

Via email

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OBSI Governance Review – request for public consultation

I welcome the chance to comments on this vital topic. In writing this letter I have relied on the Ombudsman Association document **Guide to principles of good governance**. <https://www.ombudsmanassociation.org/sites/default/files/2020-12/BIOAGovernanceGuideOct09.pdf>

From 50,000 feet, OBSI governance looks fair and reasonable. There is a majority of community directors and the Board is not permitted to get involved with individual cases. The governance committee is run by a community Director.

But when one scratches below the surface we find that community Directors can be ex-industry if they pass the 2 year test. We discover that the powerful bank lobbyist, the CBA, has the privileged right to nominate Directors, one of which must end up being a Director. We see that certain types of Firms like those catering for the fast expanding exempt market cannot even put forward any nominees. On top of it all, the Board has had a Director, a senior executive at a Firm, that has had to be publicly Named and Shamed because it refused an OBSI compensation recommendation.

The worst part is that Board has long known of these fundamental flaws and done nothing about it. Only now, with Professor Puri's report in the public eye, is the Board consulting on one aspect of OBSI governance.

It is not just the nomination process which is unfair, questions need to be asked about Board behaviour:

Why did the Board give commenters just 28 calendar days to provide comments to the Independent reviewer?

Why did the Board give up OBSI's systemic issue investigation mandate?

What reason is there to explain the 9 year wait for a Consumer Director to serve on the Board after two independent reviews had recommended inclusion?

What caused 4 of 6 Canada's Big banks to resign from OBSI in favour of a competitor bank complaint resolution body?

Why did the Board cease publishing minutes of meetings?

Why has there been no change in the \$350,000 compensation limit despite years of inflation?

Why are qualified individuals from certain registration categories precluded from ever being nominated for a Directorship?

Is OBSI empowered to reject all the Director nominees put forward by IIROC/MFDA if they are found wanting?

Why was it left up to Professor Poonam Puri to put forward simple ideas to patch the clearly broken systemic issues protocol?

What caused the Consumer and Investor Advisory Council (CIAC) breakdown and subsequent suspension?

Why were details of low ball settlements not made public despite calls for transparency?

Why did the FCAC challenge the Board re poor reporting of systemic issues?

Why has the exempt market loss calculation issue festered for years?

Why has the Board permitted recognition of unregulated, non-independent bank "ombudsman" response letters?

Why were CIAC reports to the Board not transparent to the public?

Why do Director searches not permit nominations from the Canadian population?

How often has the Board engaged with consumer advocacy and seniors groups?

Can the Board conduct a consultation without a nod from the Joint Regulators Committee?

Why does the Board promote a Public interest mandate when it cannot make binding decisions or investigate a pattern of or trend in complaints?

Has OBSI routinely provided suggestions to regulators and/or Firms on how to reduce the number of complaints about financial institutions?

Why was there a long delay in releasing the Independent Review Report for banking?

What factors are in the skills profile used for Director selection?

Will the Board address every one the 22 improvement recommendations (investments) and 25 for banking made by Professor Puri? When?

Clearly, the status quo should not be acceptable to regulators although they have knowingly allowed this governance performance to prevail for years.

I can only conclude that while the current Director mix looks like it can provide strong stewardship, there is plenty of evidence improvements are needed if OBSI is to be trusted by complainants and act in the public interest.

From a consumer perspective, I think that all nominations for Directors should be open to the public. The number of Directors independent of the industry should constitute the majority. In aggregate, the skills, background and grass roots knowledge within the Directors should be sufficient to enable OBSI to efficiently function as a trusted ombudsman service. Directors from industry should have a demonstrated capacity to see beyond the narrow interests of the financial services industry. They should have a CV that highlights their support of human and consumer rights. Directors from consumer ranks should meet a specification defined by the Board that would include a track record for advancing consumer protection and understanding of the obstacles consumers face in transversing the industry's complex complaint processing system.

A Consumer and Investor Advisory Council is a low cost way for the Board to be made aware of consumer concerns and improvements OBSI should make. Such a Council is particularly important in the Canadian context. It should be re-activated now so it can participate in the analysis of the comments received to this consultation.

The Board can also obtain information for decision making by conducting stakeholder surveys, conducting empirical research and by analyzing complaint data for root causes. In the end, OBSI should be judged by how well individual complaints are resolved, industry complaint handling is improved based on OBSI feedback and the degree to which client complaints decline over time. In theory, OBSI should be constantly working to put itself out of a job. OBSI is not a regulator but it has a critical role in the financial consumer protection infrastructure and as a thought leader in bringing about constructive change. Its governance must be of the highest order.

I hope this commentary is useful to you.

It is OK to publicly post this letter on your website.

Sincerely,
Arthur Ross