carefully delineating responsibilities for assessing pension's advice between the two bodies and we see no reason why the OLHI and the OBSI should not be able to come to some decision. We note that prior to the merger of the various ombudsman in Australia that the various ombudsman were coordinating activities and working together where relevant.

That the change was occasioned by firms who objected to OBSI investigating complaints at a time when industry frictions were running high raises further doubt over the real reason for the decision.

While a "protocol[37]" has been developed to transfer cases to the OLHI we do not believe the protocol itself covers the necessary practicalities regarding analysis and process that would at least ensure some consistency between the two ombudsman's decisions could be assured. We recommend that this issue be revisited and an agreement made to include segregated fund investments, once again, into the OBSI mandate.

We know of cases where individuals with demands on their assets have had all their mutual funds and securities sold and the proceeds invested in unsuitable high risk segregated investment vehicles. In this case neither OBSI nor the OLHI would be able to make a decision.

We also refer to the most recent OLHI independent review[38] that raises some doubt over the ability of the OLHI to properly assess a complex investment case with segregated content:

> "too few complaints are being raised to the OmbudService Officers for a more thorough review and recommendations…..after reviewing 104 files I have concluded that a dozen or more could have been raised to the OmbudService Officer level, for more in-depth inquiry and analysis…..I found a number of cases which I felt might have been unfair to the complainant by not being raised to the OmbudService Officer level."
>
> "The pursuit of fairness in complaint resolution may require OLHI, as well as the Insurer, to have access to specific legal, medical, financial and other advice. All of the foregoing are readily available to the insurer, but not always to the complainant and not to OLHI as matters now stand. One of the needs as related to me by some of the frontline counsellors at OLHI is

[36] https://www.obsi.ca/download/fm/147
[37] https://www.obsi.ca/assets/segregated-funds-or-other-insurance-investment-products-1427995667-5f602.pdf
[38] https://www.olhi.ca/downloads/pdf/Independent%20-eview-Report-OLHI.pdf

that they wished that they had available to them the right to consult legal, medical and financial professionals in cases when they need such advice."

"What OLHI needs is additional funding for access to specialized legal, medical and financial advice, and perhaps at times the advice of other specialists. Complainants can rarely supply OLHI with the specialized advice that it needs in order to make the playing field more level between the consumer and the insurer."

"Since OLHI has been in existence there have only been six references to a Senior Adjudicative Officer. An increase in the number of such references would increase OLHI's effectiveness and stature as a provider of dispute resolution services."

"Although there is an acknowledged "gap" in the industry pertaining to the inability to obtain compensation from independent agents, it is not a problem within OLHI's capacity to solve. A solution would be best found through a process involving regulators, independent agents, and the insurers."

Role of regulators & The JRC

The 2011 Navigator report made a number of comments that could be deemed as being critical of Canada's regulators, with respect to their lack of support for the OBSI, and noted that its strategic reforms were aimed at addressing the "structural weaknesses of OBSI's voluntary authority, the presence of a consumer voice and of strengthening regulator engagement , establishing safety valve mechanisms, strengthening confidence in governance."

"We will record our view that following such a showing of public opposition and non compliance by participating firms, for OBSI to continue to fulfil its public interest role, there is a compelling argument that regulators should enforce OBSI's authority in some substantive way"[39]

In the light of these comments we are underwhelmed by what we see to be the regulatory response: the hiving off of segregated investments, the retraction of systemic investigative powers, the failure to implement a key governance reform recommendation and the failure to address the issue of binding settlements. Importantly we are underwhelmed by the messages emanating from the new body given responsibility to oversee the OBSI, The Joint Regulatory Committee.

The JRC was not a Navigator recommendation and looks to be to date merely a formalisation of an existing function that the Navigator report suggested was being well satisfied, though there is nothing wrong in this.

In the detailed assessment of independence, point 1e (vi) (page 39) with respect to:

"to ensure sound relations and the accountability of the Ombudservice, all with a view to providing sound oversight of the activities of the Ombudservice so as to achieve the public interest objectives for which the Ombudservice is created"

Navigators assessment was as follows:

"Guideline met. We found that OBSI has, at Board level and at management level done everything that could be expected to meet this guideline. Regular consultative meetings are held with the relevant regulators, ad hoc and informal contact over any issues of concern are held and while there are frustrations, the feedback from both OBSI and the regulators is positive about the quality of the relationship."

[39] https://www.obsi.ca/en/download/fm/46/filename, p37

While JRC annual report does state a mandate that includes "promoting investor protection and confidence in the external dispute resolution system" the support of "fairness, accessibility and effectiveness of the dispute resolution process" and "communication and consultation among JRC members and OBSI" its actions to date lack rigour, direction and intent.

The JRC has "discussed compensation refusals...will monitor compensation refusal cases and consider patterns or issues raised by them" and notes that "While OBSI recommendations are not binding, the JRC expects firms to act in good faith when participating in OBSI processes". Yet we note that name and shaming and refusals to compensate continued beyond the publication date of the 2014 JRC Annual Report[40] and low ball offers, noted in the 2014 OBSI Annual report as being of considerable concern, have likely continued throughout the existence of the JRC.

If Canada's regulators have "enforced OBSI's authority in some substantive way" it has not been obvious. Apparently the JRC "is in the process of establishing a protocol to define potential systemic cases and to set out a regulatory approach to address these issues when reported by OBSI." but there is nothing of substance to support that anything has really happened.

We would be interested to hear about the "standardized form of quarterly reporting to assist in monitoring trends and patterns of complaints" and suggest that this be made public in the interests of transparency. Quite possibly the transition of new members to OBSI has taken up regulatory time and effort but this should be no excuse.

The Public Interest is being shut out of this forum!

Low ball offers

The OBSI 2014 annual report makes the following reference to low ball offers:

> "While the refusals are what OBSI is mandated to make public, we also note that the settlement of investor complaints for amounts well below OBSI's recommendations has been raising concerns as well. Consumers and investors should not feel coerced to accept reduced offers rather than face the possibility of a firm refusal of OBSI's recommendation, resulting in no compensation at all. Addressing both refusals of recommendations and "low-ball" settlements will be key priorities for the Board in 2015."

The problems of low ball settlements appear to have been clearly flagged in a December 2012[41] Investment Executive article which quoted Phil Khoury of Navigator.

> "Phil Khoury...says that OBSI's decision to start naming and shaming firms, "absolutely illustrates the case for OBSI to have binding powers, which in turn would require some of the other accompanying 'protective' recommendations, such as an appeal mechanism, governance reforms, etc."
>
> "'Name and shame' only works if there is enough shame," he adds. "The great risk for any 'name and shame' regime is that the naming becomes too commonplace for the 'shame' to have any serious, lasting impact on firm reputations."

[40] https://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20150319_31-340_obsi-annual-report.htm#N_1_1_1_2_

[41] http://www.investmentexecutive.com/article-details/-/asset_publisher/uOfAVucMj8hF/content/naming-shaming/pop_up;jsessionid=bXRu4yFzczJadxKuOeuEWggS?_101_INSTANCE_uOfAVucMj8hF_viewMode=print

> "If firms begin refusing OBSI's recommendations routinely, Khoury adds, "[OBSI's] credibility and ability to operate effectively will be seriously damaged."...And the harm will not be felt by just clients whose compensation recommendations are refused."

> "Khoury warns that "consumers will inevitably start accepting low-ball settlement offers" rather than run the risk of a refusal. More firms will play hardball with OBSI, too, he suggests, "using delaying tactics, resisting requests, making low-ball offers." Indeed, he warns, if "name and shame" proves ineffective, the whole system will suffer."

We consider the allowance of low ball offers to enter the complaint resolution process at the ombudsman stage to be a breach of OBSI's fundamental principles of independence, of fairness, of transparency and of clarity of purpose at the very least. We would most definitely recommend that this be stopped and that detailed information on the size of the problem be made public.

We would also refer to the 2011 Navigator report, section 7.5, in which the issue of low ball offers appears to be introduced. There were concerns with respect to this especially if this were to escalate!

Given that naming and shaming and low ball offers impact the larger loss calculations, the impact of these practises on the quality of outcomes is likely to be much more significant than is portrayed by OBSI in its summary statistics and we would like much more information on the numerics behind these issues.

Independent evaluation & key issues

The following provides additional comment with respect to the key issues noted in the "Request for Comment on the Independent Evaluation of the Ombudsman For Banking Services and Investments with respect to Investment-Related Complaints"[42]

We strongly recommend that these responses be read in conjunction with the analysis in the preceding sections as they provide greater insight into the key issues themselves.

Clarity of purpose

We will refer to the Ombudsman Association's Guide to Good Complaint Handling to help direct our comments in this section.

"***The primary (or core) role of office holders and their schemes is to look into complaints in a proportionate and impartial manner, and bring matters to a fair and reasonable conclusion***."[43]

We believe that the conflict between regulated minimum industry standards, reflective of industry self interests, and good practises, that have evolved over decades, as reflected in industry refusals to compensate and an increasing predilection for low ball offers, undermines the expectations of the core role of the OBSI and impair confidence in its ability to meet this role, in particular its ability to "bring matters to a fair and reasonable conclusion". We believe that low ball offers in particular, as they take place outside of any transparent medium, are a breach of process, an impairment of the necessary standards of fairness represented by the OBSI and represent in effect a gross breach of trust and confidence in the process and system. That they are allowed by regulators and the OBSI is concerning.

We do not believe that the cause of this impairment lies primarily at the feet of the OBSI. As noted by the 2011 Navigator report, the onus lies on the regulators to address these issues and the fact they are still occurring is moot. We express concern over the long term impact of industry push back and lack of overt regulatory support for the OBSI's assessment standards and processes and look to the current evaluation to assess the extent of any slippage in this regard.

Notwithstanding these comments we believe that the OBSI is capable of looking into complaints in a proportionate and impartial manner. The recent introduction of portfolio managers to the OBSI fold is also likely to cause OBSI to judge cases under different relationship standards and we would be interested in hearing how it is making this transition. OBSI standards of process with respect to the different registration categories is presently unclear.

Also according to the Ombudsman Association, the role of an ombudsman "***is wider than that of a regulator....It is also wider than courts or tribunals, which will generally be limited to considering whether action is lawful***." [44]

We feel that the industry assault on the ombudsman's ability to consider standards that conflict with those considered adequate by the industry may interfere with the ombudsman's necessary objectivity in assessing cases. We feel that the current environment is not conducive to the scope, freedom and independence of the OBSI. We feel this impairment on objectivity has already impacted its decision to remove segregated funds from its mandate and its failure to commit to public consultation in the removal of its systemic investigation powers. With regulator support OBSI appears to have subverted its reason for being.

[42] https://www.obsi.ca/en/download/file/625
[43] http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf
[44] http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf

A third point is made by the Ombudsman Association, "***we also have an important secondary role. As a result of our work, schemes are able to identify how organisations can improve the way they do things and reduce the likelihood of similar complaints arising in the future***". [45]

The removal of systemic investigative powers and the lack of transparency from regulators as to what issues OBSI have communicated to them, and with respect to action taken with respect to those issues, impair OBSI's ability to perform this important role.

With respect to leadership and vision, there is insufficient information and communication from the current Ombudsman to be able to define the attributes of the current leadership. The new ombudsman was a securities regulator and we are interested in assessing the degree to which this ombudsman will be able to demonstrate independence from regulatory culture and objectives as well as the necessary distance from the industry.

Trust is a confidence in the consistency and integrity of actions, and not a commonality of self interests.

With respect to clarity of objectives we would also refer to the Ombudsman Association good complaint guide; "***A further purpose of the process is to identify the reasons why complaints arose and were not settled by the organisation concerned. This may highlight a weakness in an organisation's administrative or complaint-handling processes, which can be brought to the attention of senior managers, who are accountable for making appropriate changes and improvements."*** [46]

Comments made previously with respect to "Industry complaint standards versus good practise" are relevant here. We believe there is a systemic issue with respect to standards considered acceptable by the industry and their internal complaint processes, and that this is a key part of the reason we have issues over refusal to compensate and low ball offers. We express concern over the ability of OBSI actions leading to "achieving quality outcomes that lead to positive change" [47] and we feel, as the Navigator report opined, that this is a regulatory responsibility.

The ability to assess the clarity and consistency of process requires a clear overview of individual cases and is not something we possess. The investment loss calculation methodology, issues with respect to suitability assessment and compensation limits based on publicly available information, are we believe sufficiently clear and we concur with Kenmar's comments on these issues.

While the limits of the mandate in terms of monetary amounts are clear, the ability to push through certain cases seems compromised given that the mandate has been questioned by a broad section of the industry, as evidenced by the various consultation submissions. Industry push back goes well beyond the naming and shaming and we would caution against using this as the key metric of risks to independence and other ombudsman assessment standards.

We do have issues with mitigation issues and investor responsibility for mitigation and agree with those points made by FAIR Canada in its submission on this issue (point 8 page 2 and 3 of their submission into Suitability and Loss Assessment[48]) and similarly with those made by Kenmar in its submission[49]at the time. We also agree with many of the observations made by Kenmar with respect to this section in its current submission[50].

[45] http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf
[46] http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf
[47] http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf
[48] https://www.obsi.ca/download/blog/328
[49] https://www.obsi.ca/download/blog/313
[50] https://www.obsi.ca/en/download/file/628

Other specific issues we have noted that may have bearing on clarity of purpose are as follows:

The current outreach program is feeble with most Canadian financial consumers not knowing their rights to complain. OBSI needs to focus on Canadians generally but also on ethnic communities and multiple demographic strata using a variety of communication channels and partnerships.

Out of mandate decisions: When the decision is made that a complaint is "out of mandate" a plain language letter shall be sent to the complainant on what steps to take. It is the conviction of SIPA that any investment portfolio that cannot be holistically investigated should be deemed " out of mandate". An example would be a portfolio consisting of securities and Segregated funds.

Governance

According to the Ombudsman Association's "Guide to principles of good governance"[51]: "'*Whatever governance arrangements are in place in any complaint-handling scheme, it is vital that they support and promote the integrity of the scheme and office holder and, above all, protect the independence of the office holder, particularly from those over whom the scheme has jurisdiction.*'"

Given the above we would refer the Evaluator to comments made the 2011 Navigator review to help assess current compliance with this key issue.

We remain concerned over the lack of specific consumer advocate representation and therefore the continued imbalance in the board's structure. We understand the reality over the need for industry representation in a non statutory scheme with limited regulatory support in certain key circumstances. The most recent communication on this mentions only that OBSI will be looking to increase representation to accommodate new member categories, but no mention of consumer advocate positions.[52] Similar comments have been made by FAIR Canada[53] in its submission to the 2012 Governance consultation. We consider the absence of comment, especially in the light of the Navigator report comments, to be in breach of good corporate governance and in some respects we treat this is a slight against the OBSI public interest mandate. Is it something not worth talking about? Is it something we can all ignore? We would like to know.

We do express concern over the apparent inactivity with respect to the OBSI's Consumer and Investor Advisory Council or rather the lack of transparency over action that has taken place. The 2014 Annual report comments on a 50 page report the Council had produced. This is clearly information that would have been most useful if it had been made available to those making submissions for the independent review. We note that in the past this "independent body" has been critical of many of the changes OBSI has made to its mandate (systemic issues, segregated funds etc) and we wonder if the "blackout" has something to do with the candour of their assessments and counsel.

We also express concern over board representation by industry members whose firms have refused to compensate investors following an OBSI investigation. We feel that this sends an incorrect message to the public, and directors where such conflicts of interest exist should be required to resign. The sense that we get from all this is that the "status quo" knows best what is best for OBSI. Those who represent the man on the street may have good intent but their views should not be taken seriously!!

We note that there is minimal transparency over the development of the annual budget and no transparency with respect to wages, salaries and expenses. The UK FOS model is a good example of transparency with respect to the financial side of an Ombudsman's operation.

[51] http://www.ombudsmanassociation.org/docs/BIOAGovernanceGuideOct09.pdf
[52] https://www.osc.gov.on.ca/documents/en/Dealers/ro_20141007_complaint-handling.pdf p 59
[53] https://www.obsi.ca/download/blog/361, pt 3 page 2.

The Ombudsman Association state 6 principles that underpin good governance: independence openness and transparency, accountability, integrity, clarity of purpose and effectiveness.

With the institution of the JRC and greater reliance on regulators for supporting its authority, as well as withdrawal of certain key investigative powers, we have to express reservations as to whether the OBSI's governance arrangements are indeed optimal with respect to the 6 principles noted.

That said, aside from concerns over procedure and fairness with respect to low ball settlements, transparency and due process with respect to certain key changes made post 2011, lack of transparency over board minutes and decisions and communications with the JRC, we believe that the OBSI appears to have the necessary procedural integrity with respect to global standards of good complaint management and they are sufficiently transparent and open with respect to most other issues and would probably agree that they have the structures in place to comply with good governance standards. We nevertheless feel that the OBSI has still failed to meet a standard that we feel is necessary to uphold the public interest.

With respect to independence we still note issues with participating firm compliance and would certainly like to see more feedback with respect to budget deliberation issues.

Specifically, in addition to comments made above SIPA recommend the following changes regarding corporate governance issues:

A. The 2011 independent review (the "Khoury" Report) recommended a consumer voice at the Board level through the introduction of seats for consumer/investor advocates. The Terms of Reference does not include such a provision beyond the competencies matrix for the Board (as a whole) including as one of its twelve criteria, knowledge and experience in "consumer and Investor issues". More emphasis needs to be given to knowledge and experience in "consumer and investor issues"; OBSI should have at least three representatives from consumer or investor representatives on its Board.

B. Community Directors (industry- independent directors) shall not have been employed in the financial services industry or be currently providing professional services to the industry. Community Directors should not have a close relative who is an employee of a participating firm. A two year cooling off period is inadequate per current provisions. There are plenty of qualified candidates from outside the industry from which to choose. Directors shall be limited to two terms to ensure continuous Board renewal.

C. Director independence should be better defined. OBSI could look to the Canadian Securities Administrators definition of independence set out in section 1.4 of National Instrument 52-110 or another definition used by comparable organizations to OBSI. Directors should sign off as independent annually.

D. No director should serve more than two, two year terms to allow continuous board renewal.

E. Charters for each board committee should be posted on the OBSI website and Chair/member names disclosed

F. Independent reviews of OBSI should be conducted not less than every three years given the fast moving dynamics of the industry and a plethora of industry reforms

G. The Tof R should be changed to provide for an independent review every 3 years not 5.

H. The Consumer and investor Advisory Council should be subsumed into the TofR

I. Board minutes should be publicly disclosed as should the full fee schedule The Board should effect an annual self-assessment. Two years is too long.

J. The full details of complainant satisfaction surveys should be publicly disclosed

K. The process for nominating and selecting Community Directors should be made public

L. The Board should define its benchmark standard as an Ombudsman – it should be a globally recognized standard such as ISO 10003

M. The Terms of Reference should set out whether it will involve its Consumer and Investor Advisory Council in the process used to identify director candidates (other than industry nominees).

N. 14, Transparency criteria should use the UK Financial Ombudsman Service as a benchmark

O. 15. By-laws should be changed to prohibit the termination of the Ombudsman without cause or good reason . This is actually a fundamental rule for an Ombudsman service. If not changed, OBSI is a pretend Ombudsman and its nomenclature should be modified so as not deceive complainants.

P. In its 2015 Annual Report a full explanation should be provided as to why the OBSI Board has permitted Low ball settlements to flourish and what is being done to prevent recurrence and what it has found regarding systemic issues . It is not clear how OBSI obtains or plans to obtain visibility on Low Ball settlements given that they are covered up by gag orders.

Q. No one corporate entity should have more than one Director on the Board as TD did several years ago .It was only due to the actions of investor advocates that the Board finally acted.

Independence and standard of fairness

The 2011 Navigator report detailed a number of issues impairing this guideline: funding issues, non compliance with OBSI recommendations, fractured relations with industry, directors failing to act in the best interests of the OBSI, pressure on industry directors to advocate on behalf of industry and lack of binding powers.

Many of the issues remain and many of its powers have since been reduced without sufficient explanation and no independent consultation. Naming and shaming continued till early 2015 and low ball settlements seem to have taken an increased vitiating role. There is still no binding powers and no mention of these powers with far too many other 2011 Navigator recommendations left hanging in limbo. The 2014 report suggested that funding issues were no longer an issue but there is little transparency with respect to discussions over funding and this is moot.

With respect to: "**To what extent do you consider OBSI provides impartial and objective dispute resolution services that are independent from the investment industry and participating firms?"**

It is clear from the need to name and shame and frictions between the industry and the OBSI that processes and methodologies appear to be independent of industry suasion but we cannot be definitive with respect to all analysis conducted. We are nevertheless interested in any changes to

dispute resolution since the last review in the light of the considerable pressure OBSI decisions have been under.

With respect to: "**In your experience, are OBSI's decisions based on a standard that is fair to both participating firms and investors in the circumstances of each individual complaint**?"

Basing decisions on good practises is a fair standard but fair does not necessarily mean balanced to competing interests irrespective of standards. We do feel that OBSI's focus on mitigation responsibilities by consumers may well be unfair, given the level of sophistication that is required at the portfolio construction level to be able to critically and confidently identify issues in portfolio balance and composition and to act appropriately, when in a relationship of trust. If anything, present regulatory standards are weighted against the consumer (this is not just a consumer advocate view but must also have been a public interest view in those countries that have advanced best interest standards and other regulatory upgrades) and we would welcome a move towards best interest standards and professionalism in the advisory based financial services industry. In this respect OBSI service standards have some way to go.

With respect to: "**When determining what is fair, to what extent do you consider OBSI's decisions are consistent**?"

We do not possess the information and data to make a definitive statement on this but given the cases we see publicised we believe the decisions to be fair and consistent with good practises.

The 2011 Navigator review found that OBSI carried out its service in a way that was "fair, consistent with its mandate and without undue legalism. Both sides to a complaint are provided with a fair opportunity to provide their views and supporting information. We found the OBSI obligations, procedures, and practise to be highly consistent with what is expected of EDR schemes internationally"

Processes to perform functions on a timely and fair basis

With respect to : "**Bearing in mind the GFC context, to what extent do you consider OBSI now maintains its ability to perform its dispute resolution on a timely basis and deal with complaints without undue delay**? "

It appears from the 2014 Annual report that OBSI are performing well in line with their 80% in 180 day timeline objective. Complex cases take much longer to complete and we would prefer that consumers are given timelines that better reflect the complexity of cases. Many small issues are likely to be cleared up within the 180 time limit while others may drag on beyond. Greater openness with respect to how long it could take to settle a case or come to an agreement would be useful. Timeliness would be improved by greater industry cooperation on complex issues but we do note that OBSI process improvements (noted in the 2014 annual report) are helping to shorten investigation timelines.

According to OBSI's 2014 annual report complainant ratings of process and outcome has improved: "On the question of whether the investigation was completed in a reasonable length of time, complainants who came to OBSI after the process changes were implemented gave us much higher ratings than those who came before. For investment complaints specifically, our average score on this question rose from 7.18 to 8.84 from complainants who received compensation, and from 3.82 to 5.17 from those who did not. (Scores on all questions are always lower from complainants who do not receive compensation)"[54].

[54] https://www.obsi.ca/en/download/fm/290/filename/Annual-Report-2014-1444055310-0ac88.pdf p 23

With respect to: "**Do you consider OBSI's processes (rather than its decisions) are demonstrably fair to both complainants and registered investment firm participants in the scheme?** "

Please see our comments to the prior section. From what we know of the loss calculation methodology and their approach to suitability analysis the process appears demonstrably fair. Many in the industry would counter that regulatory standards are more narrowly defined on a transaction basis with the parameters of the KYC defining the consumers transaction decision. The limited parameter to parameter suitability standard may indeed be closest to the benchmarks used in internal complaint resolution and a key reason why industry objects to issues of fairness in OBSI decisions.

A definitive statement would require a more detailed analysis of process and outcomes that we are unable to conduct. Nevertheless we note the positive complainant response regarding quality of service on page 52 of the 2014 annual report.

With respect to: "**Do you consider both parties have sufficient opportunity to be heard and respond to each others' submissions**? ", & "**Do OBSI staff keep in good contact with complainants and participating firms during an investigation/resolution process**? "

We would appreciate some analysis on this issue but from what we know in the Navigator report this was the case prior to 2011.

With respect to: "**What could OBSI do to improve the timeliness and fairness of its processes?"**

Clearly binding powers, greater regulatory involvement with respect to definition and support of good investment practices and vast improvements to the objectivity and fairness of industry internal complaint departments including the removal of the ability to use the ombudsman nomenclature. That said process improvements and tolling agreements appear to be adding value in this respect. But we would need a more detailed analyse of OBSI processes to make useful input here.

With respect to : "**What, in your view, are the key reasons for firms refusing to compensate, or to pay at OBSI's recommended amount**? "

These issues are discussed in sections dealing with "operational frame of reference". The 2014 report discusses some of these issues (Errors and omissions. Smaller firms etc) but as we have stated we believe that low balling is part of this spectrum as are the wider grievances over the standards used to arrive at OBSI decisions.

With respect to : " **How effective do you consider naming and shaming to be?** "

This was already adequately addressed in the 2011 Navigator report. The overall issue has more to do with the regulation of minimum standards. OBSI's remit to benchmark against good practices along with the development of ombudsman best practices globally have put the OBSI in conflict with the Canadian transaction culture and the internal complaint processes built along similar tracks. Regulators need to step forward and complete what they started back in 2004 with the Fair Dealing Model Consultation. As inferred, naming and shaming issues are the tip of a "non compliance with good practises" iceberg.

With respect to: " **What powers do you consider OBSI should, ideally, have**?"

We are in agreement with the 2011 Navigator report: binding powers, powers to investigate systemic issues, consumer advocate representation on the board and greater regulatory support of OBSI decisions. But the fundamental issue resides with regulatory standards and the divide between regulation and good investment practises irrespective of the level of accountability accorded to the relationship.

Fees and costs

Great transparency over the setting of the budget and the planning behind the financial demands of the organisation would be useful information to have. Much greater detail on staffing and other costs needs to be provided in financial statements and the UK FOS is a good benchmark here[55]. We concur with a number of Kenmar's submission comments here with respect to fees and costs.

With respect to: "***To what extent do you consider OBSI meets its obligations under the MOU with respect to setting fees and allocating costs?"***

We lack sufficient data and analysis on this to be specific.

With respect to: ***"To what extent do you consider OBSI provides fair value for money***?"

Again value for money is dependent on a detailed analysis of costs, processes and structures, but previous analysis by Navigator in 2011 suggests that the OBSI gives good value against global benchmarks. The 2014 annual report also notes a number of certain efficiency improvements.

Resources

With respect to: "**In your view, to what extent does OBSI have the appropriate resources to carry out its functions and to deal with each complaint thoroughly and competently?"**

We note that there is little communication from the OBSI regarding financials apart from annual reports and independent reviews. We also note that there are currently no board minutes published that would provide insight or any other substantive documentation that could provide detailed insight into this issue.

Funding in 2011[56] was some $8.6m, little different from 2014's $8.33m[57] and although we understand TD have since left other members joined in 2013 (bank membership up 15%) and 2014 (bank membership up 7%).

Sticking our fingers into the air and guessing we would suspect that OBSI could be at risk of a funding shortfall in the event of a surge in complaints. The 2014 report states that funding needs are more adequate for a number of reasons, one of which was that the back log of cases has since been dealt with and the surge in case load following the 2008/2009 financial crisis has abated. We also note the profile of caseloads on a year by year basis (noted in the 2014 report) showed a substantial increase in caseloads post 2008 that appears unlikely to return to pre crisis levels. We suspect that more sophisticated budget management may be needed.

One indicator that may suggest funding constraints is the cessation of full reports for those complaints where the expectation of compliance with the OBSI settlement recommendation is unlikely and the other is the continued search for operating efficiencies.

Overall we lack sufficient information to have confidence that funding levels could be quickly raised to meet higher workloads, although this does not necessarily mean that this is the case.

[55] http://www.financial-ombudsman.org.uk/publications/directors-report-2014-15.pdf
[56] https://www.obsi.ca/en/download/fm/69/filename/Annual-Report-2011-1426076816-6a324.pdf p70
[57] https://www.obsi.ca/en/download/fm/413/filename

Accessibility

We would defer to Kenmar's comments in its submission on this particular section but have nevertheless the following additional comments to make:

The OSC's "Getting help with your complaint" introduces the OBSI far too late in the document and even then fails to raise the importance of the service for the majority of individual complaints above arbitration and legal options.[58]

Compare the OSC's approach to the UK's Financial Conduct Authority's document where the Ombudsman is much more clearly highlighted.[59]

Worse still in IIROC's document the OBSI is placed below arbitration on page 9 of the document. One could be forgiven in believing that IIROC do not want investors to use the OBSI at all[60].

Another example of an extremely poor road map to the OBSI for consumers is shown at Scotia's site. Their own "ombudsman" who provides an impartial review is sat above the OBSI who is only "independent". We believe that the OBSI should sit well above a firm's internal "ombudsman" a term we also believe that be removed from all internal complaint processes.

We raise these points over concern that only a small percentage of those with complaints likely end up being referred to OBSI. In the UK only some 5% to 10% of complaints received by firms are referred to the ombudsman.

> "There is a risk that many consumers are vulnerable to pressure from firms to accept a resolution to a complaint which is not in their best interests, where they are unaware that they can pursue their complaint further with the ombudsman service. Currently, only 5-10% of all complaints received by firms are referred to the ombudsman. The ombudsman service reports evidence that only 20% of consumers think of the ombudsman service, without a prompt, when they are asked where they should refer an unresolved complaint (although a far higher proportion of consumers recognise the ombudsman service when prompted).3 It is likely that some consumers are not referring their complaints simply because they do not know they can. These observations are consistent with the results of our own survey of consumers"[61]

The FCA's consultation on "Improving Complaints Handling"[62] is well worth reading.

Systems and controls

We would refer you to Kenmar's submission for specific comments on this issue. We lack access to the documentation that would allow us to comment on these issues.

Core methodologies

With respect to:***"In your view, have OBSI's processes for developing or changing core methodologies been transparent and appropriate***? "

We believe yes if you refer to investment loss calculation and no if you refer to segregated funds and systemic risk changes.

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[58] https://www.osc.gov.on.ca/documents/en/Investors/res_making-a-complaint_en.pdf

[59] http://www.fca.org.uk/consumers/complaints-and-compensation/how-to-complain
[60] http://www.iiroc.ca/investors/makingacomplaint/Documents/InvestorProtection
[61] https://www.fca.org.uk/static/documents/consultation-papers/cp14-30.pdf
[62] https://www.fca.org.uk/static/documents/consultation-papers/cp14-30.pdf

With respect to: "***Have they allowed sufficient opportunity to provide external input? Did OBSI publish its response to the consultation and explain its decisions***? "

We believe yes if you refer to investment loss calculation and no if you refer to segregated funds and systemic risk changes.

With respect to "***Have the changes achieved what they intended***?"

With regard to the investment loss calculation, this is difficult to discern without access to the necessary data and information.

Information sharing

We note the following from OBSI's 2014 Annual Report but there is nothing more of any detail provided by the JRC or OBSI in any other communication:

> "Among the items discussed throughout the year were: the impacts of OBSI's process changes; implications of compensation refusals; matters arising from the expansion of OBSI's mandate to include portfolio managers, exempt market dealers and scholarship plan dealers; and issues that OBSI brought forward that arose out of specific complaints but had broader complaint-handling system implications"

We note that section 7.1 of the 2011 Navigator review stated that the function the JRC seems to be now fulfilling was already being satisfied.

> In the detailed assessment of independence, point 1e (vi) (page 39) with respect to:
>
> "to ensure sound relations and the accountability of the Ombudservice, all with a view to providing sound oversight of the activities of the Ombudservice so as to achieve the public interest objectives for which the Ombudservice is created"
>
> Navigators assessment was as follows:
>
> "Guideline met. We found that OBSI has, at Board level and at management level done everything that could be expected to meet this guideline. Regular consultative meetings are held with the relevant regulators, ad hoc and informal contact over any issues of concern are held and while there are frustrations, the feedback from both OBSI and the regulators is positive about the quality of the relationship."

We do have concerns over the effectiveness of the information transfer in the light of the removal of systemic investigation powers and the fact that if any issues are discussed these have yet to see the light of day.

Transparency and accountability

With respect to: "***To what extent do you consider OBSI provides adequate accountability to participating firms and the public?*** "

We certainly feel that the independent review process is a key driver in providing transparency and openness with respect to issues affecting the OBSI's ability to meet its service objectives. We find communication on a number of issues to be less than satisfactory though: we would like to see board minutes; more detail on issues it considers worthy of regulatory input and other confidential information passed to regulators; actual public access to the work of the Consumer and Investor Advisory Committee; more information on low ball offers; consultation on key changes to terms of reference as well as more regular status updates on implementation of independent review

recommendations; greater detail in financial statements; more information on final decisions and greater numbers of case examples to name a few.

With respect to: "***What further information could OBSI provide to assure stakeholders as to its effectiveness and efficiency?"***

See the above. We would note that since April 2013 the UK FOS has been required, under the Financial Services Act 2012, to publish all ombudsman's final decisions and to date have published more than 60,000 decisions on their website. The online "decisions database" is searchable by product type, outcome and key words.

With respect to: "***To what extent do you consider OBSI's process for dealing with complaints about its own service are transparent and effective***?"

We do not have sufficient data on this but we are aware of the processes used in Canada and in other jurisdictions.

Summary & Conclusion

The OBSI is of such fundamental importance to developing good practises in the investment industry in Canada but, like the proverbial canary in the coalmine, it is picking up the toxic fumes of regulation that allows minimum standards of advice linked to a bygone age.

Global best practises in regulation and in complaints have bypassed Canada, and the OBSI, an organisation much more closely bound to international best practises than the CSA and its SROs, has borne the brunt of its defence of the public interest through its steadfast application of good investment standards in its loss assessment process and methodology. Much of what see to be friction between the industry and the OBSI is in fact friction between allowable regulated standards and good investment practises.

Let us be clear, the current conflict is not about the introduction of best interest standards or the removal of commissions but a failure on behalf of the status quo to act in the public interest under lesser outdated standards. OBSI does not in our opinion follow best interest standards in its approach to loss calculation, but a move to best interest standards would in our opinion see an improvement in the outcomes for the public interest.

We feel that we have entered the slippery slope that the 2011 Navigator report warned about. Powers of investigation into systemic issues have been jettisoned without due process, good investment practices with respect to insurance fund investment components have been sacrificed, important communication and deliberation has been transferred to regulatory and the consumer position on the OBSI board has been placed in a far off dark place. We see the hand of the regulators, the same hands that have idled with respect to necessary change in the industry for decades.

The OBSI is necessarily bound by the highest standards necessary to place the public interest first. The unnecessary non compliance and resistance by the industry with respect to OBSI public interest standards is poisoning its foundations. As the 2011 Navigator report surmised: the OBSI has all the structures and processes necessary to perform its functions but is being hindered by weak regulatory engagement. The issue is that of enforcing and regulating good standards as a basic requirement and that is before we even get to higher order issues such of best interests and conflict free advice.

We believe very much that best interest standards are needed and will eventually be introduced but the road will be a long one. In order to proceed along that road we need a strong independent OBSI that is allowed to address the wide range of advice, complaint and systemic issues that have edified into the foundations of the financial services industry in Canada. To do this we need regulators to actively engage. Hands off with the light touch!

Just as Douglas Melville railed against the removal of OBSI's powers with respect to banking complaints we rail against the removal of powers to investigate systemic issues, the lack of binding powers, the lack of a consumer voice, the low balling and non compliance and resistance and much more and ask our regulators to step up.

As it is Canadian EDR standards, for reasons of industry culture, history and structure, risk becoming incompatible with global best practises.

Yours Truly

Stan I Buell

Appendix A – Other comments

We note below a list of other comments we have received for inclusion in this report but did not have the time to incorporate:

1. The board should show cause why it continues to refuses to provide an absolute timeline for expected resolution time. The 80%/180 days timeline is useless to victims considering the use of OBSI . Tof R should provide that Investigations should be prioritized in distress cases.

2. The Board has allowed bank “internal Ombudsman “ to flourish – it should explain why it has not reacted to this kidnapping of the term “ Ombudsman” and the poor quality of IIROC complaint brochures regarding OBSI

3. The board must clarify the criteria OBSI staff is to use when deciding to mediate vs investigate . It should also allow complainants to share the investigation report with police and law enforcement if fraud is suspected.

4. The board should define a minimum period for public consultation responses – 90 days is recommended . Previous consultations have tended to be too short in duration.

5. The Board needs to build a more robust Outreach program and provide relevant funding . Too many Canadians are unaware of OBSI and the free service it provides in complaint resolution

6. The board needs to step up pro-active engagement with consumer groups and investor advocates , visibly and meaningfully

7. A number of individual issues are disturbing. When taken together the number of Board mistakes and malpractices is shocking. It is almost as if Obsi has been designed to fail investors.

8. OBSI is not regarded as independent and is not trusted by Main Street. The general feeling is that a binding decision mandate with weak or biased governance can be dangerous. There is overwhelming evidence that current board practices, decisions, indecisions and inactions are harming retail investors. There is also the crucial question of what happens to Obsi if a Common regulator comes into effect.

9. Despite the shortcomings, OBSI represents a no- cost way to have a complaint addressed. Civil litigation for all but large losses is prohibitively expensive in Canada. OBSI has been set up to sort out complaints that financial consumers and financial businesses aren't able to resolve themselves. The Ombudsman is there to settle complaints and ensure that the financial consumer is treated fairly and made whole.

10. The role of the ombudsman/arbiter is to determine whether a wrong has occurred and what a fair settlement is. The role of the ombudsman is **NO**T to get the two sides to agree i.e. mediate -the role is to make whole according to the ombudsman's assessment of the facts of the complaint using a disciplined loss calculation methodology.

11. OBSI's governance is weak and is perceived to be weak. It's outreach program is feeble with most Canadian financial consumers not knowing their rights to complain. OBSI needs to focus on Canadians generally but also on ethnic communities and recent immigrants using multiple communication channels.

12. There is growing concern about the inappropriate use of the term Ombudsman to describe bodies that do not conform to, or show an understanding of, the accepted Ombudsman model

and its 200 year history. When the concept of Ombudsman is applied inappropriately, **public confidence** in the role and independence of the Ombudsman institution is at risk of being undermined and diminished. An 'ombudsman' office under the direction or control of an industry sector or a government Minister is **not** independent. **An office set up within a company or government agency as an 'internal ombudsman' is not independent.** (http://www.anzoa.com.au/about-ombudsmen.html#name-use-and-misuse).Example: TD Bank's internal "Ombudsman". In our opinion, Regulators should intervene and force a name change. In New Zealand the term is protected by legislation.

13. Some potential complainants - especially those who rely on community funding - fear negative repercussions from the financial institutions. Regulators should make it very clear that any attempt to disadvantage or threaten to disadvantage a person for exercising his/her right to complain to OBSI would in itself be taken as not dealing fairly , honestly and in good faith. Dealers and banks should therefore take the necessary steps to ensure that their officials are aware of this and act accordingly.

14. What indicators can be used to assess an ombudsman's added value? Most are qualitative. Without giving an exhaustive list here, there are several elements of an organization's positive performance to which an effective ombudsman can contribute. For example, he or she can inspire self-regulation, and his or her input often fosters the development of an organizational culture focused on satisfying the clientele's needs. The results of an ombudsman's actions provide the model for response in other similar situations; this is known as the collective effect. The instructive nature of the ombudsman's recommendations, which lead to lasting improvements, has an undeniable qualitative value. These improvements can also have a substantial financial value.

15. One of the challenges facing most ombudsmen today, in Canada and elsewhere, is ensuring that an organization's response to pressure to improve its administrative performances does not result in the unjust or unfair treatment of any investor or client, and that every individual's rights is upheld in all circumstances. OBSI certainly faces unrelenting hostility from industry participants -regulators need to proactively demonstrate their unwavering support of OBSI through rules and enforcement actions.

16. In general, there is no question that the resources invested in an ombudsman's office has the potential to provide a return well beyond the monetary value of the investment.

17. An independent assessor is currently examining OBSI practices and mandate and will write a report with concrete recommendations for reform in mid - Fall. We remain cautiously optimistic that major reforms will come. Our comment letter is posted on the OBSI website www.obsi.ca .Please consider filing a letter with your recommendations before the Feb. 19 deadline.