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

To: Deborah Battell dbattell@gmail.com

CC Mark Wright mwright@obsi.ca

Kenmar Associates is an Ontario- based privately-funded, non-profit organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com. Kenmar also publishes the Fund OBSERVER on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims. Kenmar are of the conviction that quality education materials and a responsive continuing education program are the foundation of professional advice giving services to retail investors.

Kenmar are pleased to submit comments as follows:

OVERVIEW

Kenmar has been a supporter and constructive critic of OBSI since its inception. OBSI is a core component of Canada's investor protection framework. OBSI is an industry funded entity with an annual budget of \$ 9.7 million, about the size of the annual CEO compensation of a major Canadian Bank. With an increasing number of Canadians living on fixed income, a decline in Defined Benefit Pension plans, a weak economy and a low return environment Canadians need an independent, trusted and respected dispute resolver as never before. OBSI was not created as a simple private supplier contracted by each participating dealer or bank; they were created to have a much broader public interest and public policy function, balancing the needs of all stakeholders. It's a role we believe they should be allowed to fulfil.

OBSI is in a unique position. An Ombudsman can serve as a bulwark of financial consumer democracy in troubled times, protecting Canadians and helping industry, regulators and government to improve in the face of a tough economy and fiscal constraint. See <http://www.gouvernance.ca/publications/09-06.pdf> for a review of the Ombudsman as a producer of better governance. Of course, we must deal with reality.

"A significant barrier to higher standards is the de facto regulatory control of the retail financial services industry by self- regulated organisations. A

complaints process beholden to the current regulatory structure (including that of the financial ombudsman OBSI), is not going to be able to address the systematic issues that drive poor financial advice in the first place. Note that OBSI is constrained by industry minimum standards which are more or less determined by self-regulated organisations. Since these standards are influenced by industry interests, OBSI can hardly be considered to be truly independent of the interests of the industry. "- A. Teasdale (CFA)

OBSERVATION: In recent years OBSI has in fact challenged abusive industry practices and made principled, fair recommendations. Industry reaction was swift, harsh, vicious and unrelenting. In 2015, the highly respected Ombudsman and Director of Communications resigned and have since been replaced. This was neither OBSI's nor the CSA's finest moment.

RECOMMENDATION: Despite the constraints, amend the OBSI mission statement to include an objective of providing feedback for continuous improvement of financial advice processes, practices and tools. OBSI's complaint database can be used to identify systemic issues at the national, regional or dealer level. OBSI should report on a select sampling of issues in a generic/anonymous way so that lessons can be learned by the industry and the consumer will have another crucial education source. The database could, if used properly, provide an insight into long-term industry issues. For example, excessive borrowing, toxic securities, undisclosed fees, deficient complaint handling processes etc. It would be a travesty not to make maximum use of this treasure trove of information.

Investors were not pleased when the OBSI board took away its ability to investigate serious "systemic issues", a critical feature it proudly promoted a few years ago. Investor advocates muse that this decision was actually forced on OBSI by regulators who saw OBSI becoming too viable a dispute resolver and exposing too many embarrassing dark sides of industry practices. [A systemic issue is defined as an issue that will have an effect on people beyond the parties to a dispute] By reporting effectively on systemic issues and serious misconduct, OBSI could help raise industry standards and help consumers to obtain fair redress. OBSI now is to report evidence of a systemic issue to regulators but which one is important. To industry controlled self -regulatory organisations or statutory bodies such as the provincial securities authorities? Logic would suggest that this should be referred to the provincial regulators and not the SROs who may be tempted to deal with the issue with the interests of its industry members in mind or a more limited lense. As things stand now, systemic issues appear to be hidden from the public's eye.

RECOMMENDATION: Work with regulators to clarify the protocol for dealing with systemic issues, ensure it is effective and transparent to consumers. This will build investor confidence in the dispute resolution system, OBSI and regulators.

Another change included the revised mandate that OBSI not investigate any complaint involving insurance products (e.g. Segregated funds), referring

these issues to a relatively unknown (to many retail investors) entity ,the Ombudservice for Life and Health Insurance (OLHI) , even if they form a part of a larger portfolio that is the subject of a complaint to OBSI. In order to look at things fairly the whole portfolio has to be examined to get an understanding of the financial plan/objectives/risk tolerance and to determine if it is suitable or not. It is illogical to just look at select securities in isolation and not evaluate if the parts come together to make a well-designed portfolio or a fiasco. How can they then be split off into two different streams when a complaint is made to OBSI? The investment dealer complaint process is confusing and stressful enough without having investors deal with two Ombuds services This is just the kind of move that is 180 degrees away from the goals of a single point of contact for retail financial consumers and consistent practices and is inconsistent with the FAIRNESS STATEMENT. Split access is never in the investor's best interests.

RECOMMENDATION: Work with provincial regulators and politicians to tackle regulatory arbitrage.

After a change in the TofR led by its board, OBSI must submit itself to knowledgeable, independent third party evaluations of its operations at least every five years. This was previously three years. Given the unprecedented turmoil. change and reforms facing the industry and the enlarged OBSI mandate, the extension of the review interval made no sense. CRM2 itself will give rise to a whole new set of complaints concerning fees, misrepresentation and dual registration. Dealing with EMD's, PM's and crowdfunding portals will challenge OBSI processes to the limit. **RECOMMENDATION:** Establish a review requirement at least every 3 years .During the interval, regulators and OBSI must define a response to effectively deal with all issues raised in the assessment report.

There is no mention of the OBSI Consumer and Investor Advisory Council in the Terms of Reference. We believe that this important Council be encapsulated in the Terms of Reference (TofR) to prevent arbitrary limits placed on it or arbitrary termination of its mandate/operations. **RECOMMENDATION:** We believe this Panel should be funded as is the case with the OSC IAP and its role be incorporated into the TofR.

While banking is excluded from this consultation, we wish to reiterate that the approach to independent external consumer dispute resolution and redress taken by the Royal Bank of Canada and TD Bank does not meet agreed-upon minimum standards, has not had an appropriate level of involvement in its development by consumers, and has not been the chosen option of most banks operating in Canada, nor organizations representing the voice of financial consumers and investors. Kenmar are of the conviction that a single, regulated independent external ombudsman with a strong governance process is the best way to deliver banking dispute resolution and redress to consumers.

RECOMMENDATION: Politicians to introduce a national statute based financial ombuds

service.

We add parenthetically that we are also concerned that the desire to improve the speed of banking complaints may result in a loss of quality decision-making. Both OBSI directly and the Navigator report indicate that a substantial portion of the delays derive from a lack of co-operation from the firms facing consumer complaints. Again, we stress the point that regulators must vigorously enforce rules requiring dealer/bank cooperation if OBSI is to meet its cycle time targets. RECOMMENDATION: Regulators to demonstrate their insistence on cooperation via enforcement actions.

OBSERVATION: Kenmar are unaware of the impact, if any, the implementation of a Common Market regulator would have on OBSI. The Federal government must clarify exactly how OBSI will fit in.

In addition to responding to OBSI's specific requests, Kenmar wishes to address the following points, support for which will be found in the body of this submission.

- 1. It is essential that OBSI re-establish trust with investors by altering policies, and behaviours and increasing visibility and engagement in the investor community.**
- 2. OBSI's governance and dispute resolution should be transparent, independent of the investment industry and sourced with the appropriate expertise.**
- 3. OBSI's complaint data base should be used to identify systemic issues at the national, regional, or dealer level.**
- 4. OBSI should report serious "systemic issues" to provincial securities regulators.**
- 5. OBSI should retain its mandate to investigate complaints involving insurance products where they relate to a financial portfolio complaint.**
- 6. OBSI itself, must be subject to independent evaluation once every 3 years.**
- 7. The Consumer and Investor Advisory Council should be encapsulated in the OBSI Terms of Reference and funded appropriately.**
- 8. OBSI's recommendations re investment complaints should be binding.**

It is worth noting that a significant number of our recommendations refer to actions to be effected by regulators and politicians.

Key issues

The independent evaluation will consider whether OBSI is operating in accordance with its obligations under the MOU as well as whether any operational, budget or procedural changes would be desirable to improve OBSI's effectiveness.

The issues set out below cover both these matters as well as 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).

The issues outlined below may not be relevant for all stakeholders. Please respond to the issues of relevance to you. Please remember that this review is confined to OBSI's mandate with respect to investment complaints (not banking).

An alternative benchmark might be the effective approaches to key principles set out and accepted by the International Network of Financial Services Ombudsman Schemes (INFO Network) or ISO 10003 Guidelines for dispute resolution external to organizations.

From the time of its origin, OBSI has been viewed with suspicion by investors and treated with indifference by regulators. More recently, media coverage regarding Name and Shame fiascos have increased investor wariness. It is essential that OBSI re-establish trust with investors by altering policies and behaviours and increasing visibility and engagement in the investor community. Recent media quotes that OBSI views a bond of trust between OBSI and investment firms as critical to winning over those firms and persuading them to accept OBSI's findings is concerning - this kind of declaration causes more doubts to arise as to OBSI's support from regulators. A bond of trust is fine but it may be unreachable since most industry participants have at best lukewarm support for the idea of an independent ombudsman working on fairness principles. In particular, there should be no exception to the fundamental principle that an arbiter who recommends or orders consumer redress be independent in fact and perception.

RECOMMENDATION: Take the hard decisions necessary to improve the reality and perception of independence. To secure consumer confidence, OBSI's governance and dispute resolution should be: • Transparent • Involve informed and well-supported consumer participation • Offer a method of accessible dispute resolution process based on fairness • Accommodate a proper understanding of what constitutes consumer representation in its governance.

RECOMMENDATION: Kenmar wholeheartedly agree with the Consumer Council of Canada recommendation that there should be members of the board of directors of OBSI with a role and responsibility to bring to OBSI's governance independently sourced professional expertise, knowledge and perspectives on consumer rights and responsibilities and the factors that impact them. See also "Improving the Effectiveness of Consumer & Public Representatives On Delegated Administrative Authorities"

http://www.consumerscouncil.com/site/consumers_council_of_canada/assets/pdf/Improving_the_Effectiveness_of_Consumer_Reps_on_DAA_Boards.pdf

Clarity of purpose

Ombudsman schemes should ensure stakeholders know why the scheme exists, what it does and what to expect from it.

In your view:

- how clear is the purpose of the scheme and who it serves?

Purpose of scheme is clear to investors- to make investors whole. Some Industry participants do not seem to understand or want to understand the role of an Ombudsman. As noted, we are not happy that the Board removed OBSI's mandate to investigate systemic issues. RECOMMENDATION: Produce a deliverable citing opportunities for dealers to improve their processes or for regulators to clarify / strengthen rules giving rise to client complaints. That would be a real value-add to the wealth management industry.

- how clear is its mandate and the limits to this?

The limitations are very clear and a subject of some concern to retail investors. The \$350,000 limit has been in place since 2002, in effect cutting it by the amount of inflation. This is particularly important as boomers enter retirement and seniors begin significant annual withdrawals from RIFF accounts.

RECOMMENDATION: The Board should have an agenda item to review the limit each year. **Some senior investor issues we have previously identified include assistance investors with complaints filing, setting investigation priorities (such as seniors), special training for investigators and use of personal visits to gather information.** **RECOMMENDATION:** Define an action plan to ensure seniors-specific issues are addressed.

We would also be interested in any views on the appropriateness and scope of OBSI's mandate with respect to investment complaints.

There are a number of issues. These include the fact that recommendations are not binding, rejected recommendations go into a regulatory black hole, systemic issues are not investigated and complaints about portfolios containing insurance industry products cannot be investigated holistically.

RECOMMENDATION: This is an action for the CSA .**We are deeply concerned that the stress of having to handle complaints about banks that can unilaterally resign from OBSI with short notice may subconsciously impact the integrity of OBSI restitution recommendations .This stress creates an unhealthy tension among staff, that may , quite naturally, be worried about job security.**

RECOMMENDATION: We recommend OBSI management and Board consider ridding themselves of bank dispute resolution unless OBSI is given the sole mandate to deal with bank complaints.[Perhaps the Trudeau govt. will reconsider the policy of competing ombudsman in financial services and more importantly , establish a legislated national financial services ombudsman service.]

The January 2012 World Bank Report "Resolving Disputes Between Consumers and Financial Businesses : Fundamentals for a financial ombudsman "

http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombudsmen_Vol1_Fundamentals.pdf has this to say: **A financial ombudsman provides an alternative to the courts; so the ombudsman should be (and also be seen to be) as independent and impartial as a judge – as well as having the necessary legal and technical expertise to resolve financial disputes authoritatively.** " In order to obtain the confidence of consumers: • the financial ombudsman should not be appointed by the industry, nor by a body with a majority of industry members; and • the person appointed as financial ombudsman should not have worked in the financial industry nor for a financial industry association within the previous three years. The World Bank comment is particularly important because it raises the issue that dispute resolution needs to be "seen to be" independent to be effective. **RECOMMENDATION:** Make OBSI recommendations binding upon dealers. [A January 2012 Report from OBSI's Consumer and Investor Advisory Council states that " It is the position of the Council that when the schisms outlined in the Khoury Report exist within the broader stakeholder landscape, the consumer / investor is the most vulnerable and has the most to lose. The Council urges OBSI to take steps to support, and where possible, rebuild relationships amongst the various stakeholders. Clear movement towards a single-source, binding authority is strongly desired by the Council ". <https://www.obsi.ca/download/blog/103>]

Governance

OBSI's governance structure is expected to:

- ensure that the Ombudsman and the scheme are independent from those whom the Ombudsman investigates (participating firms) and that it safeguards that independence
- ensure that the Ombudsman alone (or his or her delegate) has the power both to decide whether a complaint is within mandate and to then determine/resolve that complaint
- provide for fair and meaningful representation of different stakeholders on its Board of Directors and board committees
- ensure those involved in scheme governance conduct themselves in the best interest of the scheme
- promote accountability of the Ombudsman
- enable the board to effectively manage conflicts of interest.

In your view, to what extent does OBSI's board achieve these governance standards? What changes, if any, should be made to OBSI's governance structure and processes?

We have commented on OBSI governance in the past.

<https://www.obsi.ca/index.php/download/blog/356> Our main concerns are (a) no Director slot dedicated to the retail investor ; (b) term limits should be 4 years and (c) all independent directors should not have been previously employed in

the financial services industry. We also note that the Consumer advisory COUNCIL is not encapsulated into the OBSI mainstream and it has not issued any reports since 2013. Kenmar have never been approached by the Council and neither has SIPA. As noted, the independent review frequency is far too long to support good governance. We recommend a minimum 3 year cycle.

As things stand today, OBSI is overseen by a Board of Directors of which a majority are Community Directors who have not been part of the financial industry or government for at least two years prior to their appointment.

RECOMMENDATION: We recommend that Community directors not have any prior industry relationships and for the purposes of discerning eligibility for the non-industry members of the board of directors, the requirements should be enhanced to specify that an independent director should not be a partner, director, officer, employee or a person acting in the capacity of, or the holder of a "Significant Interest" in or be dependent professionally upon a participating industry participant.

Kenmar recommends that there should be members of the board of directors of OBSI with a role and responsibility to bring to OBSI's governance independently sourced professional expertise, knowledge and perspectives on consumer rights and responsibilities and the factors that impact them. The 2011 Independent Reviewer's Report suggested introducing seats for consumer representation.

RECOMMENDATION: We recommend at least one slot be dedicated for this role.

Until a few years ago, OBSI used to publish Board minutes. This stopped suddenly without explanation. RECOMMENDATION: OBSI should implement recorded voting and public reporting of minutes of "independence decisions" in order to regain the trust of consumers.

Independence and standard of fairness

Ombudsmen schemes should be impartial, proceed fairly and act in accordance with the principles of natural justice as well as with general principles of good financial services and business practice, and any relevant laws, regulatory policies, guidance, professional standards and codes of practice or conduct. They should also notify complainants as to the reasons why a complaint is considered outside mandate if they decide not to accept the complaint for investigation. Similarly, they should notify all parties concerned of their decisions and the reasons for them.

• To what extent do you consider OBSI provides impartial and objective dispute resolution services that are independent from the investment industry and participating firms?

OBSI is dependent on the rule making of the industry and thus cannot be considered truly independent. When OBSI fairness principles arise so does friction with industry. In this context OBSI could be considered beholden to industry control of the regulatory process. Even so, the 2014 OBSI Annual report tells us that 252 cases ended with monetary compensation or of 33% of all closed files broken down as 42 % of investment complaints and 14% of banking complaints. In effect, more than 4 in 10 complaints are reversed by OBSI, suggesting something is not working right at the dealer complaint level.

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Meanwhile, the OBSI Chair has pointed to a concerning trend: Some investment firms have settled complaints for amounts well below OBSI's recommendations.

RECOMMENDATION: The CSA should explicitly and publicly support OBSI's fairness principle(s) as they are consistent with "dealing, fairly, honestly and in good faith".

"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."- OBSI Chair Fernand Belisle

Kenmar believe OBSI provides a reasonably impartial complaint processing service (in the past , there were suspicions , since confirmed , that OBSI " negotiated" settlements with dealers- when this practice was constrained by the prior Ombudsman , " Name and Shame" cases rose) but we do feel the Board is not attuned to retail investor concerns, needs and emerging issues. During the financial crisis, the Board did not increase staff resources to deal with the huge increase in complaint volumes. This resulted in intolerable increases in complaint cycle time necessitating CSA intervention. Investor confidence in OBSI sank to all-time lows. **RECOMMENDATION: We recommend that the OBSI budget and amendments be approved by the independent directors to avoid this problem in future.**

• 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?

Yes, they are generally fair. We like the principle that dealers are held accountable for the actions of their representatives. They are certainly miles above the standard observed with dealers who seem to regard complaint resolution as adversarial. OBSERVATION: It is difficult to definitively assess fairness since OBSI works to a fairness standard but financial advice is not required to be in the Best interest of the client. There will always be some tension under such a scenario until a Best interests standard is introduced in Canada. **As to fairness, the unwillingness or inability to fully investigate an investment portfolio is theoretically unsound and hence incredibly unfair. We fail to see how you can properly assess the appropriateness of a portfolio if you exclude any significant asset, let alone a more complex insurance based investment vehicle like a Segregated fund. To assume so is neither professional nor fair. Indeed, how can either the insurance ombudsman (an unregulated entity) or OBSI provide the type of necessary clear cut decision that retail investors deserve if they are forced to separate the allocation pie for separate analysis. **RECOMMENDATION:** (1) OBSI should refuse to participate in unprofessionalism by denying OBSI access to the investor complaint for such a portfolio and (2) the CSA should use their powers of persuasion and influence or whatever means necessary to eliminate this abuse of the retail investor.**

• When determining what is fair, to what extent do you consider OBSI's decisions are consistent?
We find the decisions relatively consistent. Unlike investment dealers, the OBSI process is documented and publicly available for review. An independent review of the OBSI approach found it meets required standards. On the other hand, the complaint handling standards used by IIROC dealers have a number of deficiencies as detailed in our report available at [canadianfundwatch.com _ https://www.blogger.com/blogger.g?blogID=4766585986003571384#editor/target=post;postID=8940462617925235974;onPublishedMenu=allposts;onClosedMenu=allposts;postNum=0;src=postname](https://www.blogger.com/blogger.g?blogID=4766585986003571384#editor/target=post;postID=8940462617925235974;onPublishedMenu=allposts;onClosedMenu=allposts;postNum=0;src=postname)
These deficiencies in turn cause a lot of trouble for OBSI. For instance, bank - owned dealers nudge complainants to their own "internal ombudsman" thereby potentially blocking a number of investor complaints from ever reaching OBSI. The UK Financial Conduct Authority prohibits a two-stage dispute resolution process but Canadian regulators do not. **RECOMMENDATION: The JRC to review the situation.**

Processes to perform functions on a timely and fair basis

This evaluation covers cases completed after January 1, 2014. For a part of this period, OBSI was dealing with a backlog due to the unusually high volume of complaints received during the Global Financial Crisis (GFC), and was unable to resolve some complaints received prior to November 2013 in its usual time-frames. As of May 1, 2015, OBSI has resolved all backlog cases and resolution times for cases commenced after November 2013 have reduced. The extraordinary consequences of the GFC affected most international financial ombudsman schemes and will be taken into consideration when assessing performance against this term of the MOU.

• 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?

Yes, we believe targets are now being met but we have no current statistics since OBSI stopped reporting quarterly data a few years ago [the 2015 Annual Report will be issued after the closing of the consultation]. We find the cycle time standard low/ imprecise for investment related complaints compared to investment dealers who must provide a response within 90 days. Federal/ Financial Consumer Agency of Canada (FCAC) Regulations require an approved DRS provider for banking complaints to resolve complaints by making a final recommendation to the parties within 120 days after the day on which it receives the complaint (banking complaints are generally far less complex than those involving securities). This contrasts with OBSI's 80%/180 day target for investments. Regardless, we recommend all timelines be included in the Terms of Reference. **RECOMMENDATION: We believe all applicable timelines should be revealed and integrated into the Terms of Reference, semi-annual statistical reports be publicly disclosed and the cycle time standard benchmarked against other financial Ombuds services in G20. We much prefer to see a standard with a single numerical day number rather than one based on a statistical distribution.**

• Do you consider OBSI's processes (rather than its decisions) are demonstrably fair to both

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complainants and registered investment firm participants in the scheme? 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? Do they keep commitments made?

Generally yes. Complaint statistics updating could be better. We have not been privy to dealer submissions on the complaints where we acted as Intervenor.

• What could OBSI do to improve the timeliness and fairness of its processes?

Implement a formal cycle time reduction program. Establish the root causes for delays. Industry needs to be explained what fairness means as they appear not to understand. In principle, dealers are supposed to act honestly, fairly and in good faith but the observed practices are far off that mark. RECOMMENDATION: OBSI to lay out cycle time reduction program. It is up to regulators to enforce this basic standard of dealer-client relationship. OBSI cannot function effectively without strong, timely support and commitment from regulators.

OBSI is unable to require participating firms to pay the compensation it recommends in its decisions on cases. Instead, for cases where a reasonable settlement cannot be reached, its final recourse is to "name and shame" the firm involved - that is, it can publicize the fact that a participating firm has not complied with a recommendation for compensation.

• What, in your view, are the key reasons for firms refusing to compensate, or to pay at OBSI's recommended amount?

We think defiance is the primary but not sole cause. This defiance comes about due to years of regulator detachment and disinterest. There are a few points though that do merit definitive clarification. These include dealer accountability in cases where there is Off book transactions and Outside Business Activity. RECOMMENDATION This needs to be nailed down by regulators.

Another issue is the acceptance by dealers that KYC's do need to be validated by OBSI given how broken the KYC system is and how weak dealer risk profiling processes are (See the OSC IAP sponsored report by PlanPlus). KYC deficiencies also include but are not limited to poor leveraging documentation, document adulteration, pre-signed blank forms, a poorly worded NAAF, misleading marketing materials and seniors issues, particularly suitability and complex products. Regulator inaction in these areas shows up when OBSI attempt to investigate a complaint case but the root cause of disagreements is further downstream. See Canadian Fund Watch: [Suitability from a Retiree Perspective](http://www.canadianfundwatch.com/2013/08/suitability-from-retiree-perspective.html) RECOMMENDATION: Regulators to make cleaning up the broken KYC process a 2016 priority.

Several industry participants have argued of OBSI shortcomings in the KYC determination stage because there is a high potential for inadequate assessments of evidence in accurate determination which form the basis for the suitability analysis stage .They argue that there needs to be more compelling

and verifiable evidence, not just a difference of opinion, for OBSI to propose revising or reinterpreting the original submitted KYC information. Of course the truth is that prevailing KYC assessments are perfunctory and the risk profiling process barely touches the surface. Some KYC's are outright frauds resulting from the signing of blank forms or outright signature forgery. We fully support the OBSI practice of KYC validation and this should be supported by regulators.

RECOMMENDATION : Regulators to make it clear such validation is fair , reasonable and appropriate. Dealer systems and paper trails are notoriously flawed.

To the extent that there is a difference between how OBSI and industry participants risk-rate securities it is to that extent that OBSI should address the methodology to eliminate the discrepancies on securities risk rating between itself and investment dealers. **RECOMMENDATION** : No action except continuous dialogue. **One big issue is Fund Facts and ETF Facts whose misleading ratings can be the source of much unnecessary friction.** **RECOMMENDATION** : Regulators should make it clear through Guidance that these summary disclosure documents are not intended to be used for suitability determination.

To the extent that OBSI uses notional returns as well as selected indices to calculate financial compensation arising from unsuitable investments, it is to that extent that such use should be transparent both to dealers and victims.

RECOMMENDATION: OBSI should share their calculations and spreadsheets so that stakeholders can ensure the accuracy in calculating damages, ensure transparency, instill more confidence in the process and replicate the methodology in assessing complaints. That being said, we have not observed a case where the difference in assessment was material. In any event, the total annual compensation for investor losses in fiscal 2014 across Canada was peanuts- 252 case files ended with monetary compensation, worth a total of \$4,262,201. Of that amount, \$4,112,408 went to investment clients and \$151,793 went to banking clients. The average settlement was a tiny \$18,608 for investing clients compared to an even more modest \$4,897 for banking clients. In Ontario, victims could use the Small Claims Court for claims under \$25,000.

RECOMMENDATION: It would be beneficial if OBSI annually updated its guide providing the circumstances under which specific indexes and benchmarks would be employed in loss calculations and/or the criteria for choosing an index. The CSA may want to review the publicly disclosed practices, if any, investment Dealers use.

- How effective do you consider naming and shaming to be?

We do not consider it as an effective deterrent. Too many dealers are shameless given their observed behaviors. If IIROC and the MFDA automatically launched an investigation that might make a difference in behaviour. We have also been told that OBSI do not Name and Shame if a victim agrees to accept a lower than recommended offer, so naturally they offer low ball offers. This practice undermines the one tool OBSI has to inspire dealer acceptance.

RECOMMENDATION: Review Policy on Naming and Shaming and publish all cases of low

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ball settlements .Alternatively, make OBSI recommendations binding.

- What powers do you consider OBSI should, ideally, have?

RECOMMENDATION: We are of the conviction that making OBSI recommendations binding on dealers is in the best interests of all stakeholders. The status quo is incapable of leading to a well-functioning dispute resolution system and providing the necessary level of investor protection.

Fees and costs

OBSI's service is free of charge to complainants. Under the MOU, OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership.

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

Cannot comment – insufficient information on cost allocation formula.

- To what extent do you consider OBSI provides fair value for money?

For investors it is a Godsend. The cost of litigation in Canada especially for smaller amounts is prohibitive. RECOMMENDATION: Benchmark cost per complaint against comparable Ombuds services.

Resources

Ombudsmen schemes must be adequately staffed and funded so that complaints can be investigated and resolved effectively and in a timely manner.

- 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?

Hard to tell – past experience has been horrible likely due to resource constraints imposed by Board. OBSI team need surge capability via budget flexibility when a market disruption increasing complaint flows occurs as it did in 2007-2008. RECOMMENDATION: Independent directors should be given the authority to amend the annual budget when circumstances dictate based on hard facts.

Accessibility

Ombudsmen should promote knowledge of their services, ensure that investors have convenient, well-identified means of access to services, and provide services at no cost to investors who have complaints. These services should also be straightforward for complainants to understand and use.

In your opinion:

- How effective is OBSI at promoting its services?

Not needed if firms refer when appropriate...should be an important regulator requirement that is audited as part of the compliance sweeps and punished if violated. OBSI cannot spend enough millions of industry money on advertising to overcome bad firm conduct on complaint referral.

- What else could it do to ensure investors are aware of its service?

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RECOMMENDATION: Could use social media, guest columns and media interviews more. Perhaps partner with entities like CARP, SIPA and the Consumer Association of Canada.

- To what extent do participating firms adequately promote OBSI? What more could these stakeholders do to ensure their customers know about OBSI when access to OBSI may help resolve a complaint?

Dealers do not promote OBSI but do meet the regulatory requirement to inform investors at selected points of the relationship. In fact, bank and insurance owned dealers promote their own internal ombudsman services thereby potentially diverting some complaints away from OBSI.

- Is OBSI doing enough to enable investors to access them? For example, is it easy to use; is it making its resources and service available in a range of different languages, a range of different channels (phone, electronic etc.) and in a way that enables 24 hour access (e.g. on-line complaint forms)? Does it cater adequately for people, including those with disabilities, mental health issues?

Kenmar believe OBSI provide good access. Our sources tell us that seniors are apprehensive about using OBSI but we are not sure why. It could be some of the horror stories that have appeared in print and TV media. Some issues have arisen regarding the availability of forms. **RECOMMENDATION :**We recommend that any form that needs to be signed by a complainant should be available for viewing and downloadable from the OBSI website.

- What else could OBSI be doing to improve access?

RECOMMENDATION: Develop a documented action plan for dealing with seniors, vulnerable investors and new immigrants.

Systems and controls

Under the MOU, OBSI should have effective and adequate internal controls to ensure the confidentiality, integrity and competence of its investigative and dispute resolution processes. Based on your experience, to what extent do OBSI's systems and controls ensure:

- confidentiality is maintained;
- its investigative and dispute resolution process has integrity;
- its investigators have the necessary competence and industry knowledge to undertake their work;
- its decisions are robust and clear; and
- its decisions are consistent with its published approaches?

We think OBSI does well in this regard. Victims have expressed concern that they are not permitted to turn files over to police if they feel the files indicate fraud or other criminal activity. **RECOMMENDATION:** OBSI should amend its rules to permit this as a basic human right.

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Core methodologies

Under the MOU, OBSI should have appropriate and transparent processes for developing its core methodologies for dispute resolution. During the evaluation period, OBSI has consulted on its loss calculation methodology and changes to its Terms of Reference.

- In your view, have OBSI's processes for developing or changing core methodologies been transparent and appropriate?

Yes but maybe more details on non-financial issue compensation and approach to adding interest costs would be helpful.

- Have they allowed sufficient opportunity to provide external input? Did OBSI publish its response to the consultation and explain its decisions?

Yes investors were given an opportunity to provide input... RECOMMENDATION:

Make it clear that OBSI will be publishing Comment letters under this and any other consultation. The method, duration and deadline of requests for comment leave something to be desired. A more systematic approach that is more appreciative of the resources required for effective public participation should be considered. However, the opportunity for consultation is welcomed.

- Have the changes achieved what they intended?

Yes from the Board's viewpoint but no from an investor's perspective since we didn't agree with the intent in the first place.

Information sharing

Under the MOU, OBSI should share information and cooperate with the CSA through the CSA designates on the JRC in order to facilitate effective oversight under the MOU.

- How effective is this information-sharing? Does it enable effective oversight?

No information available. We remain constructively skeptical on the frequency and intensity of the JRC information flow.

- What further information sharing would facilitate more effective oversight?

RECOMMENDATION: The Consumer and Investor advisory Council should publish an Annual report summarizing its activities during the year and plans for the coming year. The results of the annual complainant satisfaction survey should be published – the survey should be conducted by an independent third party.

Transparency and accountability

As an Ombudsman scheme, OBSI is expected to publicly account for its operations. This enables public confidence in the scheme and its decision-making and management processes. In addition, Ombudsman schemes should have processes for dealing with complaints about their own service. Under its MOU, OBSI is required to undertake public consultations in respect of material changes to its operations or services, including material changes to its Terms of Reference or By-Laws. OBSI publishes Annual Reports, including financial statements, and case studies on its website, engages in public consultation with respect to changes to its Terms of Reference and core

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methodologies, and submits itself to independent review/evaluation (independent review reports are also published on the website).

- To what extent do you consider OBSI provides adequate accountability to participating firms and the public?

We think accountability is acceptable but improvements as suggested herein are in order.

- What further information could OBSI provide to assure stakeholders as to its effectiveness and efficiency?

Reports and disclosures as mentioned herein.

- To what extent do you consider OBSI's process for dealing with complaints about its own service are transparent and effective?

We are not aware of OBSI's process for dealing with service complaints and have not seen any disclosures on this matter other than the public consultations and the Annual report.

Kenmar grant permission for public posting of this Comment letter.

Should you have any questions, do not hesitate to contact us.

Ken Kivenko P.Eng.

President, Kenmar Associates

BACKGROUNDEERS

The sorry state of investor Complaint handling in Canada: Canadian Fund Watch
<http://www.canadianfundwatch.com/2014/06/the-sorry-state-of-investor-complaint.html>

OSC Mystery Shopping report

<https://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf>

TAMRIS Consultancy on Canada's complaint handling system

<http://www.moneymanagedproperly.com/newsletters/TAMRIS%20Consultancy%20-%20Suitability,%20IDA%20Complaints%20and%20OBSI%20Terms%20of%20Reference%20comments.pdf>

Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman A practical guide based on experience in western Europe

http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Financial_Ombudsmen_Vol1_Fundamentals.pdf

How mutual fund salespeople in Canada who lie, cheat and steal from clients are escaping justice | Financial Post <http://business.financialpost.com/news/fp-street/youre-talking-about-how-many-millions-how-sanctioned-mutual-sellers-in-canada-are-avoiding-stiff-punishment>

Investor advisory panel tells OSC it's failing to address 'inadequate' and 'outdated' regulatory standards | Financial Post <http://business.financialpost.com/news/fp-street/investor-advisory-panel-says-osc-failing-to-address-inadequate-and-outdated-regulatory-standards>

Investor restitution tops list of demands
<http://m.investmentexecutive.com/back-issues/investor-restitution-tops-list-of-demands/>

Canadian bank ombudsman's job is thankless – and powerless - The Globe and Mail
<http://www.theglobeandmail.com/report-on-business/rob-commentary/canadas-bank-ombudsmans-job-is-thankless-and-powerless/article23465420/>

Response to the Framework for Reforming the Board of Directors of the Ombudsman for Banking Services and Investments: Consumers Council May 28, 2012 <https://www.obsi.ca/download/blog/358>

Time to give ombudsman more power: Roseman | Toronto Star 2014 annual report http://www.thestar.com/business/personal_finance/2015/02/25/time-to-give-ombudsman-more-power-roseman.html

Risky Business: Canada's Retirement Income System

"RRSPs and PRPPs are a boon to mutual fund managers- who "earn" among the world's highest mutual fund fees from investors— but fall short on the promise to Canadian retirement savers. Those fees have a significant impact on what an individual can accumulate from retirement savings." "An individual Canadian who contributes a constant percentage of his or her income over a working lifetime to these retirement income savings plan pays an average of 2.07% annual in investment management fees to mutual fund managers. Over a working lifetime, that soaks up about 36% of his or her retirement savings," Mackenzie says."

https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2014/03/Risky_Business.pdf

Retirees: Do they face an advice gap?

http://faircanada.ca/wp-content/uploads/2013/09/Retirees-An-Advice-Gap_Kivenko.pdf

Canada lacks proper indemnity fund for investors | Advisor.ca

<http://www.advisor.ca/news/industry-news/canada-lacks-proper-indemnity-fund-for-investors-say-experts-193444>

The advice gap is more of a challenge for the industry. | Depth Dynamics

We are moving from a dysfunctional, low tech, high cost past, to a more sophisticated, accountable, well-structured future with better differentiation of service and pricing options. The clamour over the "advice gap" is self-interested, myopic and deliberately misinforming.

<http://blog.moneymanagedproperly.com/?p=3245#more-3245>

Improving recovery for harmed investors: OSC

https://www.osc.gov.on.ca/documents/en/News/sp_20151026_coalition-good-governance.pdf

Without compensation, trust is eroded in financial firms - The Globe and Mail

<http://www.theglobeandmail.com/report-on-business/without-compensation-trust-is-eroded-in-financial-firms/article5259606/>

The Feeling's Not Mutual: The High Costs of Canada's Mutual Fund Based Retirement System AUTHOR(S): [David Macdonald](#) FEB. 25, 2015

This study compares the management fees charged by mutual funds and pension plans, and finds that high management fees will cause Canadians relying on mutual funds for their retirement income to work longer or retire with less, compared to those with pension plans. The study recommends an expansion of inexpensive workplace pension plans or public pension plans, like the CPP; and as a stopgap measure, trailers fees-the portion of mutual fund fees that go back to the advisor-could be capped or banned entirely. - See more at:

<https://www.policyalternatives.ca/publications/reports/feeling%E2%80%99s-not-mutual#sthash.UrKhYJZv.dpuf>

<https://www.policyalternatives.ca/publications/reports/feeling%E2%80%99s-not-mutual>

Report at

https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2015/02/Feelings_Not_Mutual.pdf

Response to proposed reforms in banking dispute resolution: Consumers Council

<http://www.consumerscouncil.com/index.cfm?id=44859>

Elder Abuse | Prevention & Avoidance | Canadian Pensioners Concerned

<http://canpension.ca/pages/abuse.html>

MFDA report on DSC sold funds

<http://www.mfda.ca/regulation/bulletins15/Bulletin0670-C.pdf>

Restitution and Redress <http://faircanada.ca/retail-investors/restitution-and-redress/>

Should OBSI be allowed to enforce recommendations? : IE

"...Shane Tregillis, chief ombudsman of Australia's Financial Ombudsman Service (FOS) noted during the panel discussion that the FOS does have the power to make binding decisions but that, in practice, only about 10% of its recommendations go this route. The vast majority of its cases are settled. Sujatha Sekhar Naik, CEO of Malaysia's Securities Industry Dispute Resolution Center (SIDREC), noted that her organization's decisions are also mandatory and, that policy-makers in her country consciously decided not to adopt a "name and shame" approach for its dispute-resolution service because it is not believed to be effective..."

http://www.investmentexecutive.com/-/should-obsi-be-allowed-to-enforce-recommendations-?redirect=http%3A%2F%2Fwww.investmentexecutive.com%2Fhome%3Bjsessionid%3D05cdUG%2BTJCyFHMwPH8aLuU2f%3Fp_p_id%3D101_INSTANCE_rk5n61x2uHJB%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D3

OBSI Joint Regulators Committee Annual Report for 2014

<https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA%20Staff%20Notice%2031-340%20JRC%20Annual%20Report%202014%20OBSI.pdf>

Teasdale commentary on isolation of Segregated funds from portfolio

<https://www.obsi.ca/index.php/download/blog/180>

Gravitational collapse and retrograde movements...is the Canadian regulatory system imploding? | Depth Dynamics

The Teasdale analysis of splitting a complaint. FAIR also tore the concept apart

<http://blog.moneymanagedproperly.com/?p=2572>

Segregated Fund Complaints: FAIR Canada

OBSI is proposing that it not consider segregated funds in its consumer complaint dispute resolution process, even if they form part of a consumer's portfolio of investments with a single financial advisor. OBSI is proposing that the consumer should be required to make two separate complaints, one to OBSI and one to the Ombudsman for Life and Health Insurance ("OLHI"). Investor advocates and financial consumers strongly believe that it is nonsensical to send segregated fund complaints (whether a part of a larger complaint about an investment portfolio or not) to the OLHI and that OBSI should continue to investigate and analyse complaints relating to other investments. **Forcing consumers to use two dispute resolution processes when**

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the complaint involves one financial advisor and firm is burdensome, time consuming, inefficient, confusing to consumers and creates greater barriers to access to redress than a single process. Other problems with this approach include the limitations of OLHI (see [Andrew Teasdale's](#) and [FAIR Canada's](#) submissions for details) and the unfairness that can result when the complete picture of the advice that was provided to the consumer is not assessed given that the complaint has been severed into different component parts to different dispute resolution providers. (See [Debra McFadden's](#) submission and [Peter Whitehouse's](#) submission, for further discussion of this issue.) <http://faircanada.ca/whats-new/obsi-appeasement-efforts-fail-critics-urge-reduced-consumer-protection/>