

NOVEMBER 11, 2011 ISSUE

OBSI UPDATE – NOVEMBER 2011

This note is one in a series of newsletters updating you on what's happening at the Ombudsman for Banking Services and Investments (OBSI).

In this issue:

1. TD Withdrawal
2. Board of Directors' Statement
3. Consumer and Investor Advisory Council Statement
4. OBSI Bylaw
5. Letter from the CSA, IIROC and MFDA
6. G20 Endorses Financial Consumer Protection Principles
7. Stakeholder Reception

1) TD Bank Withdrawal

The Toronto-Dominion Bank (TD Bank) has withdrawn from OBSI effective as of the close of business on October 31, 2011. This move affects only banking complaints related to TD Bank. OBSI continues to accept complaints regarding TD Securities Inc., TD Investment Services Inc., TD Waterhouse Private Investment Counsel Inc., TD Waterhouse Canada Inc., and TD Asset Management Inc.

2) Board of Directors' Statement

Following TD's move, OBSI's Board of Directors issued the following statement:

In the wake of TD Bank's withdrawal from OBSI for banking complaints, the Board of Directors would like to strongly express our complete support of and confidence in OBSI management and staff. We are grateful to them for the tireless and often thankless work they do day in and day out to achieve fair outcomes for the most difficult financial consumer complaints.

Canadians are justly proud of our financial services sector. Over the past few years, it has been an example to the world in large measure due to prudent and balanced regulation of the sector, a key element of which is an effective consumer protection framework.

At the heart of that framework is trust; trust between the financial institution and the consumer. How the complaint handling system functions is essential to maintain that trust when the consumer feels he or she has been wronged or treated unfairly. For many individual consumers and small businesses navigating the bureaucratic maze of many large financial institutions can be a daunting prospect and baffling ordeal. When a consumer cannot satisfy his or her complaint with a firm, there must be a fair, impartial and efficient alternative to costly and lengthy legal action.

Canadian consumers and investors deserve an independent, accessible, and effective service that meets the needs of consumers and operates in the public interest. Government needs to know they have an effective partner in dispute resolution, one that independently and credibly deals with consumers and investors, and is transparent and accountable to regulators. For almost 16 years, OBSI has quietly and effectively performed this role.

OBSI's Board of Directors believes that an effective consumer protection service that operates in the

public interest cannot survive without the voluntary support of the banking sector, or in the absence of that voluntary support, mandatory participation through designation under the Bank Act or the approval process contemplated by the anticipated regulations pursuant to Bill C-47.

OBSI engages in extensive discussions and sharing of information with regulators and government. As part of its Framework for Collaboration with financial market regulators, OBSI must also submit to rigorous, independent third-party evaluations on a regular basis, judged against published guidelines on such things as fairness, transparency and accessibility.

OBSI's Board of Directors believes we should simplify the redress system for consumers, not allow more fragmentation. We are committed to balancing the interests of all stakeholders, including consumers, industry, government and regulators, as we seek a way forward.

Quotes may be attributed to Dr. Peggy-Anne Brown, Chair.

3) Consumer and Investor Advisory Council Statement

OBSI's [Consumer and Investor Advisory Council](#), an arms-length body established to provide the consumer's viewpoint to OBSI's Board of Directors, also issued a [statement](#) following TD's withdrawal for banking complaints.

4) OBSI Bylaw

In the summer, OBSI undertook consultations with industry on a proposed change to OBSI's bylaws that would have established a notice provision for firms withdrawing from OBSI. The change sought would have meant any firm leaving OBSI would continue to be responsible for their share of the budget for a number of months following the effective date of their withdrawal.

In 2008, RBC withdrew from OBSI for banking complaints on October 31, the last day of our fiscal year, and refused to take on any responsibility for their share of the budget as of November 1. This was seen as unfair by the remaining firms as they became responsible for the costs previously allocated to resolving RBC's banking complaints – several hundred thousand dollars. Rather than increase other firms' fees solely to pay for these costs, the Board chose to deplete OBSI's operating reserve which had been built up over several years.

During the summer consultations, we heard from several industry stakeholders that more time was needed to study the proposed bylaw. They did, however, agree in principle: the letter from industry stakeholders to our Board of Directors for their September meeting stated they "recognize it was in their own best interests to establish a protocol or requirement that any firm deciding to leave OBSI should be responsible for any reasonable disengagement costs that OBSI might incur, rather than having the remaining firms pay those costs." A decision on the bylaw was deferred to the coming December meeting to allow for more consultation.

TD announced on October 26, 2011 that they were withdrawing from OBSI for banking complaints, effective November 1. With TD's surprise announcement, OBSI's Board was faced with an immediate need to implement a solution that addressed the financial risks to our organization. On the advice of legal counsel, our Chair called a meeting of the Board on October 26, and an additional Board meeting and Special Meeting of the Voting Members of the Corporation was held on October 27. The Board and Voting members approved a bylaw change that appropriately addressed these outstanding financial risks.

The approved bylaw change was submitted for approval to the Minister of Industry on October 28. Ministerial approval was granted on October 28. The new bylaw is therefore effective as of October 28, 2011.

With the bylaw's passage, TD has volunteered to abide by its provisions. Firms can no longer walk away from OBSI without any regard for meeting their financial responsibilities: to OBSI, to their fellow participating firms, and most importantly, to all those individual consumers who have brought their complaints to OBSI seeking a fair resolution.

OBSI's full corporate bylaws can be found on our [website](#).

5) Letter from the CSA, IIROC and MFDA

OBSI has received a [letter](#) from the Canadian Securities Administrators (CSA), the Investment Industry Regulatory Organization of Canada (IIROC), and the Mutual Fund Dealers Association of Canada (MFDA) concerning the resolution of a small number of complaints considered to be "stuck"; that is, those complaints where, following OBSI's investigation, we have reached a clear conclusion but the firm in question has not yet agreed to compensate the investor despite a significant amount of time having passed.

Per the letter, OBSI will be identifying a method of finalizing these cases by the end of the 2011. This method will be an independent assessment of the files in question by a credible and experienced outside party, based on standards consistent with OBSI's [Terms of Reference](#).

At the direction of the CSA, IIROC and MFDA, a copy of the letter was provided directly to the CEOs of the investment firms in question with a view to resolving the outstanding complaints. There will be discussions over the coming weeks with the affected firms and the regulators while we make this final attempt to resolve those complaints.

The CSA, IIROC and MFDA also addressed the recent independent review of OBSI conducted as part of our Framework for Collaboration with financial market regulators. In the letter they state:

We are carefully reviewing the report with a view to ensuring a sustainable system of independent dispute resolution to which investors can have recourse as an alternative to litigation or binding arbitration. We intend to work with OBSI and its stakeholders to promote ways to improve and enhance the current system so that investors have the best complaints handling system available. The result of our review may also lead us to introduce regulatory rule and policy changes under National Instrument 31-103 and/or SRO rules.

6) G20 Endorses Financial Consumer Protection Principles

At their meeting in Paris in October, the finance ministers and central bank governors of the G20 countries endorsed the [framework for financial consumer protection](#) developed by the Organization for Economic Co-operation and Development (OECD) and the Financial Stability Board (FSB), and called for further work on implementation.

The framework contains ten principles covering topics such as the role of oversight bodies, fair treatment of consumers, and transparency and disclosure. The principle concerning financial complaints handling and redress reads as follows:

Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers. In accordance with the above, financial services providers and authorised agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public.

7) Stakeholder Reception

OBSI is pleased to invite all stakeholders and partners to a reception in Toronto on December 6th. Please contact Laura Smith at lsmith@obsi.ca or 416-287-2877 ext. 2241 for details and to RSVP.

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