

Ombudsman for Banking Services and Investments

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OBSI Terms of Reference Renewal Project: Public Consultation April 13, 2018

I appreciate the opportunity to provide a few comments on this Consultation.

You state, “We encourage the public, consumer groups and firms to provide OBSI with written comments on the proposed updated TORs.” How have you sought to actually encourage the general public, consumer or small investors to comment? Were letters sent to past complainants? Was it announced through Member Firms directly to their present clientele? How is investor input actually sought? Is there a demonstrable rigorous concerted effort to engage consumers in these discussions? If not why not? Sadly, too often the voice of the consumer is not heard nor is there a real attempt to engage with consumers. This is an ongoing shortcoming that needs strategic and disciplined effort to change.

In May 2016, two full years ago, Deborah Battell and Nikki Pender independent evaluators, issued their report ‘Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments’ regarding OBSI’s investment mandate. Nineteen recommendations were made by the Independent Reviewers (the “Battell Report”) that now need proper addressing in the TOR and/or related documents. There is not much point in having a review unless you act on the recommendations made.

OBSI should take a strategic approach to Ombudsmanship, incentivising staff to use the intelligence gained from cases to provide suitable additional value-added services to Participating firms and guidance to financial consumer users.

The Battell Report states “...That OBSI develop a prevention strategy that sets out how it will assist customers and firms avoid and reduce complaints.” This aspect of OBSI’s operations is crucial and should be reflected in the TOR.

“An ombudsman may also use its experience to inform public policy. We understand OBSI provides perspectives informally but consider it would better demonstrate OBSI’s expertise, value and independence if it commented more formally on proposed legislation and regulations. This would supplement its responsibility to proactively inform regulators about systemic issue”. This is very important to give real meaning to OBSI’s assertions that it acts in the Public interest.

When a Systemic issue has been identified, OBSI should notify the firm, regulators and police as applicable. This should be summarized in the Annual Report. An example of this would be when a Financial Advisor has been found to have wrongfully made investments in DSC mutual funds relative to a complainant’s needs criteria, then other non-complaining client accounts with DSC mutual funds

purchases with the same Financial Advisor should be examined for appropriateness relative to the investor's investment needs criteria. There is much truth in Warren Buffet's observation, "What you find is there's never just one cockroach in the kitchen when you start looking around." Start looking around.

I recommend that the CIAC and its Charter also be incorporated into the Terms of Reference. All CIAC reports should be publicly posted. Transparency is crucial in maintaining public respect.

I suggest changing the cooling off period for ex-employees of two years be increased to four years. Revolving doors into the industry do not exude public confidence in the impartiality of the ombudsman office.

I also strongly recommend that at least one Board seat be reserved for a person that will give a Voice to the retail investor as described in the June 2016 Battell Report. The whole reason OBSI exists, is to deal with investor complaints, so it is only natural they be represented on the Board of Directors. Recommendation 3 of the Battell Report states "That one of the community director positions on OBSI's board be reserved for a consumer/investor advocate and that this appointment be based on nominations from consumer/investor advocacy groups. This is just common sense and it reflects poorly on OBSI that this has not been acted upon as of yet.

Vulnerable investors, including persons with limited language skills, low financial literacy, and seniors who may have reduced cognitive abilities need to be granted flexibility and understanding. OBSI should explicitly provide in its updated Terms of Reference that it "reserves the right to waive the limitation period in exceptional cases where it is fair and reasonable to do so."

The TOR should accept the Battell recommendation that OBSI review its compensation cap to bring it closer to the IIROC arbitration limit and amends its terms of reference to also require the compensation cap to be adjusted in line with inflation.

Participating firms should direct complainants to OBSI, without diversion to their own internal "ombudsman" if a complainant is not satisfied with the firm's response.

Low-ball settlements are very concerning. The emotional upheaval in a client's life is extreme and they are in a weakened fragile position. See http://sipa.ca/library/SIPASubmissions/ListenToTheVoices_letterForward_20180414.pdf

Allowing their vulnerability to be exploited by a firm is an extreme disservice that the ombudsman must not tolerate. The Battell report recognized this "*most reported feeling they were in a weaker bargaining position and said they had simply caved in.*" Section 13:3 opens the door to investor abuse and for that reason should be eliminated.

I realize you stated the updated TORs are not meant to reshape or extend OBSI's mandate and that you were wanting to focus more on just structural or stylistic changes to clean up the document, but I do hope you find these comments useful in your consideration on these important consumer issues.

I agree to public posting of this Comment Letter.

Sincerely,

Debra A. McFadden

