



January 31st, 2023

Mr. Mark Wright
Director, Communications and Stakeholder Relations
Ombudsman for Banking Services and Investments
20 Queen Street West, Suite 2400, P.O. Box 8
Toronto, ON M5H 3R3

Sent via email : publicaffairs@obsi.ca

Dear Mr. Wright,

Re: OBSI Governance Review

Portfolio Strategies Corporation is pleased to provide our comments in regard to the Ombudsman for Banking Services and Investments (“OBSI”) Governance Review.

About Portfolio Strategies Corporation

Portfolio Strategies Corporation (“PSC”) is a Calgary based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a mutual fund and exempt market dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland & Labrador, Nova Scotia, New Brunswick and the Northwest Territories, and as an investment fund manager in Alberta and Ontario.

Introduction

We appreciate the opportunity to provide feedback and comments to OBSI as it endeavours to review and possibly improve upon its organizational governance. We believe it is critical for OBSI to consider the perspectives of all stakeholders, both from the financial services industry and informed consumer advocates. We feel that this balance between industry and consumer advocates is crucial to ensuring that OBSI operates in a fair and effective manner, having taken its guidance from an informed board. The executive summary in the OBSI Governance Review – request for public comment makes several references to board member candidates having “ the skills and competencies needed to effectively oversee OBSI”. It goes on to say that the 2021 Review, in addition to recommending linguistic diversity, “Recommended that the board

consider adding other metrics in its diversity deliberations, including indigenous ancestry, membership in a visible minority community and disability, to better align with emerging best practices and the standards established for federally incorporated businesses under the Canada Business Corporation Act. OBSI’s board agrees with this recommendation and will be considering implementation internally”.

The two statements above do not appear to be aligned at first glance. OBSI should continue to focus on skill sets for its board member candidates who do not directly interact with complainants or its industry members. While some federal and provincial organizations could benefit from input from visible minorities, disabled people, or those with indigenous ancestry (housing, banking, police relations, public transportation access to name a few) these are not **skill sets** required to guide a financial services ombudsman at the board level. The references to what Australia and the UK are doing with regard to diversity and inclusion are silent on this point. We respectfully submit that OBSI should select the best candidates available for board positions, regardless of their ancestry, physical attributes, or linguistic skills. Management can take these considerations into account when hiring internal staff, as long as they have the necessary skills, education and experience to investigate client complaints against OBSI members.

Our Response to Your Questions

Question 1:

Should OBSI’s board continue to have designated board positions for current industry participants and/or consumer advocates, or transition to a system without such designated positions?

As stated in our introduction above, we feel that the expertise available from financial services industry participants and informed consumer advocates provides a good balance to guide OBSI in how it conducts itself for the benefit of all stakeholders, so we recommend that OBSI continues to have designated board positions. We also feel that the OBSI board should be equally balanced between industry participants representing all manner of members and community directors that could include a consumer interest director. It is not clear to us why OBSI has a bylaw that “ provides that the other members of the board must be unaffiliated community directors and that community directors must at all times outnumber industry directors.” There is no balance in such a bylaw, and it is counterintuitive if OBSI truly wants a board with deep knowledge of the issues and different perspectives.

Historically OBSI's board has had one member from each of IIROC, the MFDA, and the Canadian Bankers Association. We feel that these should be maintained but we also feel that the board should include industry members representing exempt market dealers, portfolio managers, and scholarship plan dealers. This request for comments has noted the rise in credit union participation so we feel that credit unions should also have a seat on the board, to provide input on what their members may expect, which may not always align with the thoughts of our dominant banks.

Question 2:

If designated industry and consumer board positions are continued, what is the appropriate composition of OBSI's board with respect to the proportion of positions designated for those with specific industry or consumer expertise or who are independent?

We feel that the OBSI board should be comprised of 9 members or the maximum permissible number of 11 members. This should include one consumer advocate with the balance of members split evenly between financial industry members and independent members.

On page 7 of the OBSI governance review document it has been noted that a new SRO has been created in 2023 that is effectively a merger of IIROC and the MFDA. The writer appears to express concern that "without further action, this merger will lead to the new SRO having the right to nominate candidates for two industry director positions on OBSI's board". The implicit concern is that there will be a duplication of interests represented on the board, but the writer fails to recognize that many existing MFDA members will continue to be "Mutual funds only" dealers, whose interests will be very different from investment dealers with a much broader product line up, including higher risk securities that mutual fund dealers will not or can not sell due to restrictions on their registration.

Additional comments on page 7 of the paper refer to a skills matrix, and reads, "This focus on appointing individuals with the skill necessary to properly fulfill their role as directors, rather than "representatives" to voice the concerns of a particular group, is in line with governance best practices" is both insulting and uninformed. To say that industry members almost always voice concerns of their particular group, instead of using common sense to speak out or vote for the good of all stakeholders, is misplaced and has no basis in fact. It is wild speculation that takes away from the serious issues under review in this paper.

Question 3:

If designated industry and consumer board positions are continued, should industry Director positions continue to be nominated by specific industry organizations, or should OBSI transition to a system of more general nomination of current industry participants?

We would prefer to see a process where industry participants can nominate director candidates, by industry class. Under the current process there is a sense that industry associations repeatedly nominate or recycle the same individuals over and over again, whether for political reasons, or worse, to appease the big Canadian banks who also dominate the IIROC or MFDA membership.

The three lead organizations (CBA, IIROC, MFDA) could still help manage the process by eliminating unsuitable candidates that lack the necessary skill set before the slate of remaining candidates are put forward for participants to vote on.

Question 4:

If designated industry and consumer board positions are continued, how should Consumer Interest Director nominees be identified?

Consumer interest director nominees could come forward by contacting the few organizations that identify themselves as representing the consumer. OBSI could also post the available director positions through financial services media publications, which are closely followed by these same consumer advocates. OBSI should still ensure that such candidates have the necessary skills and knowledge to make a meaningful contribution to the OBSI board.

Question 5:

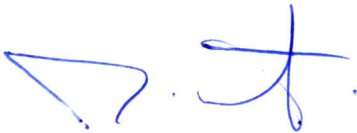
Beyond designated board representation, how should OBSI ensure that the interests and expertise of industry and consumer stakeholders are incorporated into the organization's decision-making process?

We feel that the interests and expertise of industry and consumer stakeholders are adequately incorporated into OBSI's decision making process by its current use of semi-annual roundtable meetings with industry associations, consumer advocates and advocacy organizations, and CIAC. The typical duration is noted to be only one hour, which includes presentations from the CEO and other senior management team members. A one-hour meeting seems far too short if the intent of the meeting is to elicit stakeholder feedback. We agree that OBSI should also engage in roundtable discussions with EMDs, PMs and credit unions to get feedback on other member types.

Conclusion

Current OBSI bylaws severely limit the number of financial service industry directors on its board for no obvious good reason. To be truly effective OBSI should change its bylaws to provide for equal representation by industry and consumer advocates on its board.

Yours Truly,



Mark S. Kent, CFA, CLU
President & CEO