

Ombudsman for Banking Services and Investments
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Comments on OBSI Request for Comments -Terms of Reference

I would like to provide comments on the OBSI proposals.

My comments on the proposed OBSI Terms of Reference are as follows:

- Absolutely retain the obligation to investigate systemic issues. OBSI has an overview of financial consumer issues that no single regulator has. Data mining this precious data can help improve investor protection and spot trends early.
- As a retiree who has experienced a dealer's frustrating and adversarial complaint process, I definitely would not be willing to then have to split my complaint between two Ombudsman services. According to the consultation paper. "The greatest consequence of this change will be that OBSI will refer the investigation and analysis of segregated funds to 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 "- this makes no sense since the dealer will evaluate the complaint on the basis of the entire portfolio including banking and insurance products. Do not make investors deal with OLHI for segregated funds - It is the advice that is being complained about - who regulates the product is irrelevant.
- Establish a plain language standard clarifying what suitability is and how OBSI applies it in resolving complaints .
- increase the \$350,000 limit as complaints involving Portfolio Managers and Exempt Market Dealers will tend to be much larger. Utilizing IIROC's \$500,000 number for arbitration is not an unreasonable figure.
- Retain the 3- year independent review cycle . Many CSA reforms regarding disclosure and rates of return will trigger even more complaints as investors come to understand how they have been dealt with and exploited. Also, adding PM's and EMD's should lead to a shorter independent review interval- waiting 5 years to assess the situation is a prescription for disaster.

A recent Bulletin from the OSC's Office of the Investor said: "**Having one common dispute-resolution service for the securities industry is very important for investors.** In December 2012, a rule was proposed to require all registered dealers and advisers in Ontario to use the Ombudsman for Banking Services and Investments (OBSI) as the common dispute-resolution service for the securities industry. A final rule is being developed to clarify for investors how their complaints will be handled.". If the OBSI board persists in breaching this important principle, the CSA should step in and block the proposals.

Given the CSA's proposal to mandate the use of OBSI, I understand that the CSA will play an active role in the development of the revised Terms of reference. While the FCAC/Federal Regulations apply to banking matters, I believe it would be necessary to implement tailored criteria for investment matters in order to ensure the application of consistent standards. As such, I recommend incorporating the following elements into OBSI's terms of reference:

1. Time limit to resolve complaints – According to the 2012 OBSI Annual Report, the average complaint resolution cycle time did not come close to meeting the 80%/180 day standard. The FCAC/Federal Regulations relevant to banking complaints require an approved DRS provider to resolve complaints by making a final recommendation to the parties within 120 days after the day on which it receives the complaint. Whatever standard is used, the TOR should contain it.
2. Time limit to notify a complainant that a complaint is outside of OBSI's terms of reference – The FCAC/Federal Regulations require an approved DRS provider to notify a complainant within 30 days after the day on which it receives the complaint if all or part of the complaint is outside its Terms of reference. This should be in the OBSI TOR's- 30 days is very reasonable.
3. CSA Oversight – The FCAC/Federal Regulations require an approved DRS provider to submit an annual report to the Commissioner of the Financial Consumer Agency of Canada (FCAC) on the discharge of its obligations, including a summary of the results of any consultation with members. I believe it is essential that the CSA (or OSC) assume an oversight role in respect of OBSI's governance/policies as regards investments . I recommend that OBSI be required to submit a similar report to the CSA annually.
4. Ensuring impartiality – I note that the FCAC/Federal Regulations require an approved DRS provider to ensure that every person who acts on its behalf in connection with a complaint is impartial and independent of the parties to the complaint.

I would like to see the Board provide adequate resources to management so that complaint cycle time at OBSI is equal to or less than standard (80% /180 days).The performance is an embarrassment.

Some of these proposals stem from trying to match up with FCAC standards for banking complaints - a standard vigorously opposed by investor advocates. OBSI should focus on investments where the big financial losses are being incurred.

As I read the last Independent Review Report I noticed that many of the potential consequences of inaction are in fact becoming a nightmarish reality. I absolutely disagree with the proposals which are so out of touch with the needs of retail investors. From the posted Comments received to date it looks like no one else is buying into the proposed changes to the Terms of Reference.

Supplementary Comments that need to be considered as they are an integral part of this whole dispute resolution process

While my opening comments deal with the Consultation subject of the Proposed OBSI Terms of Reference, I wish to go on record that there are substantial issues with the present total dispute resolution process that require to be changed if justice is to be served. The existence of the present dispute resolution process is unfairly weighted against the investor getting justice for a legitimate complaint. I have spent over 2-years trying to get a fair and just treatment for my complaint that is backed up with substantial evidence. Here are the experiences.

The Supplementary Comments are explained immediately after my recommendations, which are as follows -

B1 The OBSI should not be optionally funded by the financial services industry. The OBSI dispute resolution operations should be independently funded with no budget pressures from depending on financing from the financial services industry. Under present system, the Financial Institutions have the ability to directly or indirectly limit their financial support for the OBSI operations related to the investor dispute resolution process.

From personal experiences, the present OBSI staffing resources must be severely burdened by the limitations with the present system of inadequate financing relative to the number of disputes that OBSI is asked to resolve. This recommended financing change does not question the independence and standards of objectivity the OBSI uses when passing judgment on investor complaints. Rather, the lack of adequate financial resources relative to the work load is reflected in the time it takes for the OBSI to thoroughly deal with all complaints that are less compelling than outright fraud and wrongful large scale churning of investments in an account.

B2 In order to reduce the OBSI workload there needs to be more of an incentive for disputes to be settled at the source of the dispute with the Financial Institution rather than being uploaded to OBSI. Another way of explaining this recommendation is that there should be sufficient disincentive to make the Financial Institution think more than twice before arbitrarily rejecting an investor 's complaint.

It should not go unnoticed that there is presently a great incentive for the Financial Institutions and Bank Ombudsman to reject any and all investor complaints without justification. This condition exists because these parties

know they can out-of-hand reject an investor complaint and then recommend the investor take a complaint to OBSI. This incentive for the Financial Institution to direct the complainant to OBSI needs to be replaced with a known deterrent for the Financial Institution, that would be applied in cases where the OBSI is more likely to rule in favour of the investor's Complaint and against the Financial Institution.

The present system of Financial Institutions limiting the financing for the OBSI operations, then causing an increase in the OBSI workload, can only lead to extended delays in dealing with investor complaints. In the case of dealing with the investor smaller complaints, the OBSI have demonstrated to us that their resources are so limited that they have been unable to do sufficient indepth investigation to help the investor get the justice we deserve.

OBSI decisions should be binding on the Financial Institution. With this prior understanding by the Financial Institution, this in turn would reduce the number of legitimate complaints that arrive at OBSI after being rejected by the Financial Institution. Having the presence of OBSI binding decisions would also be the incentive for the Financial Institution make a better effort to settle legitimate investor complaints.

B3 The Bank Ombudsman should be removed from the dispute resolution process because they have demonstrated that the only purpose they serve is to provide another level of investor Complaint rejection for the Investment Dealer, without justification. The Bank Ombudsman is untouchable because they can say and do anything and the investor has no recourse to a higher authority to censure the actions of the Bank Ombudsman. Details of these investor experiences are disclosed in the following narrative.

When an investor finally arrives with a complaint submitted to OBSI, they have first submitted the complaint to the Investment Dealer Management. It is important that the investor give the Investment Dealer Management an opportunity to examine the complaint and take whatever remedial action is necessary. However, under the present toothless IIROC rules, it is easy for the Investment Dealer to concoct reasons to reject the investor's Complaint. When I say "concoct", I am referring to distorted and deceptive and untruthful claims (with no evidence) for rejecting an investor's Complaint.

When the Investment Dealer is owned by a Bank, it is then so convenient to refer the investor complainant to the Bank-owned Ombudsman for another opportunity to sand-bag the complaining investor. In this connection, we have about 60 pages of evidence which includes distorted and deceptive and untruthful claims by the Bank Ombudsman rejecting our investment Complaint.

After we received the Bank Ombudsman letter of rejection, we requested answers to questions related to their explanations and statements for the rejection. The Bank Ombudsman totally ignored multiple requests for them to provide evidence to support their claims. The Bank Ombudsman's final response was for us to

take our Complaint to the OBSI. **However, the OBSI has no jurisdiction over the conduct of the Bank Ombudsman. This is one more deception. This final response was sent to us just one-day before the then Bank Ombudsman retired ! ! !**

The OBSI and IIROC advised us that the Bank Ombudsman is under jurisdiction of the Financial Consumer Agency of Canada (FCAC). This is even though our complaint was related to investments and not banking issues.

We contacted the FCAC with our Complaint and offered to send them the 60-pages of evidence to show the deceptive and misleading and false statements of the Bank Ombudsman in connection with our investment complaint. The FCAC declined our offer and also reminded us that they could not discuss what they were, or were not, doing with our Complaint.

The FCAC had a full explanation that our complaint about the issues with the responses from the Bank Ombudsman were related to investments and not banking. However the FCAC directed us to contact ADR Chambers with our complaint. The FCAC said, " Furthermore, if you are not satisfied with the course of action suggested by the ADR Chambers Banking Ombuds Office (ADRBO), your final recourse is to seek legal advice". We contacted ADR Chambers and they told us that they only handled banking complaints and not investment complaints. ADR Chambers recommended that we send our complaint about the Bank Ombudsman directly to the Bank President's office. This is an insult to the expectation that there are authorities employing bureaucrats who are supposed to be serving and protecting the individuals from the institutions, when all they are doing is standing there giving motor power to the revolving door.

How would one expect impartiality when asking the Bank President to examine 60-pages of evidence of misleading and deceptive narrative defending the conduct of Representatives of their Investment Dealer subsidiary? This is where there is evidence of mutual fund fraudulent performance misrepresentation by a Representative of their Investment Dealer.

We already had the impartiality experience with Bank President's Office related to our complaint about the Management of their Investment Dealer subsidiary. The President's Office told us to take our complaint to the OBSI ! ! ! And around and around it goes. **This carrousel of deterrents against the lowly investor searching for justice needs to be recognized by the highest authority. It is the conduct of the Financial Institutions which should be governed by the threat of deterrents, not the investor - it is the investors money that is at stake, not the Financial Institutions !**

As a consumer protection agency, the effect of the FCAC being able to arbitrarily disconnect a complaint from a consumer with no resolution for or against a complaint, **raises the question as to why the Bank Ombudsman is under**

the jurisdiction of the FCAC when related to investments. For all the reasons explained above, this is why the Bank Ombudsman should be removed from the investment dispute resolution process.

Under the present regulation, the Bank Ombudsman can say anything they want in order to reject an investor's Complaint and to dissuade an investor from going further. There is no recourse for the investor to expose the Bank Ombudsman's injustices as a contradiction of the Bank Ombudsman's published claims of fairness and objectivity. Therefore, the Bank Ombudsman should be removed from the dispute resolution process. The only purpose they serve is to provide another obstacle in the line of defense for the Financial institution and to dissuade the offended investor from pursuing its case any further.

After the the Bank Ombudsman experiences, we then filed a Complaint with the OBSI which included substantial evidence and pointers as to how we as seniors, age 70 and 72, were mislead into making certain egregious and inappropriate investments. The OBSI responded with an explanation that they could see no wrong in the conduct of the Investment Dealer Representatives. We then appealed the OBSI decision, with the assistance of an Intervener. We brought to OBSI's attention the factual evidence which showed fraudulent misrepresentation of mutual funds performance by the Investment Advisor Representative prior to making our RRIF investments. In addition there were other areas of our Complaint that we referred to which were either not tested or not considered important by OBSI. We also asked that these other areas be considered.

After many months, we are still awaiting the verdict on our Appeal from OBSI. We can only conclude that the burden of so many investor complaints and other priorities that are stacked against the limited OBSI financial resources is the root cause of this delay.

Permission is granted for public posting.

Please feel free to contact me if additional information is required. My phone number and email address are in the covering email.

Sincerely,
Peter Whitehouse

PS It would have been useful if the OBSI Consumer Advisory Council had revealed its position as an integral part of the Consultation.