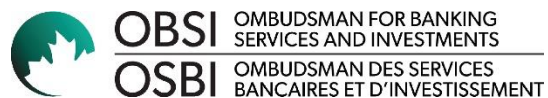


**INDEPENDENT EVALUATION
OF THE
OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS' (OBSI)
BANKING MANDATE**

September 1st, 2022



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Executive Summary

About OBSI

The Ombudsman for Banking Services and Investments (**OBSI**) is a national, independent and not-for-profit organization that assists consumers and banks/investment firms in resolving disputes. Offering services in both official languages, OBSI is free to consumers. OBSI responds to inquiries from consumers, conducts fair and efficient investigations and shares insights with regulators, stakeholders and the broader public.

Canadian federal financial institutions are required by the *Bank Act* to provide consumers with an External Complaints Body (**ECB**) where consumers and banks can receive independent dispute resolution. For banking consumers, there are two ECBs in Canada: OBSI and the ADR Banking Ombuds service (**ADRBO**). Both ECBs are overseen by the Financial Consumer Agency of Canada (**FCAC**).

In addition to complaints against a majority of federally-regulated banks, OBSI's banking mandate includes complaints against certain provincially-regulated credit unions and a small number of other entities.

On the investments side, OBSI also serves as the sole ombudsman for all securities firms in Canada outside of Québec pursuant to National Instrument 31-103. OBSI's investments and banking mandates are being reviewed separately, and this report concerns the banking mandate only, along with broader operational issues, such as OBSI's governance, which cut across both mandates.

Background to the Evaluation

In accordance with the *Complaints Regulations* under the *Bank Act* (explained below), OBSI is required to submit itself to an evaluation of the discharge of its functions and performance of its activities as an ECB every five years. This requirement was introduced as part of OBSI's approval as an ECB by the Minister, which occurred in June 2015. Work relating to this review began in 2019, with delays due to FCAC's review (explained below) and the impacts of the COVID-19 pandemic.

The last independent review of OBSI's banking mandate was in 2011 (the **2011 Review**). The 2011 Review and earlier reviews were undertaken by OBSI voluntarily based on compliance with international best practices and continuous improvement goals. Another independent review of OBSI was conducted in 2016 (the **2016 Review**), but it focused only on OBSI's investments mandate. The 2016 Review did, however, discuss certain structural matters such as governance that cut across mandates.

FCAC also conducted a review of OBSI in 2018/2019 which was published in 2020 (the **FCAC Review**).

For this independent evaluation of OBSI, both the investments and banking mandates are being reviewed. This report concerns the banking mandate only, along with broader questions, such as OBSI's governance, that cut across specific mandates. On these broader points, certain parts of the banking and investments reports are identical.

This evaluation was commissioned by the OBSI board, with approval from FCAC. After issuing a Request for Proposals, Professor Poonam Puri was selected as the independent reviewer. Assisting Professor Puri is Dina Milivojevic. Bios can be found at Appendix “A” to this report.

The independent evaluation terms of reference are attached as Appendix “B” to this report. These terms of reference require evaluation of the following:

1. *Whether OBSI is fulfilling its obligations as outlined in the Complaints Regulations and Commissioners Guidance-13; and,*
2. *Whether any operational, budget and/or procedural changes in OBSI would be desirable in order to improve OBSI’s effectiveness in fulfilling the provisions of the Complaints Regulations and/or recognized best practices for financial services ombudsmen.*

The evaluation involves a review of:

1. *banking complaint case files completed between November 1, 2018 and October 31, 2020 (the “Review Period”)*
2. *current operating policies and procedures, including any changes made during the Review Period; and*
3. *third party evaluations, financial audits and internal self-assessments between August 2015 and August 2020 (the “Five-Year Period”).*

The Complaints Regulations are attached as Appendix “C” to this report. The Commissioner’s Guidance-13 is attached as Appendix “D” to this report. OBSI’s Terms of Reference are attached as Appendix “E” to this report.

Evaluation Process

There were four main activities we undertook to complete this evaluation: file review, stakeholder and internal OBSI consultations, desk review and governance review.

1. *File Review-* We reviewed a random sampling of 74 banking files from OBSI. These files were selected randomly and anonymized, with an adequate sampling of each different outcome that is possible in OBSI files. We considered files at varying levels of complexity: at the intake stage, OBSI assigns files as A (most complex), B and C (least complex). We reviewed 27 A files, 23 B files and 24 C files. We also reviewed 13 files that went through reconsideration (a process explored below).

2. *Stakeholder and OBSI Consultations-* We conducted extensive interviews with 27 stakeholders, including banks, industry groups, consumer groups, the Consumer and Investor Advisory Council (CIAC) of OBSI, the board and senior leadership of OBSI, staff of OBSI (including investigators), and consumers who have had cases before OBSI. We met with every stakeholder who expressed an interest in meeting with us in connection with this review.

We also received four written submissions that addressed both OBSI’s investments and banking mandates, and two that were specific to its banking mandate, in response to the Request for Comment. We also received research, small notes and other helpful material from numerous individuals and organizations. These formal submissions are posted on OBSI’s website, if permission was granted by the stakeholder.

3. *Desk Review*- We conducted a careful review of OBSI's policies, procedures and training, including training manuals, quality control guidance and board reports.

4. *Governance Review*- We conducted a governance review as part of our evaluation of OBSI's operational effectiveness. This review included interviews with directors, management and external stakeholders, as well as a review of corporate governance documents such as the corporate by-laws and policies.

Evaluation Framework

This evaluation has been conducted taking the following standards and requirements into account:

1. The Complaints Regulations and Commissioner's Guidance-13;
2. International Network of Financial Services Ombudsman Schemes Network March 2018 *Guide to setting up a Financial Services Ombudsman Scheme* (the **INFO Network Guide**);
3. The World Bank's 2017 *Good Practices for Financial Consumer Protection*;
4. Report produced by David Thomas and Francis Frizon for the World Bank: *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*;
5. ISO 10003:2018 *Quality management — Customer satisfaction — Guidelines for dispute resolution external to organizations*; and
6. British and Irish Ombudsman Association: *Guide to Principles of Good Complaint Handling*.

Conclusions

Overall, we found that OBSI met and exceeded its obligations under the Complaints Regulations and the requirements under the Commissioner's Guidance-13. We were impressed by OBSI's handling of cases during the Five-Year Period. In particular, we found that:

1. OBSI dealt with complaints in a timely manner;
2. investigators were able to identify key issues in a complaint and requested additional documents where necessary;
3. investigators were skilled at conducting interviews and assessing credibility;
4. investigators kept the parties apprised of progress in the investigation, were candid with the parties about the merits of the case, and explained their views well and as early as possible;
5. OBSI's reasons were fair, proportionate and explained in plain language; and
6. OBSI's conclusions flowed from the evidence.

That said, we make certain recommendations in this report for improvement as they relate to the six areas above.

As well, we note that OBSI has made significant improvements in its operations since the 2011 Review and the 2016 Review. During the five-year review period for our review, OBSI undertook significant projects to improve its service delivery, upheld standards of fairness and impartiality and closed investigations in a timely manner. Of particular note, OBSI managed its highest ever case volumes during the COVID-19 pandemic without delays in completing investigations.

We found that OBSI's inability to universally secure redress for consumers through the name and shame system continues to limit its effectiveness, as it provides an economic incentive for both parties to settle for amounts below OBSI's recommendation. As a result, we believe that OBSI should be given authority to render decisions that are binding on the parties to its process. This is consistent with international best practices and would bring more legitimacy to the system.

We also found that there is room to improve the systemic issue reporting system, as the current system leaves consumers wondering what happens to systemic issues after they are identified.

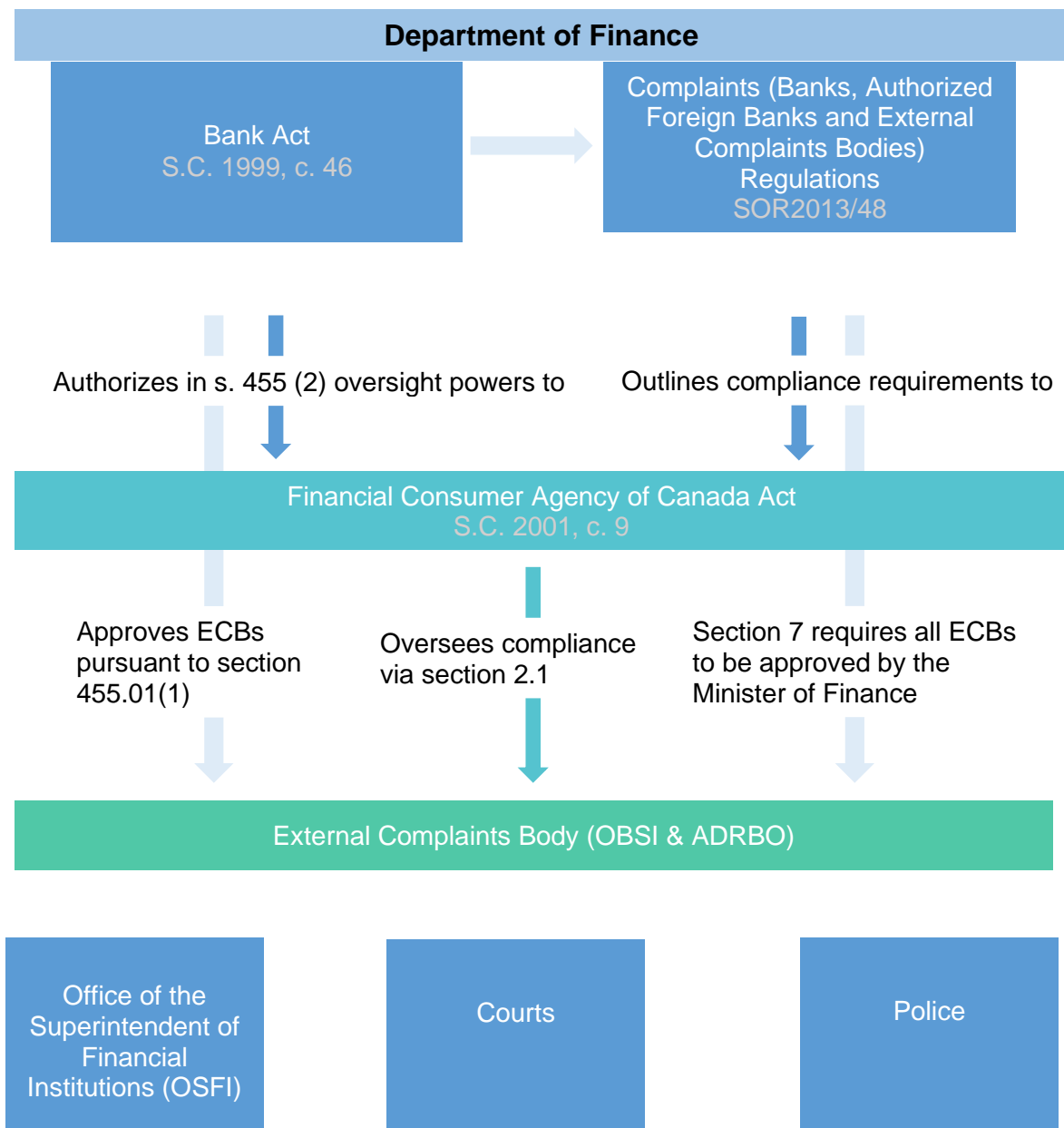
On the whole, we wish to commend OBSI for its success over the Five-Year Period, and hope that the organization is given the opportunity to live up to its full potential through the granting of binding authority.

1. CONTEXT IN WHICH OBSI OPERATES

OBSI plays a crucial role in the Canadian financial markets, offering its services in both official languages, free of charge to consumers who have complaints against their banks. It is a useful alternative to the legal system, providing a quicker and less formal dispute resolution process than traditional civil litigation through the courts.

In assessing OBSI's performance, it is important to keep in mind that OBSI has a *specific* mandate and purpose, and that it is one institution among many in a complex and evolving system. On the banking side of its mandate, it operates in a system which includes banks, regulators, government, courts and police.

The System in which OBSI Operates (for its Banking Mandate)



For the purposes of our review, we carefully considered the system constraints in which OBSI operates. Some of the recommendations we received in our consultations dealt with issues better put to FCAC or the banks themselves. Some commenters complained that OBSI does not take a more active regulatory role in the financial markets. Some commenters wanted changes in the banks' internal processes. While OBSI plays a distinct and important role in the Canadian financial markets, its authority is limited by regulatory frameworks as well as its Terms of Reference.

Below, we briefly outline the role of each of these actors/frameworks:

1. Department of Finance: the federal government department that oversees the *Bank Act* and the relevant banking agencies, including FCAC and OSFI. Headed by the Minister of Finance, the department ultimately receives instructions from the Prime Minister through the Minister's mandate letter.
2. *Bank Act*: the legislative framework under which banks in Canada operate. Regulations are made under the *Bank Act* that impact OBSI's participating banks.
3. *Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations*: created under the *Bank Act* to establish the standards under which OBSI operates.
4. FCAC: the federal agency that has a mandate to ensure that regulated financial institutions comply with consumer protection measures. It also plays a consumer awareness and education function. OBSI has reporting obligations to FCAC and complaints about OBSI can be made to it.
5. ECBs: governed by the Complaints Regulations, these entities act as independent external dispute resolution services. They service federally-regulated financial institutions (including banks, federal credit unions and trust and loan companies) and the consumers who use their services.
6. OSFI: the primary regulator for OBSI's participating banks. OSFI does not work on consumer-related issues.
7. Courts: a possible tool for consumers if they are not satisfied with the results of an OBSI investigation, or as a stand-alone tool for seeking recovery. The courts are not an appeal route from OBSI.
8. Police: in certain circumstances such as fraud or other egregious misconduct, a possible avenue of recourse for consumers who have been harmed.

1.1 OBSI's Status as a Financial Services Ombudsman

Section 1.1 of OBSI's Terms of Reference describes OBSI's purpose as follows:

OBSI seeks to resolve disputes between participating financial services firms and their customers if they are unable to resolve them on their own. OBSI is independent and impartial, operates in the public interest, and its services are free and accessible to consumers without the need for legal representation. As an alternative to the legal system, OBSI works efficiently and confidentially to find a fair outcome through a fair process.

OBSI's current model as a flexible, independent and free dispute resolution service is incredibly valuable to the Canadian financial markets. Although some stakeholders disagreed about what OBSI's specific mandate should be, they overwhelmingly took the position that OBSI plays an important and essential role in the Canadian financial markets.

In addition to providing dispute resolution services to Canadians with complaints against their banks, OBSI also plays an important public interest role. Among other things, OBSI:

1. strengthens public awareness and ensures consumers have easy access to information about OBSI when they have a problem;
2. shares information and provides thought leadership on current issues, including through consumer and stakeholder engagement, a focus on financial literacy and publishing consumer bulletins on its website. For example, OBSI recently published consumer bulletins on the increased use of cryptocurrency scams and the risks of DIY investing; and
3. advances regulatory and policy changes that improve consumers' access to effective financial ombudsman services in Canada. For example, OBSI recently responded to the Financial Consumer Agency of Canada's (**FCAC**) request for comments on Strengthening Canada's External Complaint Handling System. In it, OBSI advocated for itself to be given binding authority to improve the public perception of its non-binding mandate as toothless.

1.2 OBSI is not a Court

OBSI's current model as a flexible, independent and free dispute resolution service is incredibly valuable to the Canadian financial markets. If a consumer seeks compensation for harm they believe was caused by their bank, they have two primary routes—the courts and the ECBS. However, courts can be costly and time-consuming. The complexity of the court process means that average consumers often need to hire legal counsel to assist them. Many consumers cannot afford legal counsel, and many banking complaints also involve relatively small amounts which would not be worth the cost of going to court. OBSI offers a free service that is accessible and easy to use. OBSI works to try and find a settlement or recommends an amount of compensation if appropriate.

The fact that OBSI is different from a court is what makes it valuable to the system. If OBSI's processes become overly formal, then consumers, banks, regulators and the system as a whole will lose what they value in OBSI – access to justice, increased consumer confidence and access to information provided by a financial ombudsman service.

During our stakeholder discussions, we heard from a range of stakeholders that OBSI should adopt more robust processes. We heard suggestions for a range of process changes, including an external appeals process, cross-examination of parties, the addition of expert reports and discovery, among others. Though this term was not necessarily used, we see these process changes as making OBSI more “court-like”. Industry-oriented stakeholders tended to discuss these changes in the context of binding authority, arguing that firms would need more confidence in OBSI if binding authority were granted, and therefore more robust processes would be needed.

Certain individual suggestions for particular process changes have merit. We address possible reforms to the system, both in the event that binding authority is or is not granted by the regulators, throughout this report. Overall, however, we caution against reforms which take OBSI away from what it was designed to be. Reforms which make OBSI overly complex, overly legalistic and overly burdensome for consumers will only detract from the existing benefits of OBSI to the system.

Indeed, it is a fundamental tenet of financial ombudsmanship that consumers should have access to a quick and informal procedure without being obliged to use a legal representative. This leads to greater consumer confidence in the financial system. It also benefits firms and banks because consumers are more likely to buy financial products, the cost of resolving disputes with consumers

is kept to a minimum, and unscrupulous competitors who act inappropriately are held to account. Finally, the state benefits because redress can be provided at a minimum cost and feedback from the ombudsman can help improve future regulation.¹ As a result, we believe that OBSI should continue to be free and convenient for consumers.

1.3 OBSI is not a Regulator

It is also important to underscore that OBSI is not a regulator. Although OBSI performs certain functions to assist FCAC (such as reporting on trends in complaints received), OBSI is ultimately not responsible for regulating the financial markets in Canada. It does not set regulatory standards or guidance and does not develop public policy in the same manner that FCAC does. It is not within OBSI's mandate to impose sanctions on banks; rather, it is within OBSI's mandate to make recommendations for compensation so as to put the consumer back in the place they would have been but for harm caused by a participating bank. It is similarly not within OBSI's jurisdiction to give itself binding decision-making authority, or to make other significant changes to its mandate. Those decisions must be made by FCAC, which oversees OBSI and gives it standing.

1.4 Previous Reviews and Recommendations

The most recent independent review for OBSI's banking mandate occurred in 2011. The most recent review of OBSI's investments mandate was in 2016. A review by FCAC of OBSI and ADRBO occurred more recently and was published in 2020. OBSI was also the subject of consideration by the Capital Markets Modernization Taskforce.²

1.4.1 2011 and 2016 Reviews

While the 2016 Review covered only OBSI's investments mandate, the 2011 Review covered both mandates. However, much of the commentary provided in both evaluations was organization-wide, and therefore is informative for this evaluation.

The 2011 Review told two stories, one of successful internal progress and development and one of a "storm of criticism" externally from stakeholders. The 2016 Review largely told the story of OBSI's improvement from the previous review and made recommendations that would allow OBSI to become a fully-fledged ombuds service in line with international standards.

1.4.2 FCAC Review

The FCAC, which oversees OBSI's banking mandate, conducted a review in 2018/2019 and published its report titled *Industry Review: The Operations of External Complaints Bodies* in 2020. The review considered the complaint handling and effectiveness of both OBSI's banking mandate and ADRBO. It consisted of many of the same steps we have undertaken, including file review, desk review and interviews. Overall, the FCAC review found that OBSI met and even exceeded

¹ Report produced by David Thomas and Francis Frizon for the World Bank: *Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman*, pg. 11, available at <https://documents1.worldbank.org/curated/en/169791468233091885/pdf/699160v10ESW0P0en0Vol10Fundamentals.pdf>.

² Though the Capital Markets Modernization Taskforce report was focused on the capital markets in Ontario, *i.e.*, not the banking sector, the recommendations related to OBSI can be applied to the banking mandate as well as the investments mandate.

most requirements, having adopted international best practices for external dispute resolution services. FCAC noted that there was “room for improvement” in some areas including timeliness, in particular with respect to the transfer of information about complaints from banks to OBSI.

1.4.3 Capital Markets Modernization Taskforce

In Ontario, the Capital Markets Modernization Taskforce (the **Taskforce**) was established in February 2020 to review and make recommendations to modernize Ontario’s capital markets regulation. The Taskforce released its report in January 2021 and concluded (at page 105) that “[a] binding, reputable and efficient [dispute resolution service] framework in Ontario would be a significant improvement to the retail investor protection framework.” The Taskforce recommended that the Ontario Securities Commission (**OSC**) be given the statutory authority to designate a dispute resolution service with binding powers, and that the OSC either:

1. create a made-in-Ontario solution with the power to issue binding decisions; or
2. improve OBSI by imposing requirements to further enhance OBSI’s governance structure, public transparency, and professionalism, as a condition for being given binding authority.

The Taskforce also recommended (at page 106) that the compensation limit for either option be \$500,000. OBSI submitted a public response to welcome the recommendations of the Taskforce that it be given binding authority and that the limit for compensation be increased, and committed to working with securities regulators towards these goals.

In October 2021, the Ontario Government published the consultation draft of the *Capital Markets Act*. The proposed legislation does not give the OSC the authority to designate a dispute resolution service with binding authority, or address OBSI at all.

1.4.4 Department of Finance Consultation on Strengthening Canada’s External Complaints Handling System

In July 2021, the Department of Finance announced its consultation on Canada’s external complaints handling system. The consultation considered ADRBO and OBSI’s banking mandate, as well as the findings of the 2020 FCAC report. The consultation closed in October 2021. The Department of Finance advised that it would analyze the feedback collected and consider how to further strengthen the external complaint handling system in banking.

1.4.5 Federal Budget 2022

The Canadian Government released its budget for 2022 on April 7, 2022. In it, the Government announced its intention to introduce “targeted legislative measures to strengthen the external complaints handling system and to put in place a single, non-profit, external complaints body to address consumer complaints involving banks.”³

³ Canadian Federal Budget 2022, Chapter 9: Tax Fairness and Effective Government, available at <https://budget.gc.ca/2022/report-rapport/chap9-en.html#2022-2>.

2. GOVERNANCE REVIEW

We conducted a governance review of OBSI, including interviews with most of OBSI's directors, a review of governance policies and procedures, and consultation with external stakeholders. This section of the report contains our findings, as well as recommendations for improvement.

Overall, we found that the board demonstrated strong adherence to principles of good governance. In particular, we found that the board was characterized by strong decision-making processes, robust director nomination and board evaluation policies, demonstrable success on diversity, effective oversight of management, and active management of conflicts of interest.

One area that yielded considerable discussion was the relationship between OBSI and CIAC. Another was how to best provide fair and meaningful representation of different stakeholder views on the board. Both of these issues are described in further detail below. We have also made recommendations about the composition of OBSI's board. Overall, we are of the view that OBSI should move away from having certain board members nominated by a particular self-regulatory organization (**SRO**) or industry group, and should instead focus on amending its skills matrix to include relevant experience with the industry sectors and stakeholder groups OBSI serves. This focus on appointing individuals with the skills 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.

2.1 Size, Composition and Representation on the Board

At the completion of our review, the board sits at ten members, with outgoing Chair Jim Emmerton having recently left the board, and new Chair Maureen Jensen having recently joined. There are three industry directors (being each of the MFDA, Canadian Bankers Association (**CBA**) and IIROC nominees) and seven community directors, one of whom is the Consumer Interest Director. The Consumer Interest Director position was added to the board in 2020, in part in response to a recommendation from the 2016 Review.

The 2016 Review (which included an analysis of the board) noted that, at ten directors, "[t]he governance structure appears large." We asked directors about the size of the board and found that there were no concerns. Despite being relatively large, there was a sense that the board functioned well and that a reduction of its size was unnecessary. We agree. In particular, we heard comments that, with two committees (Audit & Finance and Governance & Human Resources) traditionally split five/five or six/four among the directors, the work allocation is appropriate. Moreover, we heard that a larger-sized board allows for diversity (and in particular geographical diversity).

2.1.1 Director Recruitment and Nomination Process

OBSI's board maintains a comprehensive and robust Director Recruitment Policy. The document contains a diversity statement and sets out the diversity metrics by which a candidate will be considered: skills/experience, geography, gender, and community, consumer and social engagement. We would recommend that the board consider adding other metrics in their diversity deliberations, including indigenous ancestry, membership in a visible minority community and disability. This is in line with emerging best practices and is, for example, the standard set for federally-incorporated businesses under the *Canada Business Corporations Act*.

The Governance & Human Resources Committee of the board leads the recruitment process. Community director nominees are solicited from current board members and through public advertisements. The board's skills needs and diversity considerations are key to the selection process. For the industry directors, the Committee contacts the relevant membership body, which then sends names of candidates for consideration. For the Consumer Interest Director, the policy states that the Committee consults with consumer advocacy groups to create a short-list. CIAC is consulted during the recruitment process for the Consumer Interest Director.

2.1.2 Representation of Stakeholders

The Request for Proposals requested an analysis of whether the OBSI board had fair and meaningful representation of its stakeholders.

Typically, there are ten directors on OBSI's board. Three of these ten are industry directors nominated by MFDA, IIROC and CBA respectively. One is a Consumer Interest Director (a role which, as described below, was formally added to the board in 2020). The rest are 'community/independent' directors. Community directors who have worked in industry have a two-year cooling off period before serving as directors. Regardless of their area of expertise, each director acts honestly and in good faith with a view to the best interests of OBSI and exercises the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, as per section 6.2(a) of OBSI's corporate by-laws and the board's Charter of Expectations.

Members of the board felt that OBSI's governance structure adequately represented the organization's stakeholders. During our external consultations, we received suggestions for reforms to the board. We address some of those below.

2.1.3 Industry Representation

We heard from some industry representatives that OBSI lacked representation on its board from all the industries/sectors that participate in OBSI's service. Specifically, we heard that the board lacks representation of EMDs and PMs, and that, absent these voices, OBSI is not receiving the full breadth of required industry insights.

OBSI has approximately 692 PM participating firms and approximately 248 EMD participating firms. This is more than the number of IIROC-regulated dealers (approximately 170) and MFDA-regulated dealers (approximately 98), who each already have a representative on OBSI's board. However, PMs and EMDs represent a small fraction by amount of assets, number of clients, or number of registered individuals compared to IIROC- and MFDA-regulated dealers (there are over 100,000 registered IIROC and MFDA representatives, compared to approximately 5,500 EMD and PM representatives in Canada). Because of this, EMDs and PMs have relatively low complaint volumes and pay a very small proportion of OBSI's annual fees.

We were asked to consider recommending that an EMD/PM representative be formally added to OBSI's board. We are instead recommending that OBSI consider: (1) amending its skills matrix to include relevant experience in one or more of the industry sectors; and (2) amending its by-laws to remove the requirement that the three industry directors be nominated by IIROC, MFDA and CBA, respectively, and instead seeking nominations for the industry directors from industry

stakeholders and through public advertisements. The industry directors should be selected on the basis of their skills and experience in one or more of the industry sectors that OBSI serves.

We believe this would be preferable to the current approach, as it would leave open the idea of rotation of board participation among all the different sectors. We also think this recommendation makes sense in light of the upcoming combination of IIROC and MFDA into one SRO responsible for overseeing both investment and mutual fund dealers, among others. Finally, this focus on appointing individuals with the skills 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.

We also believe that OBSI’s board should consider engaging in annual industry roundtables with EMDs, PMs and others to help provide for a detailed and meaningful dialogue between OBSI and its participating firms. OBSI can use these roundtables as opportunities to get qualitative feedback from participating firms that is specific to their business. For example, a roundtable with EMDs may elicit different feedback than one with MFDA members.

2.1.4 Consumer Representation

In our discussions with consumer groups, we heard that the board lacked adequate consumer representation. In the 2016 Review, it was recommended that OBSI add a consumer representative on the board, and one was added in 2020. The addition of the Consumer Interest Director was generally accepted as a good step and an effective position for the board, including by board members themselves. The current Consumer Interest Director, Wanda Morris, is a former member of CIAC, though this is not required for the position.

OBSI’s board has always considered hearing the consumer voice to be very important. Even prior to the formal creation of the Consumer Interest Director role, OBSI’s board always had one or two directors who had previously served on CIAC (most recently Jim Emmerton and Laura Tambllyn Watts), despite the absence of a formal Consumer Interest Director role.

In our review, we considered whether there should be three Consumer Interest Directors on the board, matching three-for-three between industry directors and consumer directors. Consumer advocates generally thought this would balance the board, which they considered industry-heavy. On the other hand, we heard that the matching three-for-three could risk creating partisan “camps”, which would go against the current comity on the board, where most decisions are made by consensus after thoughtful deliberation and directors take views generally with the best interests of OBSI, not individual stakeholder groups, into account.

As outlined above, we believe that OBSI should transition towards having a board with no specific categorical requirements regarding the number of industry and community directors, and that appointments should be made solely on the basis of the amended board skills matrix. OBSI should consider whether appointing board members solely on the basis of the amended skills matrix could provide for fair and meaningful representation on its board and committees of different stakeholders. It is crucial for OBSI’s board to have clear lines of sight into issues and perspectives relevant to all of its stakeholders. Although industry and consumer stakeholders often have very different perspectives, they all have the same interest in efficient dispute resolution and an effective and trusted financial services sector.

We believe that a system that bases its appointments on the amended skills matrix is the best way to achieve this. This type of system would emphasize the importance of OBSI’s impartiality

and independence (and its perceived impartiality and independence among stakeholders), and would remove any inference that directors might use their position to represent a particular stakeholder group. This type of system would also have the benefit of allowing for more flexibility in appointments, depending on OBSI's needs at a given time.

We also believe that OBSI's board should consider engaging in annual roundtables with consumers and investors to help the board receive input and perspectives from these stakeholders in an effective manner.

2.1.5 CIAC

CIAC was formed in 2010 with a mandate to provide OBSI's board with the perspectives of consumers and advise on governance and operational matters with a consumers' lens. CIAC proactively raises issues with OBSI, alerting leadership to the challenges that consumers face in using the services of OBSI members and in dealing with OBSI itself. It also provides expert advice on a range of relevant topics, including social policy, equality and accessibility matters and client experience issues.

Members are appointed from across Canada. The 2020 call for applications requested candidates with interest and experience in consumer advocacy. Candidates apply to CIAC through the Governance & Human Rights Committee of OBSI's board. CIAC meets at least quarterly. During the Five-Year Period, CIAC had significant accomplishments, including:

1. working with the OBSI board to appoint OBSI's first formal Consumer Interest Director;
2. providing commentary on a range of policies and procedures, including OBSI's statement for investigation timeliness standards;
3. contributing to OBSI's response to the Capital Markets Modernization Taskforce consultation and OBSI's Seniors Report, among other projects;
4. recommending improvements to OBSI's website, published materials and its communication of loss calculations; and
5. reviewing OBSI's complaints process.

In addition, CIAC participates in the board's annual strategic planning process.

CIAC is governed by a Statement of Expectations, most recently approved by the board in 2019. Much of the Statement of Expectations is procedural and uncontroversial, but there is a section which came up in our consultations that is of note.

Right to an Independent Opinion – *As CIAC is an advisory body to the Board of Directors of OBSI, it is expected that any formal reports or position papers produced by CIAC will be provided to the Board for consideration, action and publication as the Board sees fit. Any materials developed by the CIAC for the Board will remain confidential. Material that is identified for publication will be reviewed and approved by the CIAC Liaison, the Ombudsman and CEO, and the Board Chair. Nevertheless, it is recognized and acknowledged that members of CIAC may be activists with a right to a personal voice, provided that members will not use any confidential information or information obtained solely as a result of their membership on CIAC in the expression of their personal opinions and positions.*

During our conversation with CIAC, it became clear that they wish to have a stronger, more independent voice. We took this to mean that they wish to be more like the Ontario Securities Commission's Investor Advisory Panel (the **OSC's IAP**), which is operationally independent from the OSC and engages in broader and more public advocacy as a result.

We heard from other stakeholders that the OSC's IAP itself can effectively advocate for issues that CIAC would wish to advocate for. These stakeholders argue that CIAC was not designed as an IAP-style body but is purely a board advisory committee.

In seeking more authority and independence, CIAC faces two main design challenges. The first, as mentioned above, is that it is constituted as an advisory committee. The second is that OBSI is not a regulator. The OSC's IAP has a robust mandate in part because it is borne of a regulatory body which has rule-making power, compliance power and enforcement power, all infused with public interest jurisdiction. OBSI status as a financial services ombudsman is more limited in scope, and therefore CIAC's status as an advisory committee to OBSI is more limited in scope.

It is clear from our meetings that the relationship between OBSI and CIAC needs to be clarified. We believe the biggest issue between OBSI's board and CIAC is that they have different views about the role that OBSI should take in the Canadian capital markets. Specifically, it appears that CIAC wants OBSI to act as more of a consumer advocate, and OBSI's board does not feel that it is appropriate for OBSI to do so given its mandate. In addition, we heard that CIAC is not using its time with OBSI's board in a constructive way, raising the same issues (such as OBSI's lack of binding authority) repeatedly at multiple meetings. This had led to an impasse in communications between OBSI's board and CIAC, and has limited the efficacy of CIAC more generally.

CIAC's purpose is to assist OBSI's board, and it serves at the discretion of OBSI's board. We believe that CIAC could provide more value to OBSI's board if the parties' respective roles and responsibilities were clarified in the Statement of Expectations. Specifically, the Statement of Expectations should more clearly set out CIAC's role as an advisory committee and expressly state that OBSI's board is not required to accept a recommendation made by CIAC. OBSI's board and CIAC could also work together to define the role CIAC will play at OBSI's board meetings, and should consider formalizing the arrangement. For example, CIAC could present to the OBSI board on a particular consumer issue at every other board meeting. Setting out this level of detail in the Statement of Expectations may allow both OBSI's board and CIAC to have a common understanding about their respective roles and responsibilities, and may improve the communications between the parties and the value that CIAC ultimately provides to OBSI.

However, it is ultimately up to OBSI's board to determine whether CIAC is serving its purpose in assisting the board, and whether its continued existence is required for the OBSI board to adequately and effectively understand the views of consumers and investors, particularly if OBSI chooses to implement the updated governance structure recommended below.

Recommendation

OBSI's board should undertake a strategic review of its governance structure to determine how best to ensure that key stakeholder interests are most effectively considered in board oversight and decision-making.

In particular, OBSI's board should:

- add other metrics to the Governance & Human Resources Committee's diversity deliberations for recruitment purposes, including indigenous ancestry, membership in a visible minority community and disability;
- transition towards having a board with no specific categorical requirements regarding the number of industry and community directors and amend its bylaws to remove the requirement that industry directors be nominated by IIROC, MFDA and CBA, respectively;
- amend and update its skills matrix and use it as the basis for recruitment to ensure that directors have the skills and competencies needed to effectively oversee OBSI. The skills matrix should include experience in the range of relevant industry sectors discussed in this section, as well as important consumer and investor perspectives; geographic and linguistic diversity; and a diversity of backgrounds should also be explicitly accounted for;
- establish roundtables with industry and consumers, including advocacy groups for both, to receive their perspectives and opinions on key issues of importance to OBSI and current developments and trends; and
- in light of the above, carefully consider whether it is necessary or desirable to continue having a CIAC, given that the recommended governance structure described above would see an OBSI board that has balance in industry and investor backgrounds and where the OBSI board would receive input from industry and consumer stakeholders through other means.

2.2 Holding the CEO & Ombudsman Accountable

One of the board's primary responsibilities is to hold the CEO & Ombudsman and the senior management team accountable. Based on our interviews with directors, we found that the oversight process was robust. The board conducts quarterly reviews of the CEO & Ombudsman and has frank discussions with her on a quarterly basis to discern her views on how the organization is operating and to share the views of directors as to the same. The CEO & Ombudsman provides detailed written reports to the board covering a range of topics related to the operational performance of the organization. We have reviewed a representative sample of these reports and found them to be thorough and comprehensive.

We note that the board was complimentary of the performance of the incumbent CEO & Ombudsman and her leadership team.

2.3 Board Structure and Process

2.3.1 Committee Structure

We heard from directors that the board's structure served the interests of good governance for the organization. As mentioned above, the board has two committees: Finance & Audit and Governance & Human Resources.

2.3.2 Decision-making

Directors felt that the board generally functioned well and that it was effectively discharging its responsibilities. The chair of the board makes efforts to ensure all directors have their voice heard. The board does take votes, but it has a consensus-based decision-making process, where directors discuss issues, provide their views and typically come to a consensus about a decision. This is not atypical for boards of directors in a wide range of organizations. The quality of decision-making was no doubt aided by a strong attendance record. Between 2017 and 2020, there were only three instances of a director missing a board meeting.

2.3.3 Addressing Conflicts of Interest

Consumer groups raised conflict of interest concerns with industry directors, specifically when their former or current employers are engaged in files with OBSI. It was noted by CIAC that some directors might receive pensions from OBSI member firms and banks.

Each year, OBSI's directors sign an acknowledgment of OBSI's director code of conduct, which addresses how to deal with conflicts of interest. Directors who declare a conflict are permitted to present their views and are then asked to leave the boardroom for the rest of the board to discuss and decide on the matter.

In the Director Recruitment Policy, OBSI stipulates that no more than one industry director can be a director, officer or employee of a particular financial services provider or affiliate. We are of the view that OBSI actively and appropriately handles conflicts of interest.

3. FILE REVIEW

As indicated above, we reviewed 74 randomly selected files as part of this independent evaluation. The breakdown of the types of outcomes in each file is reflected in the table below. Many of our observations are woven into this report, and in particular the section that deals with the Complaints Regulations. Detailed discussions around timeliness and proportionality of decisions are addressed later, for example. In this section, we will discuss overall conclusions and some specific observations.

Table 1: Breakdown of Banking Files Reviewed

Case Type	Number
Case dismissed—out of mandate (general)	5
Case dismissed—out of mandate (6-year limitation period)	4
Case dismissed—within mandate	30
Case dismissed—within mandate (consumer withdrew)	5
Case dismissed—within mandate (consumer did not complete file opening)	2
Settlement before investigation	5
Settlement—non-monetary	5
Settlement or recommendation equal to or less than initial firm offer	8
Settlement or recommendation greater than initial firm offer	2
Settlement or recommendation— no offer initially made by firm	8

3.1 OBSI's Complaint-Handling Process

3.1.1 Intake

Consumers can submit complaints to OBSI through its website, by email or by telephone. When a consumer contacts OBSI with an unresolved complaint about a bank, the complaint goes through OBSI's intake process. During the intake process, a case assessment officer (who is different from the investigator who ultimately investigates the claim, if it is determined to be within OBSI's mandate) determines whether the complaint is within or outside of OBSI's mandate. In determining whether a complaint is within OBSI's mandate, the case assessment officer will confirm, among other things, that:

1. one of the following has happened: (1) 90 days have passed since the consumer complained to the bank and the bank has not provided a final response; or (2) the bank has provided a final response and the consumer is dissatisfied with that response;
2. the consumer has not waited more than 180 days to escalate the complaint to OBSI after receiving a final written response from the bank;
3. the complaint is against a participating bank and pertains to the provision of a financial service;
4. the complaint has been made within OBSI's six-year limitation period;

5. the consumer has not commenced concurrent legal proceedings, or the parties have not already entered into a settlement; and
6. the complaint does not materially relate to a bank's risk management policies and practices, as these are outside of OBSI's mandate pursuant to its Terms of Reference. We note, however, that OBSI may investigate the manner in which these policies and practices were implemented (for example, OBSI may find that a bank's decision was biased, incomplete, or not in accordance with its own policies and practices).

If the complaint is determined to be out of mandate, the consumer is informed of the reasons why. If the complaint is determined to be in mandate, the consumer is asked to provide a signed consent form and documents relevant to the claim. A request is also made of the bank to provide all of its relevant documentation, including the closing letter it sent to the consumer.

Often, OBSI needs to review the relevant documents in order to determine whether a complaint is within OBSI's mandate (for example, where documentation is required to determine whether the complaint was made within OBSI's six-year limitation period). In these cases, the document request precedes the out of mandate determination.

If a complaint is assessed as being out of mandate, written notice is sent to the consumer within 30 days of OBSI receiving all information relevant to assessing the complaint. If a complaint is determined to be within OBSI's mandate, or if the mandate question requires investigation before it can be determined, the complaint is assigned to an investigator. Almost all of OBSI's investigators have expertise in complaint-handling across multiple sectors. However, to the extent possible, OBSI tries to assign cases to investigators based on their particular backgrounds and areas of expertise.

3.1.2 Investigation

During the investigation stage, among other things, the investigator reviews the documents received from the parties, interviews the parties on a one-on-one basis, conducts research and analysis, has further discussions with parties and completes loss calculations. All of this is done under the supervision of a manager, who is kept apprised of and provides guidance on the issues engaged by the claim, the investigator's plan for investigating the claim and the investigator's ultimate conclusions regarding liability and quantum of compensation.

If the investigator, in consultation with the manager on the file, determines that compensation is not warranted, the investigator informs the client and the bank of the decision via a closing letter setting out the reasons why and the case is closed.

If the investigator, in consultation with the manager on the file, determines that compensation is warranted, the process moves onto the facilitated settlement / recommendation stage.

3.1.3 Facilitated Settlement / Recommendation

During this stage, various outcomes are possible:

1. if the bank and the consumer agree on the amount of compensation owed to the consumer, the case is closed without OBSI sending an investigation report;
2. if the bank and the consumer do not agree on the amount of compensation owed to the consumer, an investigation report is drafted and peer reviewed. The investigator provides

a draft investigation report to both parties for their comment. The investigator, in consultation with the manager on the file, considers whether any of the parties' comments affect his or her initial conclusions, and finalizes the investigation report providing OBSI's compensation recommendation;

3. if the bank and the consumer accept the recommendation, the case is closed;
4. if the consumer does not accept the recommendation, the consumer can pursue the complaint in other forums (e.g., formal litigation); and
5. if the bank does not accept the recommendation, OBSI publicizes the name of the bank, the investigation findings and the outcome of the case.

Nearly all banking complaints where compensation is recommended are currently resolved through the facilitated settlement process that takes place in advance of the final recommendation.

OBSI strives to (and does in fact) close most banking cases in less than 60 days and almost all banking cases in less than 90 days from the date that OBSI has all of the information required to investigate the complaint and the case is assigned to an investigator.

3.1.4 Reconsideration

If a consumer is dissatisfied with OBSI's decision, the consumer can request a reconsideration of the decision within 30 days from the date of the closing letter. Where a consumer requests reconsideration, one of OBSI's five reconsideration officers will:

1. acknowledge receipt of the reconsideration request within five business days;
2. review the information provided by the consumer and, if necessary, contact the consumer to obtain further information; and
3. inform the consumer of the final decision and explain the reasons in writing within 45 days of being assigned the request.

Reconsideration officers are all senior investigators with expertise in OBSI's processes, and have not had any prior involvement in the file. Generally, OBSI only changes its original decision if:

1. the reconsideration officer finds that the investigator overlooked material information, failed to address material issues raised by the consumer, or made a material error in analyzing information; or
2. OBSI receives previously unavailable information that would lead it to make a different recommendation.

3.2 File Review Observations

3.2.1 File Review Process and Overall Observations

For each file, we reviewed extensive documentation, including all the documentation provided by the consumer and the bank to OBSI. These included, for example, the consumer's initial complaint to the bank and their complaint to OBSI, the bank's response to the consumer's complaint and account documentation. We also reviewed OBSI's internal investigation documents, including investigation plans, interview notes, correspondence with the parties and closing letters. To the extent that we had questions, we were able to ask OBSI for clarification.

The issues brought before OBSI on the banking side included files related to fraud, chargebacks and service deficiencies, among others.

Our mandate in reviewing the files was not necessarily to ask whether we agreed with all the findings, but to determine whether, once those findings were made, they were supported by the evidence and were reasonable.

We were impressed by OBSI's handling of cases. Based on our file review, we concluded that OBSI followed good processes. Subject to certain recommendations for improvement made in this report, we found that:

1. OBSI dealt with complaints in a timely manner;
2. investigators were able to identify key issues in a complaint;
3. investigators were skilled at conducting interviews and assessing credibility;
4. investigators requested additional information, where necessary, and kept the parties apprised of progress in the investigation;
5. investigators were candid with the parties about the merits of the case and explained their views well and as early as possible;
6. OBSI's reasons were fair, proportionate and explained in plain language; and
7. OBSI's conclusions flowed from the evidence.

3.2.2 *OBSI's Limitation Period*

OBSI currently has a six-year limitation period. This means that OBSI will only consider a complaint if the consumer raised the complaint with the bank within six years after the consumer knew or ought to have known about the problem.

We reviewed five files where the file was deemed out of mandate due to the expiry of the limitation period. In most, the case clearly fell out of the six-year limit. However, we do know that some cases are in the grey zone, where it is truly arguable whether the consumer is within the limitation period. In light of this, changing the limitation period or how it is applied was of interest to consumer groups during our stakeholder consultations.

We do not believe that the limitation period should be removed and replaced with a pure standard of "reasonable time", as was suggested by one stakeholder, where reasonableness could in the circumstances be much greater than six years. While this has some merit and we considered it carefully, there is a strong policy rationale for limitation periods which should be respected, namely, to "provide certainty and finality" for respondents.⁴

We reviewed the guidance that OBSI investigators receive and found it to be comprehensive and easy to understand. In particular, the guidance contains a detailed analysis of the subjective standard of OBSI's limitation period, including examples to help illustrate situations that investigators could face.

Most of the consumer complaints we reviewed were made both within the OBSI limitation period as well as within the civil limitation period. Thus, if consumers got an unsatisfactory result in the

⁴ Katherine T. Di Tomaso, *Limitations Act Chapters, 1. Definitions/Basic Limitation Period, Sections 1 - 5 AND Ultimate Limitation Periods/No Limitation Periods/General Rules/Transition, Sections 15 - 24 in Civil Procedure and Practice in Ontario*, Noel Semple (ed.), Canadian Legal Information Institute, 2021 CanLII Docs 2093, <https://canlii.ca/t/tbjv>.

OBSI process, they could still seek compensation through civil litigation. The closing letters provided to consumers contain language explaining the civil limitation period. However, we found that the information was not detailed enough. Specifically, while the closing letter rightly identifies that there are limitation periods, it does not always state exactly what that period is or contain “ought to have known” language that can make a limitation period shorter than a layperson consumer might expect. We recommend that OBSI add more information about limitation periods to the closing letters. While OBSI’s internal guidance note on limitation periods cautions against providing information on limitation periods because it would constitute “legal advice”, we believe that OBSI can and should be transparent in its closing letters about its conclusions with respect to the limitation period in a particular case, especially when OBSI has concluded that the case should be dismissed because the limitation period has expired.

Recommendation

OBSI should add more information about limitation periods to the closing letter sent to consumers. Specifically, OBSI should include:

- information about the limitation periods in each province; and
- language indicating the “ought to have known” standard for limitation periods.

3.2.3 Investigation Plans

Almost all files we reviewed had an investigation plan. This document, broadly, is prepared by the investigator ahead of the investigation and outlines the complaint, the bank’s preliminary response, the parties’ arguments and their strengths and weaknesses, the core issues to be determined and occasionally preliminary assessments of the case.

OBSI currently has two templates for its investigation plans. The template that is used for a given case depends on the complexity and subject matter of the case and the seniority of the investigator. Based on those same considerations, some investigation plans are treated as living documents, updated with notes and observations throughout the process, while others are not. OBSI allows for some flexibility with its investigation plans to allow them to be appropriately scaled for the nature of the case and to promote efficiency.

3.2.4 Interviews and Assessing Credibility

Based on our file review, it appears that OBSI conducts interviews in most, but not all cases that are determined to be within OBSI’s mandate. OBSI determines whether to conduct an interview based on its fundamental goal of being efficient and employing only those investigative steps that are necessary to determine the facts and recommend a fair outcome. As a result, we saw cases where interviews were conducted with both parties, and some where the OBSI investigator determined that only an interview with the consumer was necessary to reach a fair outcome.

Though there is a limit to analyzing the qualities of an interview through the investigators’ notes, we generally found that interviews were conducted well. Investigators asked probing questions, challenged the evidence and noted inconsistencies where they existed. They were frank with the parties about their assessment of the case, managing expectations and noting where they were having difficulty accepting an argument from a party.

Importantly, we observed that investigators explained the Terms of Reference and the investigation process well to consumers during the interview. Many files seemed to utilize template introductory remarks, where the investigator would explain OBSI's role, what they could and could not do, and what the investigation process would be. At the end, the investigators went over any questions the consumer had and explained next steps for the process. The interview appeared to be a key method for transmitting information about the process to the consumers.

We also observed that there were many cases where a credibility assessment was necessary. OBSI has a detailed guidance note for its investigators on assessing credibility. In the files we reviewed, we were impressed with the investigators' skills at assessing the parties' credibility. Investigators told us that they generally rely on the first accounts of both parties, *i.e.*, the accounts closest to the events in question. When there are inconsistencies, the investigators probe them and ultimately have to choose between the consumer and the bank in a he/she said-he/she said situation. In these files, we noticed investigators used whatever documentary evidence they did have to test the credibility of the parties, probing inconsistencies and confirming stories against documentation.

In our interviews with investigators, they noted that credibility assessments can be difficult over the phone, which is how interviews are conducted. Ultimately, one investigator said, it is a "judgment call", but others emphasized that there needs to be a "why" as to the conclusion. We believe that utilizing videoconferencing services will greatly enhance the ability of the investigators to determine credibility. While it may ultimately still be a "judgment call", at least investigators will get the chance to observe non-verbal communication from consumers and bank representatives.

Recommendation

OBSI should conduct consumer and bank interviews over a videoconferencing platform, allowing for a stronger credibility assessment.

3.2.5 Closing Letters

At the conclusion of an investigation, OBSI provides a closing letter to the consumer and the bank. Since the 2016 Review, OBSI has invested significant time, focus and training on its plain language initiative for its closing letters. We heard positive feedback from a number of stakeholders on the quality of OBSI's closing letters, and note that certain of OBSI's industry stakeholders have since adopted similar styles in their communications.

We were very impressed with the quality of OBSI's closing letters. They contain plain-language information clearly setting out the complaint, the issues, OBSI's decision on each issue, and the reasons (including the documentary or other evidence) relied on to reach those decisions. They are clear, well-reasoned and easy to understand. They also contain information about the reconsideration process and alert consumers to their rights (*e.g.*, to bring litigation) and the existence of a limitation period.

3.2.6 Reconsideration

After the 2016 Review, OBSI implemented a new reconsideration process for investments and banking. Designed as an appeal of sorts, it allows senior investigators who have not seen a file before in any way to consider the concerns raised by the consumer challenging the outcome of

the investigation. If OBSI is given binding authority which includes a right of appeal for the parties, the need for a reconsideration process will likely no longer be required. Accordingly, all of the comments below are made in the context of the current system, and likely will not apply in the event that binding authority is granted.

Reconsideration officers are senior investigators who have expertise in OBSI's processes and the matters that OBSI handles. Senior Investigator-3s (**SI-3s**), the most senior investigators, can become reconsideration officers in addition to their work as SI-3s, but they cannot have any involvement with any file that comes before them for reconsideration. Managers are not involved in reconsideration matters. Instead, the process is overseen by a deputy ombudsman. While removing the managers from the process is a strong step to ensure no prior opinions or thoughts about a case, deputy ombudsmen do review files at a high level with managers, so there is a possibility that they may have heard the fact pattern already.

We put a great deal of thought into the reconsideration program at OBSI. We reviewed multiple files which went through reconsideration and discussed the process with OBSI's stakeholders, senior management and investigators.

In our file review, we noticed that most reconsiderations did not involve interviews with the parties. Largely, reconsideration officers tended to rely on the interview notes (if interviews were conducted) and other documents produced for or created during the original investigation. We do not feel that interviews need to be conducted in every reconsideration, so this was not a concern. We note that we only reviewed one case where reconsideration was successful.

However, the reconsideration decision letters did not contain adequate information for the parties. Often, the letter presented to the parties contained little information beyond the decision—most reconsiderations upheld the original decision. These closing letters should contain additional information for the parties. Including more information will show the parties what the reconsideration officer did in their review and why they came to their conclusion. This will increase confidence in OBSI and the financial markets.

Recommendation

OBSI's reconsideration closing letters should contain additional information with respect to the process the reconsideration officer undertook and more detailed reasons for either upholding or overturning the original decision.

In our stakeholder consultations, we heard that the reconsideration process lacks legitimacy. One stakeholder noted that it could not be legitimate so long as "OBSI is reviewing OBSI". Another described it as OBSI "reviewing its own notes." At the same time, we are cognizant of arguments that for OBSI to remain free and efficient for consumers, a degree of informality should be maintained, and that a more formal external appeal process would create burden for consumers and tilt the playing field in favour of banks, which have more resources.

We considered recommending that OBSI adopt an external reconsideration process with a panel of part-time contractors with expertise in dispute resolution in the securities industry. However, the purpose of the current reconsideration process is to provide a basic assurance of fairness in the event that one of OBSI's investigators was negligent or biased or otherwise made a significant error. The process also provides a secondary quality assurance check and feedback OBSI uses to improve its services. Although imperfect, the current reconsideration process was designed to

be proportionate to this purpose. Adopting an external process would have significant resource implications for OBSI (there were over 100 reconsideration cases last year alone), and would therefore increase costs for its participating firms. We do not believe that the minimal process legitimacy gains that may be made from an external reconsideration process can be justified in the circumstances. It is also important to remember that a consumer who participates in OBSI's process and is dissatisfied with the result is not precluded from pursuing the claim in court or any other appropriate forum.

4. COMPLAINTS REGULATIONS

4.1 Reputation for Good Operations

OBSI must maintain a reputation for being operated in a manner that is consistent with the standards of good character and integrity.

Complaints Regulations, s. 7(a)

In our interviews with stakeholders, we asked if they believed that OBSI had a reputation for good operations and whether it had a reputation for good character and integrity. We gauged perception of OBSI's services.

Generally, OBSI's reputation was strong among its stakeholders. While banks that had left OBSI had concerns specific to their experience at that time, banks currently using OBSI's services felt that OBSI was well-run and that investigators were very responsive and open to feedback. Stakeholders representing members/consumers using OBSI's services felt that the organization was well-run.

With respect to its reputation for good character and integrity, stakeholders generally felt that OBSI had integrity and good character. However, there were concerns raised from consumer groups that OBSI was beholden to the "market" of banks, whereby they were overly-focused on "competing" for banks with ADRBO. In some commenters' opinions, this resulted in OBSI curtailing its role and being pro-bank, since they risked losing banks to ADRBO if they took a hardline pro-consumer position. These commenters referred to this as "market pressure". While we saw no evidence of this in practice, we understand how the current dual ECB model could lead to such a perception.

4.1.1 Investigator Performance and Expertise

Inherently tied into its reputation for good operations is the reputation of OBSI's investigators. OBSI's investigators are full-time permanent staff of the organization. They come from a range of backgrounds, including law, finance and accounting. While they can generally be categorized as "investments investigators" and "banking investigators", OBSI makes efforts to "cross-train" investigators to enhance operational capacity.

With respect to style, the comments about OBSI investigators were universally positive. Industry and consumers alike found OBSI investigators pleasant, professional and communicative. With respect to OBSI investigators' expertise, on the whole, OBSI has done a good job bringing knowledgeable investigators in. However, there were concerns raised by a small number of industry commenters that bank staff needed to teach OBSI investigators about certain business concepts.

We did not see any evidence of this in our file review, and found OBSI's investigators to be knowledgeable in the industries OBSI serves. We note that OBSI has an extensive system of helpful guidance notes for investigators on various issues and products. We also note that OBSI's 2020 firm survey results indicated that 100% of banks who use OBSI's services agreed that its

investigators were knowledgeable about applicable laws and regulations and banks' applicable policies.

We did see cases where a degree of information-sharing by the banks about their particular procedures was required (for example, where the bank asserted that its actions were in line with its own internal policies). In these cases, we would not expect OBSI's investigators to be aware of these policies without some information-sharing on the part of the banks.

When we raised these concerns to OBSI, the senior leadership team expressed confidence in OBSI staff and the quality control and assessment measures OBSI has in place, and felt that these concerns were not warranted. With respect to the cross-training system, which we reviewed with OBSI investigators, we were confident in the support that investment-side investigators received from their banking-side peers, managers and internal guidance as they took on banking files.

We believe that OBSI should post bios of their investigators online, with last names anonymized, so that parties to the process can learn about the background of the investigator working on their file. This will increase confidence in OBSI, showcasing the diverse talent and the expertise each investigator brings to the file.

Recommendation

OBSI should post investigator bios on their website to showcase the diverse talent and the expertise each investigator brings to the file.

4.1.2 The Dual ECB Model

As discussed above, during our consultations we heard a significant amount of concern from consumer representatives that OBSI's reputation is harmed by perceptions that it must "compete" for banks. Consumer groups in our review felt that OBSI was punished by banks for doing a good job, and that OBSI had to be cautious not to be *too* effective, lest it lose more banking members and thus revenue.

Certain industry commenters, particularly certain ADRBO member banks, disagreed with this. They felt the dual ECB model was effective because it gave banks the choice between two different service providers with different processes. Some banks have moved to ADRBO, and others have not, depending on their individual experiences.

It is not within our mandate for this review to consider (a) keeping the dual ECB model, (b) abolishing one of the two existing ECBs, or (c) merging the two into a new entity. As a result, we do not make a recommendation on this issue. We do, however, note the following based on what we heard from stakeholders and based on our consideration of this issue.

We do not believe that the current dual ECB model is in line with international standards. Most of OBSI's international counterparts, such as the United Kingdom Financial Ombudsman Service (**FOS UK**) and the Australian Financial Complaints Authority (**AFCA**), have exclusive jurisdiction over banking complaints, as well as complaints relating to other financial service sectors such as securities, insurance and pensions. As the FCAC Review noted: "the multiple-ECB...model is not consistent with international standards. It introduces inefficiencies and increases the complexity of the external dispute resolution system for consumers. FCAC also has concerns about how

allowing banks to choose the ECB negatively affects consumers' perceptions of the fairness and impartiality of the system." While we did not have a view on this issue going into our evaluation, having now completed our review based on the factors that we were required to assess, we agree with FCAC's statement, and share the same concerns as FCAC; we also note that, in recent years, numerous countries have moved away from multi-ombudsman systems to single ombudsman systems (e.g., Ireland, Australia and most recently South Africa).

In 2021, Prime Minister Justin Trudeau published a mandate letter for Minister of Finance Chrystia Freeland, which included the following item: "Establish a single, independent ombudsperson, with the power to impose binding arbitration, to address consumer complaints involving banks."⁵ As noted above, the federal budget, which was tabled on April 7, 2022, announced the government's intention to put in place a single, non-profit ECB. The budget states:

A Fairer Banking Complaints Handling System for Canadians

Canadians deserve a fair and impartial process to address unresolved complaints with their banks. Banks should not be able to choose the complaints handling body they participate in, and the system should not be run on a for-profit basis. To strengthen Canada's external complaints handling process and enhance consumer confidence in the system:

Budget 2022 announces the government's intention to introduce targeted legislative measures to strengthen the external complaints handling system and to put in place a single, non-profit, external complaints body to address consumer complaints involving banks.⁶

The current system is not intuitive, and navigating it can be confusing for consumers. For example, a consumer with a complaint against RBC would fall within OBSI's purview for an investment complaint, but ADRBO's purview for a banking complaint. This introduces confusion and inefficiencies into the system (for example, in having to transfer a complaint from one ECB to another) and may cause some consumers not to file a complaint at all.

In addition, there are significant differences between critical aspects of OBSI and ADRBO's processes and the manner in which the organizations measure their performance. One of the main differences is ADRBO's "initial view" process and the high number of cases rejected by ADRBO without investigation during this process. OBSI's intake does not include a similar process. As the 2020 FCAC report noted, according to ADRBO and OBSI's publicly reported statistics, OBSI was about 75% more likely than ADRBO to open a full investigation when contacted by a consumer.

Similarly, we understand that ADRBO does not include these "initial view" outcomes in its base of consumer complaints for purposes of calculating case outcomes (*i.e.*, the percentage of cases in which it finds in favour of consumers).

Most importantly, we do not believe that a consumer should be prejudiced or have different rights depending on the ECB chosen by the bank. If the multiple ECB system is to remain in place, we

⁵ <https://pm.gc.ca/en/mandate-letters/2021/12/16/deputy-prime-minister-and-minister-finance-mandate-letter>.

⁶ Canadian Federal Budget 2022, Chapter 9: Tax Fairness and Effective Government, available at <https://budget.gc.ca/2022/report-rapport/chap9-en.html#2022-2>.

urge FCAC to require both ECBs to apply the same standards and measure their performance in the same ways to allow for direct comparison by the government, the regulator and the public.

4.2 Accessibility

OBSI must make its services as an external complaints body available across Canada in both official languages and offer those services free of charge to persons who make complaints to it.

Complaints Regulations, s. 7(b)

Accessibility is crucial for any ECB. As a free alternative to court, it is imperative that OBSI is accessible. The FCAC Review found that OBSI meets or exceeds the requirements for accessibility under its regulations. For the reasons below, we agree.

4.2.1 Bilingual Services

OBSI is required by the regulations to offer its services in Canada's two official languages, English and French, and to provide those services across our vast country. In order to discern whether OBSI is accessible in the frame set out in the Complaints Regulations, we reviewed OBSI's public-facing materials, interviewed OBSI investigators and consulted with stakeholders who serve the Francophone communities.

Overall, we found that OBSI makes its services available in both official languages. In speaking with OBSI staff, we found that there were investigators who spoke English and French and heard from investigators that they could not recall any situations where a consumer was unable to work with an investigator who did not speak their chosen official language.

We reviewed files that were in both English and French. While most were in English, those that had Francophone consumers received services in French if requested including having their interviews in French. In conducting our review, we took a broader definition of 'services' than just the dispute resolution process. We reviewed the public-facing materials produced by OBSI. The website is fully bilingual and users can access the information and resources there in either English or French.

However, we note that not all publications are in both official languages, though most are. While key documents such as annual reports are in both French and English, there are some documents in the *Présentations, rapports et propositions* section of the website that are in English only. Importantly, case studies and data reports are in both languages.

4.2.2 Services across Canada

OBSI is a national service, available to residents of any of Canada's 13 provinces and territories and those outside of Canada dealing with a Canadian bank. However, we did hear feedback from multiple stakeholders that OBSI's services are not available to everyone. There was concern raised that those in remote, rural and Indigenous communities might not know about OBSI or have the resources to go through the dispute resolution process. We flag this as a concern though

it is not entirely within OBSI's control; for example, some communities lack adequate broadband access and there is little that OBSI can do to improve accessibility in this case.

That being said, we found no pattern of service differentials depending on geography. A consumer in a remote town and a consumer in a big city did not face different service timelines or quality of service, as best we could tell through our file review.

4.2.3 Free Services

OBSI is required to provide its services free of charge to consumers. OBSI has maintained this standard and we heard no concerns from stakeholders to the contrary. This is also a crucial internationally recognized best practice for financial services ombudsmen and an important aspect of OBSI's accessibility.

4.2.4 Broader Accessibility Considerations

In our discussions with OBSI senior management, we also heard that OBSI publishes some materials in languages in addition to English and French. We believe this is an important practice to ensure that OBSI is reaching all communities in Canada.

Recommendation

OBSI should continue to produce core materials for consumers in languages in addition to English and French, to the extent possible within resource constraints.

Part of accessibility is understanding the consumers who are seeking OBSI's services. Therefore, we commend OBSI for collecting anonymized demographic data on the consumers who use its services.

4.3 Impartiality and Independence

OBSI must ensure that every person who acts on its behalf in connection with a complaint is impartial and independent of the parties to the complaint.

Complaints Regulations, s. 7(c)

OBSI's legitimacy is directly tied to OBSI's impartiality and its perception of impartiality. Through our consultations with stakeholders, we heard from some consumers that they think OBSI is biased in favour of banks because of the dual ECB model and the perceived incentive to find in favour of the bank. Consumer groups also expressed the view that OBSI investigators must collaborate too closely with bank representatives to try and find a positive outcome for consumers, allowing banks to shape OBSI investigators' thinking on a file.

Likewise, we heard from some banks that they think OBSI is biased in favour of consumers and acts as a consumer advocate. In light of these concerns and the importance of impartiality to

OBSI's legitimacy, we paid close attention to the matter in our file review, desk review and interviews. In the files we reviewed, we did not find any reason to question OBSI's impartiality. We found that OBSI's conclusions flowed from the evidence and that investigators asked questions and tested the evidence of both consumers and banks. In comparison with the investments files, many of the files on the banking side had fewer opportunities for subjective analysis. Many of the cases focused on contractual analysis. For example, investigators were required to apply the facts against cardholder's agreements to determine whether the bank's actions violated the agreements.

Having reviewed the matter in considerable detail, we concluded that any perception of impartiality is not warranted and that OBSI meets and exceeds its standards for impartiality and independence. However, as noted above, we understand how the current dual ECB model could lead to such a perception.

4.4 Membership

OBSI must accept as a member any bank or authorized foreign bank that makes a request to it for membership.

Complaints Regulations, s. 7(d)

We reviewed applications for membership from a number of banking institutions during the review period. Specifically, we reviewed the applications from Coast Capital Savings Federal Credit Union, Credit Agricole Corporate Investment Bank (Canada Branch), Desjardins Trust Inc, Equitable Trust, HSBC Mortgage Corporation (Canada), HSBC Trust Company (Canada), Motus Bank, Natixis Canada Branch, Peoples Bank of Canada and Silicon Valley Bank. We also reviewed an extensive internal membership onboarding guide.

We found that OBSI accepted as members all banks or authorized foreign banks that made proper requests for membership. We found their processes for accepting new members to be clear and straightforward.

4.5 Process for Handling Complaints for Non-OBSI Members

OBSI must, if a person has made a complaint to it in respect of a bank or an authorized foreign bank that is a member of another external complaints body, provide the person with the name of that other body and its contact information.

Complaints Regulations, s. 7(e)

OBSI's intake team uses a template email to respond to consumers who submit a complaint for a bank that is a member of ADRBO. It contains the necessary information for consumers, including contact information for ADRBO. It also provides this information verbally to consumers who reach OBSI by telephone. In our view, OBSI meets the requirement under the regulations.

4.6 Process for Handling Complaints Outside of OBSI's Mandate

OBSI must, if it determines that all or part of a complaint is outside its terms of reference, provide the person who made the complaint with written reasons for that determination within 30 days after the day on which it receives the complaint.

Complaints Regulations, s. 7(f)

In the files we reviewed, OBSI met the 30-day requirement in that they made a determination that the complaints were out-of-mandate within the 30-day period and provided written reasons to that effect.

In the majority of cases, we found that OBSI provided an adequate explanation to consumers outlining their reasons. Investigators generally link to the Terms of Reference and attach an information sheet produced by FCAC. That being said, there were some cases where we found that the closing letters could have included more reasoning, including reasoning that was contained in the investigator's notes and thus could easily have been included in the letter to the consumer.

We found that OBSI investigators interpreted their Terms of Reference in a manner that was clear and logical, identifying issues (such as business practices, estates issues, etc.) that were not within OBSI's mandate.

4.6.1 Matters for the Police

On the banking side, OBSI handles many cases that involve fraud. In one case, for example, a fraudster stole a consumer's credit card information and the bank failed to alert the consumer about abnormal transactions. In this case, OBSI could investigate the conduct of the bank, but not the underlying fraud. In cases such as these, OBSI investigators have done well at explaining the OBSI Terms of Reference and the limits of OBSI's authority to consumers. OBSI's interview notes and communication with consumers outlined what they could investigate and what they could not in a clear and understandable manner.

We did not find evidence that OBSI recommends consumers go to the police for the underlying fraud in all cases. There were some cases where the OBSI investigator suggested that the consumer go to the police, some cases where OBSI asked whether the consumer had gone to the police already, and others where we could not find evidence that OBSI discussed police referrals at all. Police referrals are important and OBSI should always recommend that consumers file a police complaint when there is a possible crime.

Recommendation

OBSI should always recommend that consumers file a police complaint when there is possible criminal misconduct.

4.6.2 *Dealing with Events Outside of Mandate*

In the files we reviewed, OBSI identified antecedent and consequent events that were related to the complaint but were out of mandate. For example, in one file, a bank error resulted in a lending decision that was outside of the bank's control, and the OBSI investigator rightly identified that this event was out of mandate and communicated this clearly to the consumer.

Moreover, in the files we reviewed, OBSI identified when aspects of the complaint were not within mandate. For example, there was one file where a family member engaging in financial abuse was a key aspect of the fact pattern. OBSI correctly determined that this was outside of its mandate and communicated this to the consumer.

4.7 Process for Transferring Complaints to ADRBO

OBSI must transfer a complaint received by it and all related information that is in its possession or control to another external complaints body if a bank or an authorized foreign bank that is a party to the complaint becomes a member of that other body before a final recommendation is made in respect of the complaint.

Complaints Regulations, s. 7(g)

We reviewed internal and external communications with respect to the National Bank transfer in 2017 and the Scotiabank transfer in 2018. In each case, OBSI leadership provided communication templates and strategies to their investigators. Their investigators were instructed to contact consumers and have a conversation with them, and then follow up by email. For new intakes, OBSI's case assessment officers were instructed to provide complainants with a choice to proceed with OBSI or wait for the transfer to ADRBO. If waiting until the transfer date would prejudice the consumer (given that consumers must complain to an ECB within 180 days of receiving the bank's determination), then OBSI would open the complaint to preserve their rights but not investigate further.

OBSI also communicated with ADRBO before the transfers, explaining the measures they were taking. In the periods leading up to the transfers, OBSI had seven cases involving National Bank and 32 (of which 14 were mid-investigation, with the others being opened but not assigned) involving Scotiabank. When National Bank and Scotiabank announced their intention to leave OBSI and join ADRBO, OBSI strove to close all or nearly all of the open files by the date that the transition was expected to occur. In working to close most of the files, OBSI endeavoured to ensure that as few consumers as possible had to transfer ECBs mid-investigation.

Overall, we found that the transfer process was minimally disruptive to consumers. However, for those consumers whose files could not be closed by the transfer deadline, they had to begin the investigation process again at ADRBO. When cases are transferred to ADRBO, OBSI sends only bank documents and consumer documents, but not OBSI internal investigation documents (e.g., interview notes). It is understandable that OBSI would not transfer its own working materials to ADRBO, but to make the consumer start over at ADRBO is an unnecessary burden that they should not bear.

While OBSI made strong efforts to finish investigations before the National Bank and Scotiabank date of transition, we believe that this should not have been necessary because it is enormously inconvenient for consumers who have already been through a lengthy process. Moving forward, ECBs should be permitted to complete all investigations without files being transferred mid-stream.

Recommendation

OBSI and ADRBO should work with FCAC to ensure that, when a bank changes ECBs, any investigation not completed by the transfer date remains with the ECB to which the consumer originally complained.

4.8 Process for Receiving Transferred Files

OBSI must advise the parties to a complaint that is transferred to it by another external complaints body in writing

- (i) that a bank or an authorized foreign bank that is a party to the complaint has become a member of the body corporate, and**
- (ii) that the complaint has been transferred to it.**

Complaints Regulations, s. 7(h)

No banks that were members of ADRBO joined OBSI during the review period. However, we understand that OBSI would communicate closely with ADRBO in this situation, were it to arise in the future.

4.9 Process for Managing Systemic Issues

OBSI must advise the Commissioner in writing if it determines that a complaint raises a systemic issue.

Complaints Regulations, s. 7(i)

Prior to 2013, OBSI had the power to investigate systemic issues. Its Terms of Reference were amended in December 2013 to remove these powers and to replace them with a requirement to monitor and inform the regulators of any potential systemic issues. The *Bank Act* complaints regulations were established during the same period, requiring OBSI to report any systemic issue to FCAC.

FCAC defines a systemic issue as “a compliance issue that could affect multiple consumers and/or could potentially have market-wide implications. Generally, these issues are deemed to not be isolated in nature (i.e., individual employee error) and often stem from more wide-spread procedural or documentation issues within the regulated entity.”

“Systemic issue reporting” is part of OBSI’s mandate, but it was universally considered by OBSI’s stakeholders to be an imperfect system. Some of the stakeholders we met with wanted OBSI to be able to take action on systemic issues—however, this is not their role, but rather FCAC’s prerogative. OBSI is an excellent source of data for FCAC, gathering real-time, on-the-ground information about systemic issues which FCAC can then act on.

That being said, there is clearly something that needs to be changed about the way OBSI identifies systemic issues. We reviewed OBSI’s annual reports to determine how many systemic issues they reported to FCAC. The summary is included in the below table. For the 2017/2018 reporting, included in the 2018 annual report, there was a list of systemic issues, with two appearing to be banking-related.

Table 2: Systemic Banking Issues Reported During Review Period

Year	Number of Issues Reported
2020	0
2019	0
2017/2018	2
2016	0

Following the 2020 FCAC report and its commentary on systemic issues, OBSI reported four systemic issues to FCAC in 2021.

It is also important to note that OBSI does alert consumers to current issues through social media and the case studies and bulletins it publishes on its website. However, consumers have a reasonable expectation that such issues will also be reported to the regulators, and that the regulators will take steps to address the issues. They also have a reasonable expectation that they will have visibility into this process. At present, they do not. This makes consumers lose confidence in OBSI.

Consumer stakeholders were of the opinion that OBSI’s systemic issue reporting system was ineffective. One commenter called it “an incomplete process”, while another stated that the definition of “systemic issue” is not fit-for-purpose. We agree. It is simply not feasible that there are so few systemic issues in such a large retail banking sector. By contrast, AFCA completed 147 investigations into possible systemic issues in 2020-2021 alone.⁷ AFCA referred the 147 potential systemic issues to financial firms for response and action, and based on the responses received from these firms, it reported 55 “definite” systemic issues to regulators.

It is important to note that AFCA’s mandate and the definition of systemic issues are considerably different from OBSI’s, and AFCA deals with over 75,000 complaints each year and has approximately 40,000 members. However, the experience of other countries suggests that reporting of systemic issues by OBSI to regulators is not meeting its full potential value.

⁷ <https://www.afca.org.au/about-afca/annual-review/2020-21/systemic-issues>

Recommendation

OBSI should work with FCAC to review and improve the systemic issue reporting system, including possibly by:

- Amending the definition of systemic issue;
- Requiring OBSI to report repeated systemic issues year-after-year, even if the same issue was identified in prior years; and
- Ensuring more robust communication between FCAC and OBSI once a systemic issue has been identified by OBSI.

Recommendation

OBSI should set out in its Annual Report the number of potential systemic issues it has identified in the previous year, both in respect of securities and banking complaints, and provide a generic description of the type of issue identified.

OBSI should work with the FCAC to issue a report to the public on what steps have been taken with respect to the potential systemic issues identified by OBSI.

4.10 Process for Informing Complainants about the Terms of Reference and Procedure

OBSI must inform the parties to a complaint about its terms of reference and procedures for dealing with complaints and, on request, provide them with any further information and assistance necessary to enable them to understand the requirements of those terms of reference and procedures.

Complaints Regulations, s. 7(j)

OBSI fulfils its obligation to inform complainants about its Terms of Reference and procedures. To open a file, OBSI requires consumers to sign consent letters, which are template documents. They contain basic information about OBSI and what an investigation will look like from a consumer's perspective. Attached to these letters is a *What to Expect* guide. We reviewed these documents closely, since, as the opening document, consumers will play close attention to the information provided therein. If a matter is out of mandate, OBSI provides a letter to this effect, citing to its Terms of Reference.

Consumers receive a link to OBSI's Terms of Reference in the consent letter. The *What to Expect* document provides some information related to the investigation process. The consent letter and *What to Expect* document contain most of the relevant information that the consumer will need and communicate it in plain, non-legalistic language. That being said, there are three possible suggestions for change which will provide clearer information to consumers. We believe that, given the importance of limitation periods, OBSI should include reference to the "ought to have

known” standard for limitation periods and should lay out the limitation periods of each province. This does not constitute legal advice but rather legal information. Moreover, an investigation pathway or “investigation steps” graphic would assist consumers in understanding the process. Lastly, we believe that OBSI should provide more disclosure of the timing of investigations, including the time it might take to collect documents and the 120-day target for completion after all documents are collected.

Recommendation

OBSI should provide additional information in the standard consent letter and their *What to Expect* document, including:

- Legal information about limitation periods for civil actions in each jurisdiction in Canada;
- Reference to the “ought to have known” standard for limitation periods;
- An investigation pathway/steps graphic; and
- Better disclosure with respect to timing of the investigation, including the 120-day target for completion and an estimated time for collecting documents.

We also saw significant evidence that OBSI investigators explain the Terms of Reference and procedures throughout the investigation process. When consumers asked questions about next steps, OBSI investigators readily provided answers. Importantly, as reflected in the interview notes we reviewed, during interviews with consumers, OBSI investigators began with an extensive explanation of the investigation process and ended with a summary of next steps.

4.11 Process for Dealing with Complaints

OBSI must deal with complaints in a manner that affects only the parties to them.

Complaints Regulations, s. 7(k)

It is our conclusion that OBSI handles complaints in a manner that affects only the parties to that complaint. Much more than in the investments files we reviewed, the banking files involved situations where OBSI was required to determine whether entities and individuals were covered by the Terms of Reference. There were many cases where a third party (such as a credit card provider) was involved in the fact pattern, and OBSI was required to inform the consumer that OBSI could not investigate parties that were not member banks. OBSI investigators made clear and logical determinations and cited their Terms of Reference.

4.11.1 Non-Financial Harm and Indirect Financial Harm

OBSI operates under the principle of restoring consumers to where they would have been without the bank’s misconduct. However, in certain circumstances OBSI can recommend compensation for non-financial harm and for indirect financial harm. Non-financial harm can include undue distress and inconvenience and a privacy breach, for example. Indirect financial harm can include financial harm causally linked to the bank’s conduct. OBSI investigators do not recommend compensation related to medical harms, such as anxiety and lack of sleep, as they are unable to make health determinations.

The training materials provided to investigators contain useful guidance, including a typical monetary range for such recommendations, lists of factors to consider and case studies outlining when recommendations for compensation for non-financial harm or indirect financial harm can be issued. We found this training material to be comprehensive.

However, in our stakeholder interviews, we also heard confusion about when and how OBSI applies its policies and procedures on compensation for non-financial harm/indirect financial harm.

We believe that setting fixed amounts or ranges for non-financial harm/indirect harm will provide clarity to the parties. The amounts can be set by OBSI in consultation with participating banks, consumer groups, CIAC, industry representatives and FCAC. This will enhance confidence in OBSI's processes.

Recommendation

OBSI should reform its approach to non-financial harms and indirect financial harms in the following ways:

- To provide certainty, OBSI should create multiple levels for non-financial harm/indirect financial harm (low, medium and high), with set compensation amounts or ranges for each one; and,
- When providing a determination with respect to compensation for non-financial harm/indirect harm, OBSI investigators should provide detailed reasons as to why they came to their conclusion.

4.11.2 Serving Seniors

According to OBSI's 2019 Seniors Report, 38% of consumers who use OBSI's services are seniors, higher than seniors' share of the population. As Baby Boomers retire, this percentage is likely to go up. Therefore, seniors are a core group of users of OBSI's services. Moreover, seniors have unique substantive issues (including reduced capacity and coercion from family members) and operational requirements (including those related to reduced eyesight, hearing or cognition). For that reason, we welcome OBSI's focus on seniors (as reflected in its Seniors Report) and would recommend additional steps to continue serving seniors.

We heard from the Canadian Association of Retired Persons (**CARP**) that OBSI lacks the ability to adequately serve seniors because its board lacks seniors advocacy representation. We do not agree. Wanda Morris, OBSI's consumer interest director, was the Chief Advocacy and Engagement Officer for CARP until 2019. Prior to Ms. Morris joining OBSI's board, Laura Tambllyn Watts was a director and was simultaneously National Director of Law, Policy and Research for CARP. She then went on to found CanAge.

We believe that OBSI is adequately receiving the views of seniors, but offer certain recommendations for further improvements below.

Recommendation

OBSI should ensure that it is adequately serving seniors by:

- changing CIAC's Statement of Expectations to require at least one member with experience in advocating for seniors; and
- requiring special training for all existing (and then, as they are onboarded, all new) investigators on working with seniors (e.g., identifying diminished capacity).

4.12 Timeliness

OBSI must make a final written recommendation to the parties no later than 120 days after the day on which the information that it requires to deal with the complaint, as set out in its terms of reference and procedures, is complete.

Complaints Regulations, s. 7(l)

Timeliness is one of the most important metrics of success for an ECB. Consumers and banks want a timely process where a fair resolution can be reached as quickly as possible. Timely resolution reduces stress on consumers and reduces costs for banks. If a complaint is out of mandate, OBSI is required to communicate this conclusion to consumers within 30 days. If the complaint is in mandate, OBSI is required by its regulations to complete the investigation and provide a recommendation within 120 days of the file being ready for investigation. FCAC has made it clear, however, that these are maximums and that cases should be decided as quickly as possible.

The *Bank Act* Regulations require that OBSI complete all banking cases within 120 days. Its current internal standards are to close 50% of banking cases in 60 days or less, 75% in 90 days or less and 100% in 120 days or less. Over the past several years, OBSI has consistently met these standards. In 2019, for example, it took OBSI an average of 55 days to complete a banking file, and in 2018 it took an average of 53 days. As a result, we believe that OBSI should revise its standard to close 90% of banking cases in 90 days. There are natural limits to how fast and efficient a fair dispute resolution process can be. OBSI should constantly be striving to improve its timeliness while maintaining the integrity and fairness of its process. We are of the view that updating its standard to require 90% of banking cases to be closed in 90 days to achieve the appropriate balance.

Recommendation

OBSI should revise its internal timeliness standard to require 90% of banking cases to be closed in 90 days.

FCAC surveyed consumers (of both OBSI and ADRBO banks, to our understanding) and found that 78% expressed dissatisfaction with the length of time it took for a determination from an ECB. Below, we provide some recommendations to reduce the length of investigations.

4.12.1 *Pre-Investigation Delays*

The FCAC Review identified delays in obtaining documents from consumers and banks as a main area of improvement. Our file review identified the same concern. When OBSI receives a complaint from a consumer, it needs to collect the file from the bank, get any relevant documents from the consumer and obtain a signed consent letter from the consumer. This process faces significant delays—sometimes up to one month. The pre-investigation delay is more serious on the investments side, but there are still delays with banking files.

The pre-investigation delay raises two concerns with respect to timeliness. First, the fact that there is a significant delay at all is a concern. Second, the fact that OBSI does not begin its “clock” (the 120 days) for investigations until after all the documents are collected and the file is ready for investigation.

Based on the files we reviewed, the pre-investigation delay is mostly caused by the delay in collecting the required documents from the banks. While there were cases where consumers took a long time signing their consent letter, most of the delays appeared to be on the bank’s side. In light of this, we asked OBSI staff and the banks about the delay. We heard from the banks that OBSI’s requests are too broad and that it takes a significant amount of time to gather the documents. OBSI noted that the banks did not always provide the documents requested. Banks are required to respond to requests from regulators on an ongoing basis, on a range of issues—we understand that they do so promptly. They should do so with OBSI as well.

We believe that pre-investigation delays need to be addressed. Though we recognize that much of the delay is out of OBSI’s control, we urge the organization to develop tools to address the delay as best it can, including by requiring banks to provide the relevant files within two weeks, failing which OBSI should publicly report the bank’s failure to meet OBSI’s timelines.

Recommendation

OBSI should require firms to provide documents within two weeks, failing which OBSI should publicly report the firm’s failure to meet OBSI’s timelines.

OBSI’s current standard for case assignment is 42 days from the date the consumer signs the consent letter. We believe OBSI should move this target up to 30 days, bringing it more in line with its international counterparts.

Recommendation

OBSI should set a target of 30 days to assign a case to an investigator, and should report on how frequently it is meeting this target.

4.12.2 *Timelines for the Investigation*

Timeliness of the entire process from beginning to end is important as well. We appreciate that OBSI’s procedure is that the 120 days begin when the file is ready for investigation. However, we do not believe that this is the appropriate starting point, and as the 2016 Review noted, it is off-side international practice. Based on the files we reviewed, OBSI should be able to “start the

clock” when OBSI receives a consumer’s signed consent letter and count 120 days from there for the purposes of meeting its timeliness targets.

Recommendation

OBSI should begin counting its investigation targets when OBSI receives the consumer’s signed consent letter.

In making this recommendation, we acknowledge that much of the delay is not entirely within OBSI’s control, as discussed above. However, we believe that OBSI should take a consumers’ view of timeliness. While it is good to know that OBSI is consistently meeting its target of 120 days, that is still too long for an exhausted consumer who has already experienced a lengthy, multi-step internal bank process before going to OBSI. From the consumers’ point of view, the complaint begins when the complaint is filed. We find that an appropriate balance is that a complaint begins when the consumer submits the signed consent letter.

With respect to timeliness, we note that OBSI compares well against its international peers. For example, FOS UK takes “up to 90 days” to handle complaints.⁸ In 2020-2021, AFCA took on average 88 days to close a complaint. The average timelines for OBSI to complete investigations for the review period are reflected in the table below.

Table 3: OBSI Timelines for Closing Banking Investigations (2016-2020)

Year	Average Time to Close Investigation (Days)
2020	50
2019	55
2018	53
2017	50
2016	57

4.12.3 A Note on Attrition

Our concern with pre-investigation delays is part of a broader concern we have about attrition from the bank to OBSI. During this stage, there is a risk that consumers will give up and withdraw their request for compensation. While some of the consumers who “drop off” will have unmeritorious claims, others will have completely valid complaints that could lead to a recommendation from OBSI and ultimately compensation. To get recovery through OBSI, consumers have to determine that they have been harmed, determine the cause, complain to their point-of-service contact (e.g., their advisor), then prepare and submit a complaint to the bank’s complaints program and go through an investigation with them (and possibly multiple stages). Once they face the disappointment of a negative resolution from the bank, they must then contemplate complaining to OBSI and going through an investigation. That investigation could take months and could, in the end, result in a recommendation that the bank refuses to agree to. For consumers, this is an exhausting and grueling process. It is easy to see why consumers would drop off, and the FCAC Review expressed concern about attrition: “In the survey conducted for FCAC, about two-thirds (68%) of consumers chose not to escalate a complaint to an ECB after they were not satisfied with the resolution offered by the bank’s

⁸ <https://www.financial-ombudsman.org.uk/consumers/expect/how-long-it-takes>.

[complaints department].” This sentiment led one consumer advocate to note that complaints to OBSI were just the “tip of the iceberg”.

Recommendation

OBSI should take measures to reduce consumer attrition. FCAC and OBSI should convene a dialogue with banks to determine measures to reduce attrition for consumers who receive a negative determination from the bank. OBSI should also work with consumer groups and CIAC to determine how to reduce attrition.

OBSI has videos explaining its services, but they are not currently highlighted on OBSI’s website. For example, there is an introductory video about OBSI’s process on the “Can OBSI Help?” section of its website. It also has straightforward explanations of its process on the “For Consumers” section of its website. We understand that OBSI plans to create a video-related page on its website. Currently, all of its videos can be accessed through the YouTube link on its homepage.

Recommendation

OBSI should work with FCAC to require banks to provide link(s) to the “Make a Complaint” section of OBSI’s website (as well as to other important sections, such as the upcoming video-related page) to consumers who go through the internal complaint process and do not get a satisfactory result. Written materials should still be distributed; this will ensure multiple modes of communicating the information and will ensure that those without email/computers still receive written OBSI information.

4.12.4 Timeliness for Out of Mandate Determinations

OBSI must make an out of mandate determination within 30 days. In our stakeholder discussions, it was raised to us that this is too long a time for a consumer to wait just to be told that OBSI cannot assist them. One commenter suggested a much shorter time period, namely 48 hours.

However, we are not prepared to make that recommendation at this time. The 30-day period for out of mandate assessments is appropriate at this time and does not need to change. We come to this determination for two reasons. First, most of the files we reviewed that were dismissed for being out of mandate were closed in time periods shorter than 30 days. The 30-day limit is a ceiling. Second, an out of mandate determination is an incredibly serious decision, and we do not want to recommend that OBSI make such a determination in a compressed period of time. If it is obviously out of mandate, OBSI can inform consumers immediately, in line with its current practice. If not, then they should be able to take the time needed to make the determination.

4.13 Consulting with the Public

OBSI must consult at least once a year with its members, and with persons who have made complaints to it since the previous consultation, with respect to the discharge of its functions and performance of its activities as an external complaints body.

Complaints Regulations, s. 7(m)

In its review, FCAC found that OBSI consulted with members and complainants annually and that it utilizes the feedback received to improve its operations. We found this as well. We reviewed surveys that OBSI undertook annually, summaries of which are included in the annual reports. Moreover, we heard from banks and consumer groups that OBSI frequently consults with them and has open lines of communication. OBSI should continue this practice, including through more regular roundtables, as recommended above.

4.14 Reporting to FCAC and the Public

OBSI must submit an annual report to the Commissioner on the discharge of its functions and performance of its activities as an ECB, including:

- (i) a summary of the results of any consultation with its members and with persons who have made complaints to it,**
- (ii) in respect of each of its members, the number of complaints that it received, the number of complaints that it determined were within its terms of reference, the number of final recommendations that it made and the number of complaints that, in its opinion, were resolved to the satisfaction of the persons who made them, and**
- (iii) the average length of time taken to deal with complaints;**

OBSI must make the annual report available to the public after it is submitted to the Commissioner

Complaints Regulations, s. 7(n) and (o)

OBSI satisfies the requirements under the regulations to provide an annual report to FCAC and then make it public. OBSI chooses to do this reporting through public annual reports, produced in English and French and promptly published on the OBSI website.

4.15 Submitting to Independent Evaluation

OBSI must submit every five years to an evaluation of the discharge of its functions and performance of its activities as an external complaints body that is conducted by a third party in accordance with terms of reference established by the body corporate in consultation with the Commissioner.

Complaints Regulations, s. 7(p)

OBSI has been incredibly cooperative during this review. Senior management and the board were engaged, responsive and forthcoming with successes and lessons learned over the past five years. When we had questions, they were always responsive and provided prompt and comprehensive replies.

4.16 Making Information Available to the Public

OBSI is required to make information available to the public about its constitution and governance and the identity of its members; the terms of reference that govern its functions and activities as an external complaints body; all sources of funding for its functions and activities as an external complaints body, including the fees charged to each of its members for its services and the method of calculating those fees, and; the results of the most recent five-year evaluation.

Complaints Regulations, s. 7(q)

In our review of OBSI's public reporting, we found that OBSI meets and exceeds this requirement by making a high level of information available to the public. Specifically, OBSI provides public access on its website to its Terms of Reference and general governance structure, including its Corporate By-Law and board structure. Consumers who want to search OBSI's membership are able to do so with the "Find Your Firm" function, prominently placed on the main webpage. There is ample information about OBSI's funding and fee structure on its website, including a list of all member banks and what they paid in 2020/2021 and a thorough description of how fees are set. The result of the most recent five-year review for OBSI's investments mandate is on the website. The most recent review which included the banking mandate was conducted in 2011; it is also available on the website.

Since the last review in 2016, OBSI has put significant work into making more information available to the public, including through the complete rebuilding of its website, the launch of its social media strategy, and a complete revamping of its traditional communications such as case studies, approaches and bulletins. It has also invested in special reports each year, and in more innovative approaches such as accessible videos.

We believe that OBSI's public disclosures and website utility are among the best in class. We also understand that OBSI is working to enhance its thought leadership more generally. We believe this is an important function of a financial services ombudsman and will be a significant value add to the system.

Recommendation

OBSI should continue to expand its role as a thought leader in the future by using its experiences and expertise to contribute to the overall fairness, effectiveness and trust in the financial services sector in Canada .

5. OPERATIONAL EFFECTIVENESS

5.1 Performance During Review Period

Table 4: OBSI's Banking Investigations (2016-2020)

Year	Number of Opened Cases	Number of Closed Cases	Percentage Increase Year over Year in Opened Cases	Average Compensation
2020	332	314	31%	\$5,875
2019	254	262	6%	\$2,425
2018	412	417	12%	\$4,841
2017	370	349	28%	\$2,089
2016	290	323	6%	\$4,106

5.2 Budget and Resources

We reviewed OBSI's budgets, budget summaries and audited financial statements for 2016-2020. OBSI's leadership presents budget summaries for the board that are comprehensive and well-considered. On the face of these documents, there does not appear to be anything of great concern. Budget planning appears to be accurate, as budgets typically have a positive variance at the end of the fiscal year, with the exception of 2019, which had a small negative variance. In our discussions with OBSI leadership, it was noted that the organization's budget has remained largely constant in recent years, even with the spike in cases caused by the COVID-19 pandemic.

The management and staff we spoke to did not express any significant budget or resource concerns and we find that OBSI's budget and resources during the review period were adequate. However, we note that if certain of the recommendations in this report are implemented (for example, if OBSI is given binding decision-making authority and certain reforms are made to its systems), it will likely require an increase in fees.

5.2.1 Response to the COVID-19 Pandemic

In March 2020, the COVID-19 pandemic led to enormous disruption at OBSI, both externally and internally. Externally, cases spiked, with more consumers complaining to their banks and investment firms for various reasons. This led to an enormous increase in workflow for the organization. While OBSI dealt with 90-95 intakes (for both banking and investments files) per week on average pre-pandemic, they received about 150 per week during the pandemic. Internally, OBSI dealt with the same challenges every employer dealt with in Canada, including the need to transition to a work-from-home model and the need for flexibility to allow for childcare and sick time.

OBSI was criticized for the backlogs in investments cases it suffered after the 2007-09 financial crisis, which also resulted in a spike in cases. In contrast, OBSI has not had significant delays in its services during the COVID-19 pandemic. In response to the pandemic and the influx of cases, OBSI hired more investigation staff. Moreover, managers expressed to us that staff simply "worked a lot," hunkering down for a busy period. We commend OBSI for their success in this regard. Senior management observed that the organization had learned lessons from the financial

crisis and the backlog it created. There was more staff, more support, a stronger analyst team and more guidance from management during the pandemic, and all of this led to better results.

At the management and board level, the pandemic was taken seriously from the beginning. In both 2020 and 2021, management prepared Case Volume Increase Response Plans, outlining possible case increase scenarios and the budgetary and operational impacts of each. The 2020 plan was produced in April 2020, mere weeks after the declaration of a global pandemic—this shows that OBSI’s leadership was on top of the matter. This strong leadership complemented the hard-working staff.

Also notable was the organization’s digital transformation between 2015 and 2020 to completely cloud-based computing, VOIP telephone communications and paperless workflows. Technological innovations such as OBSI’s consumer and firm portals and online case opening process have also driven efficiency significantly through the period.

The shift to remote work was smooth due to OBSI’s advance business continuity planning and the fact that even pre-pandemic, about a quarter of OBSI’s workforce worked remotely, as they are located across the country. OBSI also adjusted workflows, reduced project work and reduced cross-training to allow staff to focus in areas of high expertise in order to facilitate efficiency.

5.2.2 *Setting Fees*

Each year, OBSI’s board approves a fee allocation, which is split between five industry sectors, of which banks and deposit-taking institutions are one. Banking fees are allocated on a sector level according to the number and complexity of cases opened in that sector in the previously completed year. Among the banks and deposit-taking firms, the fees are split on the basis of the relative banking assets in the most recent benchmark year. The current benchmark is 2016, and OBSI is in the process of updating the benchmark to 2021. We believe that OBSI should consult with industry as to whether the benchmark year should be updated more regularly, to reflect possible changes in the economy and banking sector.

Recommendation

OBSI should consult with industry as to whether its benchmark year for fee allocation in the banking sector should be updated more regularly.

In our consultations, we heard from OBSI members—both banks and investment firms—that OBSI’s fee allocation structure is too complicated. One bank said that it was a transparent formula, but was too complex. This bank, though an OBSI member, preferred the simpler fee system used by ADRBO (a set fee with hourly rates). Given our review of the fee system, we do not recommend at this time that any changes be made. We find the system, while complex, to be fair and transparent. A fixed fee and hourly rate system, as used by ADRBO, is simpler but may not be well-suited for OBSI, where investigators are employees rather than external contractors.

5.3 **Service Improvements**

As an ECB, OBSI is ultimately a service provider to consumers and banks. In recent years, OBSI has undertaken multiple initiatives to improve the experience of those who use it. For example, OBSI launched a new Firm Portal and a Consumer Portal for the parties to upload documents and track case progress. These initiatives were lauded by stakeholders.

5.4 Obtaining Redress for Consumers

OBSI's ability to obtain redress for consumers—where appropriate—is crucial to its legitimacy and consumers' confidence in the banking sector. OBSI is not a guarantee of compensation for consumers. Its role is to be a neutral third-party between the bank and the consumer. However, if OBSI determines that the consumer deserves redress, the consumer rightly expects that they will receive that amount from the bank.

We heard concerns from consumer advocates about both refusals and low-balls (situations where banks offer less than what is recommended by OBSI). However, we note that a review of the refusals⁹ from firms shows that all the refusals are on the investments side of OBSI's membership. Likewise, the concerns we heard about low-ball offers were focused largely on investment firms, rather than banks.

OBSI employs a “name and shame” system to deter refusals by its members. We heard from consumer advocates that this tool was ineffective. We address “name and shame” in the investments mandate evaluation, but we note that for banking matters, the “name and shame system” appears to have worked. The banks we spoke to indicated that they would never risk the public reporting of a refusal and the possible reputational damage that could cause. This is supported by the data on refusals, which appear to be all from cases under OBSI's investments mandate. Nevertheless, since binding authority is an important policy debate, we address it below.

There are two primary policy considerations which impact OBSI's ability to obtain redress. Both have been the subject of great debate in recent years, particularly with respect to OBSI's investments mandate. The first is binding authority, which OBSI lacks. The second is the compensation limit, which is currently set at \$350,000. Each of these is addressed in turn.

5.4.1 Binding Authority

The ability of OBSI to issue binding decisions remains a primary point of debate among OBSI's stakeholders. On the consumer side, we heard that binding authority is required to level the playing field between consumers and firms, bring OBSI in line with its international counterparts and ultimately give it legitimacy as a true ombuds service. By contrast, industry representatives were generally against giving OBSI binding authority, taking the position that this would require an overhaul of OBSI's processes, introduce too much formality into the process and ultimately cause OBSI to lose what makes it valuable. We summarize various arguments we heard in favour and against binding authority in the table below.

Table 5: Binding Authority – Pros and Cons

Binding Authority – Pros and Cons	
Pros	Cons
<ul style="list-style-type: none">• A binding system would ultimately be more efficient and quicker because there would be less focus on coming to a mutual resolution (<i>i.e.</i>, less focus on buy-in from firms and less back and forth with firms)	<ul style="list-style-type: none">• A binding system would be more adversarial and less collaborative than the current system, which may reduce consumer experience• A binding system would require the introduction of enhanced processes and a

⁹ <https://www.obsi.ca/en/news-and-publications/firm-refusals.aspx#Aug-27-2020-WealthTerra-refuses-to-compensate-investor-for-losses>

<ul style="list-style-type: none"> • A binding system would level the playing field between firms and consumers and address consumer impartiality concerns, leading to improved consumer confidence, improved consumer experience and decreased attrition in OBSI's process • Binding authority would cause firms to take the OBSI process more seriously, leading to increased engagement in OBSI's process and increased legitimacy for OBSI • A binding system would lead to increased consumer compensation • Binding authority is an international best practice, and is required to make OBSI a world-class ombuds service • Binding authority would require certain enhanced processes, which may lead to more informed and fairer decisions 	<p>right of appeal, leading to the potential for added delays, procedural complications and increased costs</p>
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We believe that the arguments in favour of giving OBSI binding authority outweigh the arguments against giving it binding authority. Most significantly, we believe the current system provides an economic incentive for both parties to settle for amounts below OBSI's recommendation. While there is merit to the view that a binding system would require certain procedural enhancements that may lead to added delays and increased costs, we believe that the system can be tailored to find the appropriate balance between speed and efficiency and procedural fairness. We also note that this recommendation is in line with both the recent Taskforce recommendations and the 2016 Review (both on the investments mandate).

5.4.2 *International Best Practices and Comparisons with respect to Binding Authority*

Citing the World Bank's 2012 *Good practices for financial consumer protection*, the INFO Network Guide recommends the following best practices in setting up a financial services ombudsman scheme:

Consumers have access to an affordable, efficient, respected, professionally qualified and adequately resourced mechanism for dispute resolution, such as an independent financial services ombudsman or equivalent institution with effective enforcement capacity. The institution acts impartially and independently from the appointing authority, the industry, the institution with which the complaint has been lodged, the consumer, and the consumer association. Decisions by the financial services ombudsman or equivalent institution are binding on the financial institution. (emphasis added)

The 2016 Review extensively considered the issue of whether OBSI can truly be said to be an ombuds service without binding authority. After reviewing the literature and various international counterparts (including the UK, Australia, New Zealand and India financial ombudsman schemes, which all have binding authority) they concluded that it cannot. We agree. We are of the view that the time has come to bring OBSI in line with international best practices by making it a true ombuds service, capable of issuing decisions that are binding on the parties.

For the binding decision-making model to be adopted, we recommend a model similar to the one suggested by the INFO Network Guide and the models employed by the United Kingdom's Financial Ombudsman Service (FOS UK) and the Australian Financial Complaints Authority (AFCA). Specifically, we believe the process should involve the following steps:

1. an OBSI investigator investigates the case;
2. if the investigator determines that compensation is warranted, the investigator will attempt to facilitate a reasonable settlement between the parties;
3. if a facilitated settlement cannot be reached, the investigator sends the parties a written recommendation about what the outcome should be;
4. if either of the parties rejects the recommendation, both parties are able to submit further arguments and evidence, and a separate, senior member of OBSI's staff with appropriate experience and training who has not been previously involved in the case (perhaps one of its deputy ombudsmen) issues a final decision;
5. if compensation is awarded, the complainant has a defined amount of time to accept the decision;
6. if the complainant accepts the decision within that timeframe, the decision is binding on both the bank and the complainant, and the complainant cannot pursue the matter in court;
7. if the complainant rejects the decision, or does not accept the decision within the specified timeframe, the decision is not binding on either party, and the complainant is free to pursue the matter in court.

Recommendation

OBSI should be empowered to make awards that are binding on the firm and on the consumer, if accepted by the consumer.

We note that this type of process is followed by United Kingdom's Financial Ombudsman Service and the Australian Financial Complaints Authority. We also note that we have recommended that OBSI be given binding authority for its investments mandate, and believe it would be inconsistent and confusing to consumers for OBSI to be able to make binding decisions on the investments side but not the banking side.

5.4.3 Compensation Limit

The current compensation limit for OBSI is \$350,000. In 2020, the CMMTF recommended (for investment cases) a dispute resolution body with the ability to recommend up to \$500,000 in compensation, adjusted every two years based on cost-of-living increases. We agree with this recommendation and would extend it to the banking mandate as well.

In making this recommendation, we do note that the amounts in question for banking files are typically smaller than for investments files. Given this, we feel that the increase to \$500,000 on the banking side will have minimal impact on banks while reserving the possibility of recovery in those rare cases that extend beyond \$350,000 in financial harm.

Recommendation

OBSI should increase its compensation limit from \$350,000 to \$500,000.

5.5 Quality Control

As part of our review, we interviewed investigators, managers and analysts to determine OBSI's quality control processes. We are satisfied that quality control is embedded in every step of the investigation process. OBSI explained to us that there are three investigation teams, each led by a manager. The teams share banking and investments files, with cross-training as appropriate.

Managers informed us that they meet regularly to review the files and make assignments, based on expertise, workload, conflicts, etc. Managers said they play an active oversight role in the files, even when the investigator is a Senior Investigator-3, and that this oversight is more hands-on with new investigators. All documentation uploaded to OBSI's internal case management system is reviewed by the appropriate manager. Managers also meet with the Deputy Ombudsmen frequently to go over files. At these meetings, managers will flag unusual issues or patterns they are noticing.

OBSI's leadership indicated that new investigators receive close supervision from managers and Senior Investigator-3s. They shadow interviews to gain experience and Senior Investigator 3s attend their first solo interviews to observe, even reviewing their interview questions in advance. In our interviews with investigators, it was clear that this is the case and that new investigators are well-supported.

5.6 Fairness

Overall, we found that OBSI's investigations were fair. OBSI has a robust and comprehensive fairness statement that covers both substantive and procedural fairness. Investigations are generally regarded by stakeholders as being fair—concerns about partiality were more about the system and set-up of OBSI, rather than the decisions themselves. Some industry stakeholders did raise concerns about a pro-consumer bias, including the fact that investigators hear from the consumer first and thus their story sets the agenda for the investigation. We did not share these concerns, however.

In the files we reviewed, we found that the conclusions flowed from the evidence. When OBSI made a determination, the investigator cited to the appropriate evidence and such conclusions were reasonable. In most cases, the investigation plans showed a thorough consideration of the issues in the investigation. We were able to see how OBSI tested the arguments brought by the parties by querying inconsistencies in the consumers' stories and verifying party claims against documentary evidence.

Typically, the closing letters explained the investigators' reasons in a clear, plain-language manner. We understand from our conversations with OBSI investigators and leadership that closing letters used to be more detailed and that there was an effort to simplify them and put them in plain language. We commend this effort but would advise that more detail be provided in certain circumstances. In essence, we would recommend a balance between the current letters, which can be relatively light in detail, and the former practice of long and detailed investigation reports.

In particular, we note that in some cases we reviewed, the investigators cited contractual documents (e.g., a cardholders' agreement) without citing the relevant provision.

Recommendation

OBSI investigators should, when basing their decisions on contractual terms between the parties, such as cardholders' agreements, put the text of the relevant provisions in the closing letter. Moreover, OBSI investigators should provide more detailed reasons in their closing letters.

5.6.1 Consistency of Decisions and Use of Precedents

Peer agencies internationally, such as the UK Financial Ombudsman Service, post all of their binding, second-level decisions online. This allows the parties, and especially the banks, to understand how any particular case might be approached by investigators. We understand from OBSI that all banking related files will be summarized, anonymized and posted on the OBSI website starting in June 2022. This is a positive step. It will enhance transparency, promote consistency of like decisions and increase confidence in OBSI's decision-making processes.

6. COMMISSIONER'S GUIDANCE-13

For the reasons outlined above, we conclude that OBSI maintains compliance with the Commissioner's Guidance-13 and is still fit for registration as an ECB.

OBSI deals with complaints made by persons having requested or received products or services from its members that have not been resolved to the satisfaction of those persons as described above. It has a reputation for being operated in a manner that is consistent with the standards of good character and integrity. It is accessible, accountable, impartial and independent, and discharges its functions and perform its activities in a transparent, effective, timely and cooperative manner. OBSI meets the standards for responsible persons, business records and experience, and is financially viable.

7. SUMMARY OF RECOMMENDATIONS

Governance Recommendations

1. OBSI's board should undertake a strategic review of its governance structure to determine how best to ensure that key stakeholder interests are most effectively considered in board oversight and decision-making. In particular, OBSI's board should:
 - a. add other metrics to the Governance & Human Resources Committee's diversity deliberations for recruitment purposes, including indigenous ancestry, membership in a visible minority community and disability;
 - b. transition towards having a board with no specific categorical requirements regarding the number of industry and community directors and amend its bylaws to remove the requirement that industry directors be nominated by IIROC, MFDA and CBA, respectively;
 - c. amend and update its skills matrix and use it as the basis for recruitment to ensure that directors have the skills and competencies needed to effectively oversee OBSI. The skills matrix should include experience in the range of relevant industry sectors, as well as important consumer and investor perspectives; geographic and linguistic diversity; and diversity of backgrounds should also be explicitly accounted for;
 - d. establish roundtables with industry and consumers, including advocacy groups of both, to receive their perspectives and opinions on key issues of importance to OBSI and current developments and trends; and
 - e. in light of the above, carefully consider whether it is necessary or desirable to continue having a CIAC, given that the recommended governance structure described above would see an OBSI board that has balance in industry and investor backgrounds and where the OBSI board would receive input from industry and consumer stakeholders through other means.

Strategic Recommendations

2. OBSI should be empowered to make awards that are binding on the firm and on the consumer, if accepted by the consumer.

Operational Recommendations

3. OBSI should conduct consumer and bank interviews over a videoconferencing platform, allowing for a stronger credibility assessment.
4. OBSI investigators should, when basing their decisions on contractual terms between the parties, such as cardholders' agreements, put the text of the relevant provisions in the closing letter. Moreover, OBSI investigators should provide more detailed reasons in their closing letters.
5. OBSI should consult with industry as to whether its benchmark year for fee allocation in the banking sector should be updated more regularly.

6. OBSI should require firms to provide documents within two weeks, failing which OBSI should publicly report the firm's failure to meet OBSI's timelines.
7. OBSI should set a target of 30 days to assign a case to an investigator, and should report on how frequently it is meeting this target.
8. OBSI should begin counting its investigation targets when OBSI receives the consumer's signed consent letter.
9. OBSI should revise its internal timeliness standard to require 90% of banking cases to be closed in 90 days.
10. OBSI should ensure that it is adequately serving seniors by:
 - a. changing CIAC's Statement of Expectations to require at least one member with experience in advocating for seniors; and
 - b. requiring special training for all existing (and then, as they are onboarded, all new) investigators on working with seniors (e.g., identifying diminished capacity).
11. OBSI should reform its approach to non-financial harms and indirect financial harms in the following ways:
 - a. to provide certainty, OBSI should create multiple levels for non-financial harm/indirect financial harm (low, medium and high), with set compensation amounts or ranges for each one; and,
 - b. when providing a determination with respect to compensation for non-financial harm/indirect harm, OBSI investigators should provide detailed reasons as to why they came to their conclusion.
12. OBSI should provide additional information in the standard consent letter and their *What to Expect* document, including:
 - a. Legal information about limitation periods for civil actions in each jurisdiction in Canada;
 - b. Reference to the "ought to have known" standard for limitation periods;
 - c. An investigation pathway/steps graphic; and
 - d. Better disclosure with respect to timing of the investigation, including the 120-day target for completion and an estimated time for collecting documents.
13. OBSI should work with FCAC to review and improve the systemic issue reporting system, including possibly by:
 - a. Amending the definition of systemic issue;
 - b. Requiring OBSI to report repeated systemic issues year-after-year, even if the same issue was identified in prior years; and
 - c. Ensuring more robust communication between FCAC and OBSI once a systemic issue has been identified by OBSI.

14. OBSI should set out in its Annual Report the number of potential systemic issues it has identified in the previous year, both in respect of securities and banking complaints, and provide a generic description of the type of issue identified.
15. OBSI should work with the FCAC to issue a report to the public on what steps have been taken with respect to the potential systemic issues identified by OBSI.
16. OBSI and ADRBO should work with FCAC to ensure that, when a bank changes ECBs, any investigation not completed by the transfer date remains with the ECB to which the consumer originally complained.
17. OBSI should always recommend that consumers file a police complaint when there is possible criminal misconduct.
18. OBSI should increase its compensation limit from \$350,000 to \$500,000.

Value-Added and Awareness Recommendations

19. OBSI should work with FCAC to require banks to provide link(s) to the “Make a Complaint” section of OBSI’s website (as well as to other important sections, such as the upcoming video-related page) to consumers who go through the internal complaint process and do not get a satisfactory result. Written materials should still be distributed; this will ensure multiple modes of communicating the information and will ensure that those without email/computers still receive written OBSI information.
20. OBSI should take measures to reduce consumer attrition. FCAC and OBSI should convene a dialogue with banks to determine measures to reduce attrition for consumers who receive a negative determination from the bank. OBSI should also work with consumer groups and CIAC to determine how to reduce attrition.
21. OBSI should continue to produce core materials for consumers in languages in addition to English and French, to the extent possible within resource constraints.
22. OBSI should add more information about limitation periods to the closing letter sent to consumers. Specifically, OBSI should include:
 - a. information about the limitation periods in each province; and
 - b. language indicating the “ought to have known” standard for limitation periods.
23. OBSI’s reconsideration closing letters should contain additional information with respect to the process the reconsideration officer undertook and more detailed reasons for either upholding or overturning the original decision.
24. OBSI should post investigator bios on their website to showcase the diverse talent and the expertise each investigator brings to the file.
25. OBSI should continue to expand its role as a thought leader in the future by using its experiences and expertise to contribute to the overall fairness, effectiveness and trust in the financial services sector in Canada.

APPENDIX “A” TEAM BIOS



Professor Poonam Puri

Professor Puri is one of Canada’s most respected leaders in corporate governance and corporate and securities law. She is a tenured professor of business law and former Associate Dean at Osgoode Hall Law School. Professor Puri has been recognized with the Law Society Medal (2021), the David Walter Mundell Medal (2021) and the Royal Society of Canada’s Yvan Allaire Medal (2021) for excellence in contributions to the governance of public and private organizations in Canada. Professor Puri has been previously recognized as one of Canada’s Top 25 Most Influential Lawyers, one of Canada’s 100 Most Powerful Women and one of Canada’s Top 40 Under 40 leaders. She is a graduate of the University of Toronto Faculty of Law (LL.B., 1995, Silver Medalist) and Harvard Law School (LL.M., 1997).



Dina Milivojevic

Ms. Milivojevic is an experienced litigator and corporate lawyer with a deep understanding of litigation and dispute resolution, expert governance knowledge and superior research skills. Ms. Milivojevic has extensive experience conducting investigations and independent evaluations in a range of contexts. Most recently, she conducted an independent review of two major transactions for a large not-for-profit organization. Ms. Milivojevic is a graduate of McMaster University (B.A., 2009) and the University of Western Ontario Faculty of Law (J.D., 2012).

APPENDIX “B” INDEPENDENT EVALUATION TERMS OF REFERENCE

Independent Evaluation Terms of Reference

The Evaluator will report on:

- A. Whether OBSI is fulfilling its obligations as outlined in the Complaints Regulations and CG-13; and,
- B. Whether any operational, budget and/or procedural changes in OBSI would be desirable in order to improve OBSI's effectiveness in fulfilling the provisions of the Complaints Regulations and/or recognized best practices for financial services ombudsmen.

The Evaluator will evaluate OBSI's operations and procedures applicable to the handling of banking complaints involving participating firms who are federally regulated financial institutions, including the effectiveness of complaint resolution.

The Evaluator will consider and evaluate:

- banking complaint case files completed between November 1, 2018 and October 31, 2020 (the “Review Period”)
- current operating policies and procedures, including any changes made during the Review Period
- third party evaluations, financial audits and internal self-assessments between August 2015 and August 2020

The Evaluator will ensure that the complaint files included in their review sample are selected at random and include files with the following outcomes: out of mandate before investigation, out of mandate following investigation, compensation recommended and no compensation recommended.

In addition to examining case files, the Evaluator will undertake interviews with key stakeholders including participating firms, complainants, consumer/investor groups, FCAC and OBSI staff. Interviews may be conducted personally, in writing, by telephone, or by electronic means and may include the use of surveys. The Evaluator will be given full access to information, meetings, communications, and OBSI staff for the purposes of the Evaluation. OBSI will use its best efforts to facilitate and coordinate access to former staff members and other stakeholders. Access to any materials or staff must pertain to the Review Period.

A) Obligations under the Complaints Regulations

With respect to requirement (A) set out above, the Evaluator's report must include analyses and conclusions on OBSI's performance with respect to the requirements of CG-13 and the following requirements for External Complaints Bodies set out in the Complaints Regulations:

- a) Maintain a reputation for being operated in a manner that is consistent with the standards of good character and integrity
- b) Make its services as an external complaints body available across Canada in both official languages and offer those services free of charge to persons who make complaints to it
- c) Ensure that every person who acts on its behalf in connection with a complaint is impartial and independent of the parties to the complaint
- d) Accept as a member any bank or authorized foreign bank that makes a request to it for membership
- e) If a person has made a complaint to it in respect of a bank or an authorized foreign bank that is a member of another external complaints body, provide the person with the name of that other body and its contact information without delay
- f) If it determines that all or part of a complaint is outside its terms of reference, provide the person who made the complaint with written reasons for that determination within 30 days after the day on which it receives the complaint

- g) Transfer a complaint received by it and all related information that is in its possession or control to another external complaints body without delay if a bank or an authorized foreign bank that is a party to the complaint becomes a member of that other body before a final recommendation is made in respect of the complaint
- h) Advise the parties to a complaint that is transferred to it by another external complaints body in writing and without delay
 - i. That a bank or an authorized foreign bank that is a party to the complaint has become a member of the body corporate, and
 - ii. that the complaint has been transferred to it
- i) Advise the Commissioner in writing and without delay if it determines that a complaint raises a systemic issue
- j) Inform the parties to a complaint about its terms of reference and procedures for dealing with complaints and, on request, provide them with any further information and assistance necessary to enable them to understand the requirements of those terms of reference and procedures
- k) Deal with complaints in a manner that affects only the parties to them
- l) Make a final written recommendation to the parties no later than 120 days after the day on which the information that it requires to deal with the complaint, as set out in its terms of reference and procedures, is complete
- m) Consult at least once a year with its members, and with persons who have made complaints to it since the previous consultation, with respect to the discharge of its functions and performance of its activities as an external complaints body
- n) Submit an annual report to the Commissioner on the discharge of its functions and performance of its activities as an external complaints body, which includes
 - i. a summary of the results of any consultation with its members and with persons who have made complaints to it,
 - ii. in respect of each of its members, the number of complaints that it received, the number of complaints that it determined were within its terms of reference, the number of final recommendations that it made and the number of complaints that, in its opinion, were resolved to the satisfaction of the persons who made them, and
 - iii. the average length of time taken to deal with complaints;
- o) Make the annual report available to the public without delay after it is submitted to the Commissioner
- p) make information available to the public about
 - i. its constitution and governance and the identity of its members,
 - ii. the terms of reference that govern its functions and activities as an external complaints body
 - iii. all sources of funding for its functions and activities as an external complaints body, including the fees charged to each of its members for its services and the method of calculating those fees, and
 - iv. the results of the most recent five-year evaluation.

B. Operational Effectiveness

With respect to requirement (B) set out above, the Evaluator's report must set out analyses and conclusions including:

- a) A report on progress towards the recommendations from the previous independent reviews.
- b) A high-level evaluation of OBSI's operations with reference to its terms of reference, internal policies and procedures, and fairness statement.
- c) A high-level benchmarking exercise that compares OBSI to other financial services ombudsman schemes or equivalent in comparable international jurisdictions both operationally and with respect to OBSI's general organizational approaches to matters such as accessibility and transparency.

- d) An analysis of OBSI governance, including particular reference to stakeholder representation on OBSI's board of directors.

Deliverable(s)

The Evaluator will present a final report in English to OBSI and the FCAC and make separate presentations to OBSI Senior Management, OBSI's Board of Directors, and a joint meeting of the OBSI Board of Directors and the FCAC.

OBSI will facilitate a professional translation of the final report into French. The final report will be published simultaneously with the final report of the five-year review of the other Canadian ECB.

Timeline

The Evaluator will regularly update OBSI on its progress and immediately disclose any material issues that could hinder its ability to carry out an effective independent evaluation and OBSI will advise the FCAC of any such issues. A full project timeline will be presented by the Evaluator to OBSI for consideration and approval.

The final presentation to the OBSI Board of Directors and FCAC will take place in December 2021. Work on the review should begin in October, 2021.

APPENDIX “C” COMPLAINTS REGULATIONS

Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations

SOR/2013-48

Interpretation

Definitions

1 The following definitions apply in these Regulations.

Act means the *Bank Act*. (*Loi*)

complaint means a complaint that is made by a person

(a) to a bank or an authorized foreign bank about a product or service that was requested or received by the person from the bank or authorized foreign bank; or

(b) to an external complaints body about a product or service that was requested or received by the person from a member of that body. (*réclamation*)

external complaints body means an external complaints body that is approved by the Minister under subsection 455.01(1) of the Act. (*organisme externe de traitement des plaintes*)

member means a bank or an authorized foreign bank whose request for membership is accepted by an external complaints body, permitting the bank or authorized foreign bank to have access to the services of the external complaints body in connection with complaints made to that body. (*membre*)

PART 1

Banks and Authorized Foreign Banks

Contact information for Agency

2 (1) For the purposes of subsections 455(4), 456(1), 573(4) and 574(1) of the Act, the prescribed information on how to contact the Agency is the following:

(a) at its office at 427 Laurier Ave. West, 6th Floor, Ottawa, Ontario K1R 1B9; or

(b) through its website at www.fcac-acfc.gc.ca.

Manner of providing information

(2) For the purposes of subsections 456(1) and 574(1) of the Act, the prescribed manner for a bank or an authorized foreign bank to provide the information is

(a) in a brochure, statement of account or written statement that contains other information that is required to be disclosed under the Act in respect of an arrangement referred to in subsection 452(3) or 570(3) of the Act, a payment, credit or charge card,

the cost of borrowing or any other obligation of the bank or authorized foreign bank under a consumer provision; or

(b) in a separate document.

Information regarding complaint procedures

3 A bank or an authorized foreign bank must inform a person who makes a complaint to it about the procedures that it has established under paragraph 455(1)(a) or 573(1)(a) of the Act for dealing with complaints and must provide the person with any information that is necessary to enable them to meet the requirements of those procedures.

Information regarding complaints

4 A bank or an authorized foreign bank must make the following information available to the public on an annual basis:

(a) the number of complaints that were dealt with by the officer or employee designated by the bank or authorized foreign bank to deal with complaints who holds the most senior position identified for that purpose in the procedures established by the bank or authorized foreign bank;

(b) the average length of time taken by that officer or employee to deal with the complaints; and

(c) the number of complaints that, in the opinion of the bank or authorized foreign bank, were resolved by that officer or employee in accordance with those procedures to the satisfaction of the persons who made the complaints.

PART 2

External Complaints Bodies

Purpose

5 The purpose of this Part is to enhance the process for dealing with complaints under the Act by establishing a scheme for external complaints bodies that are accessible, accountable, impartial and independent and that discharge their functions and perform their activities in a transparent, effective, timely and cooperative manner.

Approval — reputation

6 (1) A body corporate that applies for approval under subsection 455.01(1) of the Act must have a reputation for being operated in a manner that is consistent with the standards of good character and integrity.

Policies, procedures and terms of reference

(2) Before it applies for approval, the body corporate must have policies and procedures, and terms of reference to govern its functions and activities as an external complaints body, that would enable it to meet the conditions that are set out in section 7.

Maintaining approval

7 Every body corporate that is approved by the Minister as an external complaints body must, as conditions of maintaining that approval,

- (a)** maintain a reputation for being operated in a manner that is consistent with the standards of good character and integrity;
- (b)** make its services as an external complaints body available across Canada in both official languages and offer those services free of charge to persons who make complaints to it;
- (c)** ensure that every person who acts on its behalf in connection with a complaint is impartial and independent of the parties to the complaint;
- (d)** accept as a member any bank or authorized foreign bank that makes a request to it for membership;
- (e)** if a person has made a complaint to it in respect of a bank or an authorized foreign bank that is a member of another external complaints body, provide the person with the name of that other body and its contact information;
- (f)** if it determines that all or part of a complaint is outside its terms of reference, provide the person who made the complaint with written reasons for that determination within 30 days after the day on which it receives the complaint;
- (g)** transfer a complaint received by it and all related information that is in its possession or control to another external complaints body if a bank or an authorized foreign bank that is a party to the complaint becomes a member of that other body before a final recommendation is made in respect of the complaint;
- (h)** advise the parties to a complaint that is transferred to it by another external complaints body in writing
 - (i)** that a bank or an authorized foreign bank that is a party to the complaint has become a member of the body corporate, and
 - (ii)** that the complaint has been transferred to it;
- (i)** advise the Commissioner in writing if it determines that a complaint raises a systemic issue;
- (j)** inform the parties to a complaint about its terms of reference and procedures for dealing with complaints and, on request, provide them with any further information and assistance necessary to enable them to understand the requirements of those terms of reference and procedures;
- (k)** deal with complaints in a manner that affects only the parties to them;
- (l)** make a final written recommendation to the parties no later than 120 days after the day on which the information that it requires to deal with the complaint, as set out in its terms of reference and procedures, is complete;
- (m)** consult at least once a year with its members, and with persons who have made complaints to it since the previous consultation, with respect to the discharge of its functions and performance of its activities as an external complaints body;

(n) submit an annual report to the Commissioner on the discharge of its functions and performance of its activities as an external complaints body, which includes

(i) a summary of the results of any consultation with its members and with persons who have made complaints to it,

(ii) in respect of each of its members, the number of complaints that it received, the number of complaints that it determined were within its terms of reference, the number of final recommendations that it made and the number of complaints that, in its opinion, were resolved to the satisfaction of the persons who made them, and

(iii) the average length of time taken to deal with complaints;

(o) make the annual report available to the public after it is submitted to the Commissioner;

(p) submit every five years to an evaluation of the discharge of its functions and performance of its activities as an external complaints body that is conducted by a third party in accordance with terms of reference established by the body corporate in consultation with the Commissioner; and

(q) make information available to the public about

(i) its constitution and governance and the identity of its members,

(ii) the terms of reference that govern its functions and activities as an external complaints body,

(iii) all sources of funding for its functions and activities as an external complaints body, including the fees charged to each of its members for its services and the method of calculating those fees, and

(iv) the results of the most recent five-year evaluation.

Information relating to external complaints body

8 (1) A bank or an authorized foreign bank must display and make available to the public at all of its branches and points of service where products or services are offered in Canada, and on every website through which products or services are offered in Canada, copies of a written statement disclosing the name of the external complaints body of which it is a member and with which it must cooperate and the contact information for that body.

Definition of point of service

(2) In this section, **point of service** means a physical location to which the public has access and at which a bank or an authorized foreign bank carries on business with the public and opens or initiates the opening of retail deposit accounts through natural persons in Canada.

Information relating to complaints

9 A bank or an authorized foreign bank must provide the external complaints body of which it is a member with all information in its possession or control that relates to a complaint after the external complaints body notifies it that the complaint has been received in respect of it.

Notice of transfer of membership

10 A bank or an authorized foreign bank must give the Commissioner and the external complaints body of which it is a member written notice of a request, or an intention to make a request, to become a member of another external complaints body at least 90 days before the day on which it becomes a member of that other body.

PART 3

Obligation Regarding Information

Language

11 All information that is provided under these Regulations by a body corporate, a bank or an authorized foreign bank must be in language that is clear, simple and not misleading.

Repeals

12 [Repeal]

13 [Repeal]

Coming into Force

14 These Regulations come into force on September 2, 2013.

CG-13 Application guide for external complaint bodies

Publication date: April 10, 2013

Effective date: September 2, 2013

Modified on February 9, 2016, to include Frequently Asked Questions

1. Definitions

The following definitions apply in this guide.

Applicant

The applicant means a “body corporate” incorporated under Canada Not-for-profit Corporations Act or under the Canada Business Corporations Act, whose purpose under its letters patent, in the Minister’s view, is dealing with complaints made by persons having requested or received products or services from its member financial institutions that have not been resolved to the satisfaction of those persons under procedures established by those financial institutions under paragraph 455(1)(a) of the Bank Act.

Investigator

An investigator is an individual who is appointed by the external complaint body (ECB) in connection with a complaint to conduct the investigation.

Dispute resolvers

A dispute resolver is an individual who is appointed by the ECB to consider and make final recommendations with respect to complaints.

Member

Member has the same definition as in the Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations.

Complaint

Complaint has the same definition as in the Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations.

Regulations

The Regulations refer to the Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations.

2. Approval criteria

Pursuant to section 455.01 of the Bank Act, upon the recommendation of the Commissioner of the Financial Consumer Agency of Canada (FCAC), the Minister may approve a body corporate whose purpose under its letters patent, in the Minister's view, is to deal with complaints made by persons having requested or received products or services from its members, that have not been resolved to the satisfaction of those persons under procedures established by those financial institutions under paragraph 455(1) (a).

Before making an approval under subsection 455.01(1) of the Bank Act, the Minister may take into consideration the Commissioner's recommendation. The Commissioner will take into account the following:

- the ability of the body corporate to deal with complaints made by persons having requested or received products or services from its members, that have not been resolved to the satisfaction of those persons as described above
- the reputation of the body corporate for being operated in a manner that is consistent with the standards of good character and integrity
- the ability of the body corporate to be accessible, accountable, impartial and independent, and to discharge its functions and perform its activities in a transparent, effective, timely and cooperative manner
- the policies, procedures and terms of reference governing its functions and activities that would enable it to meet the conditions under Section 7 of the Regulations.

3. Application process

Following submission of a draft application, FCAC's Supervision and Promotion Branch (SPB) will review the application request and supporting information during a pre-application period to ensure that all required documents have been included and to request any further information from the applicant that it may require. Once FCAC is satisfied that all necessary information has been received and reviewed, SPB will advise the applicant that the application is certified as complete.

3.1 Pre-application review procedure

- A body corporate intending to apply to FCAC to become an approved ECB should file two (2) copies of its draft application with FCAC.
- FCAC will review the draft application and may contact the applicant to discuss its completeness, status and outstanding issues.
- FCAC will respond to applicants on a timely basis, and where necessary request additional information from the applicant.
- To avoid delays in the processing of its application, applicants are expected to provide any further information requested within the timeframes established by FCAC.
- If any of the information submitted by the applicant to FCAC is changed, replaced or amended, applicants are expected to advise FCAC of the change as soon as possible.
- SPB will review the draft application for completeness.

3.2 Application procedure

- A draft application package will be certified as complete by FCAC when all requested information is received in a manner satisfactory to the Commissioner, and the applicant will be instructed to submit a formal letter of application to the Commissioner requesting that the Minister approve the application submitted to FCAC pursuant to subsection 455.01(1) of the Bank Act.
- FCAC will provide the applicant with an application receipt indicating the date on which the Commissioner received the application, and a further receipt when the Commissioner's recommendation is submitted to the Minister.
- Applicable notices will be published, pursuant to subsection 455.01(5) of the Bank Act, in the Canada Gazette.

4. Information requirements

It is incumbent on the applicant to demonstrate how it meets the various principles and requirements set out in the Act and the Regulations, through the information it provides to FCAC in its application. FCAC will review each applicant on a case-by-case basis, recognizing that each proposed ECB may have a different approach for meeting the requirements in the Bank Act and the Regulations.

4.1 General information

General information is needed to accurately identify the applicant. The applicant must provide:

- the proposed English and French names by which the applicant proposes to operate
- the location of the head office
- the name, position and telephone number(s) of the contact person(s)
- a letter authorizing FCAC to discuss the application with the contact person(s).

4.2 Terms of reference

Terms of reference are established to describe the purpose and scope of the operations of the ECB. Terms of reference are to be made available to the public and must be provided to FCAC. The applicant's terms of reference should include the following:

- the mandate of the ECB
- the responsibilities, powers and duties of the investigators and dispute resolvers
- the scope and nature of the complaints that the ECB will handle
- the types of complaints that fall outside its terms of reference
- the process for handling complaints
- information on its constitution and governance structure and senior management of the ECB
- details on the board and/or senior management's role in managing the ECB, including details on how the board and/or senior management will ensure that the ECB is managed with good character and integrity

- the terms and conditions for membership and membership fee structures for services provided
- information on how the ECB will ensure confidentiality and privacy of the parties to a complaint
- information on how the ECB will meet public reporting requirements
- a list of members or potential members
- a statement that the ECB will be subject to a third-party evaluation of the discharge of its functions and performance of activities, as required in the regulations
- any other information relevant to the mandate, purpose and objects of the ECB.

4.3 Corporate information

The applicant must provide FCAC with evidence of corporate authorization, including copies of:

- the applicant's articles of incorporation and any by-laws
- any other pertinent evidence of corporate authority.

4.4 Policies and procedures

The Regulations specify that the ECB must have policies and procedures in place to ensure it is accessible, accountable, impartial and independent, and discharges its functions and performs its activities in a transparent, effective, timely and cooperative manner. In addition, the body must be operated in a manner that is consistent with the standards of good character and integrity.

In the context of its application, the applicant must provide evidence that it has developed appropriate policies and procedures to meet key elements set out in the Regulations, but must also provide information regarding how the ECB will ensure that these policies and procedures are understood internally and externally, are followed by those within the ECB responsible for delivering on these policies and procedures, and the steps that the ECB will take to ensure the ongoing effectiveness of the policies and procedures.

4.4.1 Good character and integrity

The ECB must be operated in a manner that is consistent with the standards of good character and integrity. It is incumbent upon the applicant to demonstrate that it has addressed the issues of responsible persons, business records and experience, and financial viability to meet the standards. The application should show:

Responsible persons

- the ability of the body corporate to be operated responsibly by persons with the competence and experience suitable for involvement in its operation; the application must include
 - the processes for assessing the initial and ongoing suitability and integrity of directors and persons who play a significant role in the management or dispute resolution processes of the ECB, including a process to collect, retain and review the information

- adequate screening, criminal record searches and other measures to minimize the risk of illegal conduct by directors, senior officers and dispute resolvers in carrying out the ECB's day-to-day affairs
- information on the selection and oversight of investigators and/or dispute resolvers

Business records and experience

- the business records and experience of the applicant, including
 - a brief history of the applicant, including a summary of its experience in complaint handling, mediation or dispute resolution
 - the applicant's business strategy, including any implementation strategy and staffing plan to provide services and an analysis of business risks

Financial viability

- evidence that the applicant has sufficient financial resources to support the ongoing and long-term operations of the ECB or would have access to the financial resources to enable it to do so, including
 - a demonstration of the adequacy of anticipated capital expenditures and an explanation of the capital expenditure financing strategy
 - supporting information, such as an attestation from a reputable external auditor and letters of support from investors and/or affiliates attesting to the financial viability of the body corporate.

4.4.2 Accessibility

The applicant must ensure that complaint-handling is easily accessible and available at no cost to consumers. ECBs must have adequate policies, procedures and processes in place to accept any bank or authorized foreign bank as a member.

It is incumbent upon the applicant to demonstrate how the ECB will be accessible to consumers, banks and authorized foreign banks. At a minimum, the applicant must indicate how the following information is incorporated in its policies and procedures:

Accessibility to consumers

- the provision of services to consumers across Canada in both official languages
- the provision of services to consumers free of charge
- the availability of information on how consumers will be able to contact the ECB
- the ability to allow consumers to communicate by writing, email, fax or electronically with the ECB (how to submit complaints)
- the availability of information about the complaint-handling process to consumers written in language that is clear, simple and not misleading
- the process to inform complainants about its terms of reference and procedures for dealing with complaints, and to provide information to assist them in understanding those requirements

Accessibility to members

- the process to inform members about its terms of reference and procedures for dealing with complaints, and to provide information to assist them in understanding those requirements.

4.4.3 Accountability

The Regulations require that ECBs be accountable to consumers, members and FCAC. The applicant must demonstrate that policies or procedures are in place to ensure accountability, including but not limited to the following.

Annually, ECBs must

- consult with its members, and with persons who have made complaints to it since the previous consultation, in regard to the discharge of its functions and performance of its activities as an ECB
- report the findings of said consultation to the Commissioner and make the findings publicly available through its annual report
- report complaint related data as required by the Regulations.

The ECB must also do the following in relation to its engagement with FCAC as required by the regulations:

- report regularly to FCAC
- report any systemic issues to the Commissioner without delay
- undertake an evaluation by a third party of the discharge of its functions and performance, in accordance with terms of reference established in consultation with the Commissioner every five years, and make the findings available to the public
- monitor and assess the board of directors' and/or senior management's commitment to and delivery of regulatory requirements, including the complaints process.

4.4.4 Impartiality and independence

The ECB and those who act on behalf of the ECB in connection with a complaint must be seen to be impartial, unbiased and independent when dealing with complaints. At a minimum, FCAC expects the applicant to demonstrate that the investigators and dispute resolver(s), whether employed by the ECB or engaged under contract:

- have no previous involvement with the case
- have no personal or pecuniary interest in the outcome of any particular case
- are not compensated or evaluated for their performance based on the outcome of any particular case
- maintain a professional designation or be required to receive ongoing training in dispute resolution
- have established procedures for addressing and dealing with cases, conducting investigations and rendering decisions
- have well defined terms and conditions for employment, including clear processes for performance management

- are solely responsible for their recommendations and not subject to review or change by senior management or others in the organization who have not been involved in the process.

The applicant must also demonstrate how it will seek to ensure that persons who act on its behalf in connection with a complaint will do so in a manner that avoids conflicts of interest and is impartial in his or her execution and is independent of the parties to the complaint. This must include the following:

- information on the ECB's investigators and/or dispute resolvers' professional standards, such as experience, training, designations, etc.
- policies governing ethics and conflicts of interest
- training requirements
- details about how investigators and dispute resolvers are hired or engaged, including a description of their responsibilities, the terms and conditions of their appointment and any reporting relationship to senior management and/or the board of directors
- details of the investigators and dispute resolvers' compensation structure and performance evaluation
- monitoring and assessment of the application of the policies and procedures.

The applicant must also have policies and procedures in place to demonstrate how these principles will be implemented by the ECB.

To ensure the impartiality and independence of the complaint resolution process, the relationships between the applicant ECB and its members (contractual, financial, business or otherwise) should not impact or be perceived to impact the outcomes of the complaints resolution process. To this end, the ECB will need to demonstrate that it:

- reviews and evaluates, on a regular basis but no less than once per year, any significant financial, business and other relationships between it and any of its members to assess whether there is any actual or perceived impact on its independence or impartiality
- undertakes this assessment of relationships with its members in the light of what a reasonable and informed third party would likely conclude could or be perceived to impact said processes
- ensures that all the specific facts and circumstances available to the ECB at the time are appropriately considered and weighed in the context of the relationship assessment
- takes the necessary steps to eliminate, or reduce to an acceptable level, any actual or perceived risks associated with said relationships, through the application of appropriate standards and/or safeguards as required
- has a process to report to the Commissioner of FCAC the findings and outcome of the review and assessment upon completion.

The applicant must also provide FCAC with the following information, where applicable:

- a corporate structure chart (showing percentages of voting and non-voting shares owned) for the applicant and any parent corporation, including all affiliates of the applicant and any parent company
- a list of all classes and attributes of voting and non-voting shares
- a certified or authenticated list of all shareholders [see footnote 1] and board members

- the name and address of each director who directly or indirectly beneficially owns more than 10 percent of any class of shares of the applicant, including
 - the number of shares held
 - the class and attributes of the class
- the current employer/occupation of each director and relationships to shareholders, if any
- any agreements or arrangements among shareholders of the body corporate or any agreements or arrangements between or among any holding company and any affiliated corporation of the body corporate related to the governance or management of the body corporate
- projected staff complement of the organization and a complete organization chart that clearly identifies reporting lines for senior positions, key responsibilities within the ECB and a description of the functions the identified individuals will perform
- details on all sources of debt and equity funding for the ECB, as well as funding received from members, including any formula to calculate membership fees
- information on and examples of the arrangements and contractual relationships between the ECB and its members.

4.5 Discharge of functions and performance of activities

The applicant must identify how it will discharge its functions and perform its activities in a transparent, effective, timely and cooperative manner.

4.5.1 Transparency

FCAC expects the applicant:

- to demonstrate how the ECB will make available to the public information on its terms of reference, complaint data, complaint-handling process, results, procedural rules, operations, membership and funding
- to establish data collection and retention standards
- to inform the parties to a complaint of the existence of applicable limitations period
- to undergo a third-party evaluation, overseen by the Commissioner of FCAC, every five years with the results publicly available.

4.5.2 Effectiveness

To ensure that consumers and the satisfactory resolution of complaints would be the focus for all ECBs, the applicant must show:

- how its complaint-handling procedures and outcomes are suited to the nature of the complaint
- how senior management demonstrates its commitment to these principles through the provision of training and resources
- its process for notifying and providing supporting information to FCAC on systemic issues, leaving the role of investigation of such issues to FCAC.

4.5.3 Timeliness

FCAC expects the applicant to demonstrate that a final written recommendation regarding complaints would be provided no later than 120 days after the day on which the information that it requires to deal with the complaint, as set out in its terms of reference and procedures, is complete.

If a consumer has a complaint that is not covered by the ECB's terms of reference, it must have a policy of notifying the consumer with a written reason within 30 days after receipt of the complaint.

4.5.4 Cooperation

FCAC expects each applicant:

- to have a membership acceptance protocol(s) with clear membership requirements
- to demonstrate how it will cooperate and resolve disputes with members
- to have policies and procedures in place to ensure that complainants with pending cases of any new member that joins an ECB from another ECB are notified without delay of this change
- to have policies and procedures in place to transfer a complaint received by it and all related information that is in its possession or control to another ECB without delay if a member becomes a member of another ECB before a final recommendation is made in respect of the complaint
- to have procedures to ensure that sufficient, pertinent and timely information regarding decisions is communicated to members
- to have procedures to direct persons who have made complaints to the correct ECB if the bank or authorized foreign bank is not member of that ECB.

Frequently Asked Questions

1. Question

According to subsection 7(n) of the Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations, ECBs are required to submit an annual report to the Commissioner on the discharge of their functions and performance of their activities as external complaints bodies and include prescribed information in the report. The report must then be made public without delay after it is submitted to the Commissioner.

What is the expected time frame for submitting this report for the first year of operation of the ECB and moving forward?

Answer

The report for the first year of operation should cover the activities from the date the ECB received approval to October 31.

Annual reports are to be submitted within 135 days after October 31 of each year.

2. Question

Subsection 7(o) of the Complaints Regulations requires ECBs to publicly report complaint data.

Do all ECBs report in exactly the same way?

Answer

Paragraphs 7(n)(ii) and 7(n)(iii) of the Complaints Regulations require an ECB to report the following complaint data:

- the number of complaints received
- the complaints that it determined were within its terms of reference (TORs)
- the number of final recommendations
- the number of complaints that, in its opinion, were resolved to the satisfaction of the persons who made them and
- the average length of time taken to deal with complaints

Subsection 455.01(1) of the Bank Act stipulates that the Minister may approve more than one ECB and each ECB determines its own TORs. If the TORs differ, it is expected that complaint data would be reported differently, as they would be dependent on what each ECB considers to be within and outside of its TORs. ECBs are required to publicly disclose their TORs.

3. Question

Subsection 7(k) requires ECBs to “deal with complaints in a manner that affects only the parties to them”.

Does that mean that ECBs no longer investigate many of the complaints they currently receive? For example, complaints related to joint deposit accounts, joint chequing accounts, residential (family) mortgages, joint lines of credit, and jointly held investment accounts could all potentially be covered by this section.

Answer

The intent of this subsection is to ensure that ECBs focus on the individual complaints that they receive. If consent is withheld or not given by all parties to the joint account, the ECB cannot deal with the complaint in a manner that affects the non-consenting party.

If, in the course of their investigation, the ECB finds that other bank clients may be similarly impacted, it is required to report this potential systemic issue to FCAC, as per subsection 7(i). For example, if an issue is identified with mortgage prepayment disclosure that affects more than one consumer, the ECB must report the underlying issue to FCAC.

In our view, ECBs are not to investigate the following types of complaints but are required to report them to FCAC:

1. class-action-type complaints or where a complaint uncovers a systemic issue. This type of complaint refers to a shared issue that affects more than one person. The ECB should investigate the individual's complaint, but not the collective complaint.
2. a complaint received from a person (third party) complaining on behalf of another person where consent is not received from the party to the complaint. [See footnote 2.]

4. Question

According to subsection 7(l) of the Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations, ECBs are required to "make a final written recommendation to the parties no later than 120 days after the day on which the information that it requires to deal with the complaint, as set out in its terms of reference and procedures, is complete".

How should the ECB determine this date?

Answer

ECBs' policies and procedures should clearly include a process ensuring that investigators obtain the required information from the parties to the complaint. For example, the internal procedure should require the ECB investigator to conduct interviews and collect the required information from both parties promptly. The date when all of the information is received by the ECB should be tracked in the ECB's database.

ECBs have noted that, in some cases, the complainant is not available or does not provide all the information at the outset of the investigation. In other cases, the bank does not provide all information when contacted. In such cases the 120-day timeline does not begin until the complainant and the bank have provided all relevant information.

Internal procedures should require that the investigator document the attempts to reach the complainant and follow up. Should the complainant not contact the ECB within a reasonable timeframe, as stipulated in the internal procedures, the complainant should be advised that the file will be closed pending receipt of the requested information. ECB contact information should be provided, with a reference number, in case the complainant wishes to pursue the complaint at a later date, bearing in mind that there is a timeline to complain to the ECB, as per its TORs.

ECBs should be aware that section 9 of the Regulations requires a bank to provide the ECB of which it is a member with all information in its possession or control that relates to a complaint without delay after the ECB notifies it that the complaint has been received. The bank is expected to cooperate fully with the ECB's request pertaining to the complaint.

However, should an investigator not follow the internal procedures of the ECB, the "start date" [see footnote 3] should not be suspended or restarted. Under subsection 7(l), the 120-day period starts from the day "on which the information that it requires to deal with the complaint, as set out in its terms of reference and procedures, is complete." **Information does not mean internal assessments.** For example, if an investigator fails to conduct an interview with the complainant, and as a result does not gather all the relevant information, the 120-day timeline will not be re-started. Similarly, if the investigator did not disclose a conflict of interest, the 120-day timeline should not be re-started. The date the investigator initially determined that all the information was received should continue to be considered the "start date" for calculation of the 120-day timeline. The final written recommendation should not be delayed solely owing to the errors/omissions of an investigator.

Footnote 1

Shareholder is interchangeable with the term “member” as used in the Not for Profit Canada Act.

Footnote 2

Except where there is a valid power of attorney. Other exceptions may apply, for instance with regard to minors and trust accounts.

Footnote 3

“Start date” is the date used to determine when the 120-day timeline begins. The “start date” is considered to be the date on which all the information the ECB requires to deal with the complaint has been provided to its investigator.

APPENDIX “E” OBSI TERMS OF REFERENCE

TERMS OF REFERENCE

Ombudsman for Banking Services and Investments (OBSI)

PART 1 – PURPOSE AND SCOPE

1.1 OBSI’s purpose – OBSI seeks to resolve disputes between participating financial services firms and their customers if they are unable to resolve them on their own. OBSI is independent and impartial, operates in the public interest, and its services are free and accessible to consumers without the need for legal representation. As an alternative to the legal system, OBSI works efficiently and confidentially to find a fair outcome through a fair process.

1.2 Scope – These Terms of Reference describe the principal powers and duties of OBSI, the obligations of Participating Firms, the scope of OBSI’s mandate, and OBSI’s process for receiving, investigating and seeking resolution of Complaints about Participating Firms.

PART 2 – DEFINITIONS AND INTERPRETATION

2.1 Definitions – In these Terms of Reference,

“**Board**” means the board of directors of OBSI.

“**Commercial Judgment**” means assessments of risk (such as in lending, taking security or insurance underwriting), and assessments of financial and commercial criteria or of the character of a Customer.

“**Complainant**” means any Customer of a Participating Firm or its Representative making a Complaint to OBSI and includes the authorized representative(s) of the Customer, such as a personal representative, guardian, trustee or executor.

“**Complaint**” means an expression of dissatisfaction made by a Customer about the Provision of a Financial Service in Canada by a Participating Firm, or Representative of a Participating Firm, made

- (a) in writing; or
- (b) verbally, either
 - (i) at the reportable complaint level (if the Participating Firm’s regulator has established such a level); or

- (ii) at any level, if the Customer's dissatisfaction has been recorded by the Participating Firm,

and a Complaint includes issues identified by OBSI in the course of its investigation that are materially connected to issues raised by the Complainant.

"Customer" means an individual who, or small business that, requested or received a Financial Service from a Participating Firm or its Representative, regardless of whether the Financial Service was received through an account at the Participating Firm, provided it is reasonable for the individual or small business to believe that they were requesting or receiving a Financial Service from a Representative or a Participating Firm.

"Financial Service" is any service related to the provision of financial advice or products including buying or selling investments, devising or implementing investment plans, or saving, borrowing, lending, financial planning or wealth management strategies.

"Industry Ombudservice" means any of OBSI, the Ombudservice for Life and Health Insurance (OLHI) and the General Insurance Ombudservice (GIO).

"OBSI" means the Ombudsman for Banking Services and Investments, an organization incorporated under the *Canada Not-for-profit Corporations Act*

"Ombudsman" means the individual appointed by the Board to exercise the powers and duties of the office of OBSI or a person to whom the powers of the Ombudsman have been delegated in accordance with section 4.4.

"Participating Firm" means

- (a) an Industry Member as defined in OBSI's by-laws; and
- (b) any affiliated entity controlled by an Industry Member and eligible itself for membership in OBSI, excluding affiliated entities whose main business is the provision of insurance products or services;

that directly or indirectly provides Financial Services in Canada.

"Provision of a Financial Service in Canada" means the provision of a Financial Service

- (a) to any consumer (Canadian or foreign) while that consumer is located in Canada; or

(b) to a resident of Canada, regardless of where they are when they receive the Financial Service; or

(c) from a place of business in Canada to any consumer (Canadian or foreign);

and includes providing, inadequately providing, and failing to provide Financial Services.

“Regulator” means any applicable regulator and includes a self-regulatory organization.

“Representative” of a Participating Firm includes any individual who dealt with the Complainant or supervised the dealing with the Complainant in the Provision of Financial Service that gave rise to the Complaint, whether the individual is an employee, agent, or third-party contractor of the Participating Firm.

“Small business” means an enterprise, irrespective of legal form, with annual gross revenues under \$5 million in each of the 5 years preceding submission of the enterprise’s Complaint to OBSI.

“Standards” means any applicable statutory or regulatory requirements for handling and resolving complaints, as well as any other standards adopted by the Board for those purposes.

2.2 Interpretation

2.2.1 Delegation by Ombudsman – In recognition of the fact that the Ombudsman’s powers may be delegated, certain provisions of these Terms of Reference refer to OBSI rather than to the Ombudsman. These provisions should be interpreted as references to OBSI management or staff exercising the powers and performing the duties of the Ombudsman delegated to them.

2.2.2 Gender and number – In these Terms of Reference, all references to the male gender include, where the context admits, the female gender and vice versa, and references to the singular number include, where the context admits, the plural number and vice versa.

2.2.3 Parts, sections and paragraph numbers – In these Terms of Reference, all references to parts, sections and paragraphs mean parts, sections and paragraphs of these Terms of Reference unless otherwise indicated.

2.2.4 Conflicts with statutes, regulations and by-laws – If any statute or regulation applicable in Canada or any portion of OBSI’s by-laws conflicts with

any portion of these Terms of Reference, the statute, regulation or by-law will govern and the conflicting portion of these Terms of Reference will be disregarded.

PART 3 – OBSI ORGANIZATION AND GOVERNANCE

3.1 Incorporation – OBSI is incorporated as a non-profit organization under the *Canada Not-for-profit Corporations Act*.

3.2 Membership – Membership in OBSI is available to any firm engaged in the Provision of a Financial Service in Canada. A full list of Participating Firms can be found on OBSI's website.

3.3 Fees – OBSI levies fees on all Participating Firms in accordance with its by-laws. Information about the fees can be found on OBSI's website.

3.4 Governance – OBSI is governed in accordance with the terms of its by-laws, all applicable laws and regulations, and the following governance principles:

- (a) The Board is responsible for overseeing OBSI and the Ombudsman, and the Ombudsman is accountable to the Board.
- (b) The Ombudsman is OBSI's Chief Executive Officer and leads OBSI's senior management team.
- (c) A majority of directors on the Board are Community Directors elected in accordance with OBSI's by-laws, and must not occupy specified positions in Participating Firms, self-regulatory organizations or government or have occupied such positions in the two years prior to their election to the Board.
- (d) A minority of directors on the Board are Industry Directors elected in accordance with OBSI's by-laws.
- (e) The Board oversees the business and affairs of OBSI, establishes the strategies and objectives to be implemented by management, monitors standards of performance, and ensures that OBSI conducts its business and affairs in a manner consistent with its mission and objectives.
- (f) To maintain the independence and impartiality of OBSI staff, the Board does not consider Complaints. The final decision concerning

Complaints rests with OBSI. There is no appeal to the Board, nor can the Board influence the decisions of OBSI staff.

PART 4 – OMBUDSMAN'S POWERS AND DUTIES

4.1 Principal powers and duties - The Ombudsman at all times will serve as an independent and impartial arbiter of Complaints and will not act as an advocate for Participating Firms, Complainants or any other person. The Ombudsman will:

- (a) Act fairly in accordance with OBSI's Fairness Statement adopted by the Board;
- (b) adhere to these Terms of Reference and all applicable Standards;
- (c) advise the public about procedures for making a Complaint to OBSI, to a Participating Firm or to another appropriate body;
- (d) receive Complaints;
- (e) where necessary, and without advocating on their behalf, assist Complainants with the complaint process, including helping them articulate their Complaint to OBSI or a Participating Firm;
- (f) investigate Complaints with a view to resolving them through appropriate dispute resolution processes; and
- (g) as appropriate in the circumstances, make recommendations to Participating Firms and Complainants to resolve Complaints or reject them on their merits.

4.2 Duty to oversee staff compliance – The Ombudsman is responsible for ensuring that all OBSI personnel (including officers, employees, consultants, independent contractors and agents) comply with these Terms of Reference, OBSI's Code of Conduct and all policies and procedures adopted by the Board.

4.3 Duty to safeguard privacy – The Ombudsman is responsible for ensuring that OBSI complies with all applicable legislation protecting the privacy of personal information, and all privacy policies and procedures adopted by the Board.

4.4 Ombudsman may delegate – The Ombudsman may delegate any of the Ombudsman's powers to OBSI staff.

PART 5 – COMPLAINTS TO OBSI

5.1 Preconditions for OBSI involvement – Subject to the limitations set out below in Part 6 - Exclusions from OBSI’s Mandate, OBSI may investigate any Complaint it receives provided OBSI is satisfied that:

- (a) Appropriate Complainant** - the Complaint was made by all persons having an interest in the subject matter of the Complaint, or that OBSI can fairly consider the Complaint without the participation of one or more people having an interest in the subject matter of the Complaint;

- (b) No vexatious claims** - the Complaint is not frivolous or vexatious and that the Complainant is not pursuing it in an abusive, vexatious or threatening way;

- (c) Firm had opportunity to investigate** - the Participating Firm to which the Complaint relates received the Complaint or the substance of it and rejected the Complaint, made an offer to resolve it, or had at least 90-calendar days to respond to it;

- (d) Complaint made to OBSI within 180 days** - the Complaint was made to OBSI no more than 180-calendar days after the Complainant received a written notice rejecting the Complaint, or a written offer for the resolution of the Complaint, from the Participating Firm, subject to section 5.5 - OBSI may extend time for filing Complaints;

- (e) Claim made to Participating Firm within 6 years** - the Complaint was made to the Participating Firm no more than six years after the Complainant knew or reasonably ought to have known about the problem or issue giving rise to the Complaint, having regard to what a reasonable person in the Complainant’s circumstances, with the Complainant’s abilities and limitations ought to have known;

- (f) No concurrent proceedings** - the Complainant has not commenced proceedings in any court or before an arbitration tribunal to adjudicate the subject matter of the Complaint or, if such proceedings have been commenced, the Complainant has agreed to hold them in abeyance pending completion of OBSI’s investigation of the Complaint;

- (g) Consents received** - OBSI has received appropriate consents concerning the release and treatment of confidential information from all necessary parties

and any other consents, agreements or releases that OBSI considers appropriate in the circumstances; and

(h) No previous OBSI investigation - OBSI has not previously investigated the Complaint or, if OBSI has done so, that new material information that was not reasonably available has become available and OBSI is satisfied the new information warrants treating it as a new Complaint.

5.2 Response from firm not required – Nothing in section 5.1 (d) requires a Complainant to wait for the 90-day period stipulated in section 5.1 (c) to elapse before submitting their Complaint to OBSI if the Complainant has received an offer to settle the Complaint or a notice of its rejection from the Participating Firm.

5.3 Effect of firm offer or rejection – The 180-day period stipulated in section 5.1 (d) commences as soon as the Complainant receives from the Participating Firm a written notice rejecting the Complaint or a written offer for the resolution of the Complaint, even if the 90-day period stipulated in section 5.1 (c) has not yet expired.

5.4 OBSI may extend time for firm’s response – Despite section 5.1 (c), OBSI may decide that the Participating Firm has not had sufficient time to address a Complaint and that the Participating Firm’s internal process should continue for a reasonable period of time to be established by OBSI in consultation with the Complainant and the Participating Firm.

5.5 OBSI may extend time for filing Complaints – If OBSI considers it fair to do so, OBSI may investigate a Complaint it receives later than the 180-calendar days stipulated under section 5.1 (d). In assessing the fairness of doing so, OBSI will consider, among other things:

(a) Whether, and in what manner, the Participating Firm notified the Complainant of the right to bring a Complaint to OBSI, including whether any written notice provided by the Participating Firm sufficiently specified the 180-calendar day period within which the Complainant has the right to bring a Complaint to OBSI and whether the Participating Firm adhered to any complaint-handling requirements that may apply;

(b) the extent to which the Complainant and the Participating Firm were occupied with negotiations for the resolution of the Complaint during the 180-calendar day period; and

(c) whether the Complainant was subject to extraordinary circumstances.

5.6 Determining whether time limit was exceeded – OBSI may commence investigation of a Complaint to ascertain whether the Complaint was made within or beyond the time limit set out in section 5.1 (e).

5.7 Effect of regulatory proceedings – For purposes of section 5.1 (f), OBSI will not consider a regulatory proceeding, hearing or mediation to be a proceeding before a court or arbitration tribunal.

5.8 Effect of class proceedings – For purposes of section 5.1 (f), OBSI will not consider a class proceeding to be a proceeding commenced by the Complainant unless the Complainant is named as a representative plaintiff rather than merely a member of the class.

5.9 Joint investigations with other Ombudservices – Where, in the opinion of OBSI, the subject matter of a Complaint (in whole or in part) is one in which another Industry Ombudservice has expertise and the Complainant and the Participating Firm consent, OBSI may cooperate with that Industry Ombudservice in the investigation of the Complaint and may, if appropriate, make a recommendation jointly with the other Industry Ombudservice for the resolution of the Complaint. Similarly, OBSI may cooperate with another Industry Ombudservice in the investigation and resolution of a Complaint referred to OBSI by that Industry Ombudservice.

PART 6 – EXCLUSIONS FROM OBSI'S MANDATE

6.1 Matters excluded – OBSI will not investigate Complaints, or portions of Complaints, that relate solely to:

- (a) The general interest rate and risk management policies and practices of a Participating Firm;
- (b) the pricing of Financial Services by a Participating Firm;
- (c) the scale of fees or charges generally applicable to Financial Services offered to Customers of the Participating Firm in similar circumstances; or
- (d) the Commercial Judgment of a Participating Firm.

However, OBSI may investigate whether the process by which a Participating Firm implemented its policies and practices or made or maintained a Commercial

Judgment was biased, incomplete, not in accordance with the Participating Firm's policies and procedures or otherwise was unfair.

6.2 Matters already decided – OBSI will not investigate a Complaint where the same subject matter, raised by the same Complainant, has been considered in proceedings in or before any court, tribunal, arbitrator, or any other independent dispute resolution body, and those proceedings have concluded with a binding decision on, or final disposition of, the merits of the Complaint. OBSI will also not investigate a Complaint where the same subject matter has been the subject of a settlement agreement between the Complainant and the Participating Firm.

6.3 Regulatory proceedings and investigations – The proceedings referred to in section 6.2 do not include proceedings conducted by a regulator, and the existence of a regulatory investigation into the subject matter of a Complaint does not preclude OBSI from conducting its own investigation into the Complaint. However, OBSI may decline to conduct an investigation in these circumstances or may defer its own investigation until the regulatory investigation is concluded. Where OBSI so declines, or defers, it will inform the Complainant and the Participating Firm of its decision and will inform the Complainant about other dispute resolution alternatives that may be available.

6.4 More appropriate forum – OBSI may decline to investigate a Complaint if OBSI decides that the Complaint can be dealt with more appropriately by other means, such as a proceeding before a court, tribunal, arbitrator, regulator or any other dispute resolution process.

6.5 OBSI to determine whether Complaints fall within mandate – All questions of whether a Complaint falls within OBSI's mandate will be determined exclusively by OBSI. In making that determination, OBSI will have regard to these Terms of Reference and may consider representations from the Complainant and from the Participating Firm.

PART 7 – AGREEMENT TO SUSPEND STATUTORY LIMITATION PERIODS

7.1 Parties deemed to agree – To the extent permitted by applicable law, every Complainant and Participating Firm must agree, and by submitting a Complaint to OBSI or by becoming a Member of OBSI each does agree, that the running of any statutory limitation period in respect of a Complaint will be suspended from the time the Complaint is submitted to OBSI until OBSI's involvement in the resolution of the Complaint ends. For purposes of this section, a Complaint is submitted to OBSI when the Complainant signs a consent

letter authorizing OBSI to investigate the Complaint, and OBSI's involvement ends when:

- (a) The Complainant revokes their authorization for OBSI to investigate the Complaint; or
- (b) OBSI issues a written rejection of the Complaint or a written recommendation for resolving it, and any requested reconsideration review has been completed by OBSI, or the time for requesting a reconsideration review has expired.

7.2 Other defences and remedies not affected – Nothing in section 7.1 prevents the Participating Firm or Complainant from raising any defences relating to the passage of time before OBSI's receipt of the consent letter signed by the Complainant, or from proceeding at any time with legal remedies against each other.

PART 8 – EXECUTION OF OBSI'S MANDATE

8.1 General practices – In carrying out its mandate and in resolving each Complaint, OBSI will abide by these Terms of Reference, the Standards and the following practices:

- (a) In determining what is fair to the Complainant and the Participating Firm, OBSI will take into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct applicable to the subject matter of the Complaint.
- (b) To identify general principles of good financial services and business practice, OBSI may, where appropriate, consult within the financial services industry, including with individual firms, associations, regulators, industry entities and consumer groups, counsel and academic experts or elsewhere.
- (c) OBSI will not be bound by the rules of evidence applied in courts, arbitrations or regulatory hearings.
- (d) OBSI will not be bound by any of its previous recommendations.

8.2 No advice to parties – In carrying out their duties, and, in particular their, duty under Section 4.1 (e), the Ombudsman and OBSI staff will not provide

Complainants or Participating Firms with legal, accounting or financial advice on matters relating to Complaints.

PART 9 – PROCEDURE WHERE CONFLICTS OF INTEREST ARISE

9.1 Definition of conflict of interest – For purposes of this Part, a conflict of interest is:

- (a) a material interest in the outcome of a Complaint;
- (b) an interest that reasonably may be perceived as a material interest in the outcome of a Complaint; or
- (c) a prior involvement in the Complaint, or involvement with the Complainant or the Participating Firm or Representative against whom the Complaint is directed, that reasonably may be perceived as creating an impediment to the fair and impartial evaluation of the Complaint.

9.2 Where Ombudsman is conflicted – In the event that the Ombudsman has a conflict of interest, the Ombudsman will immediately cease all involvement in the investigation or resolution of the Complaint. In such cases, the Ombudsman will immediately inform the Board about the conflict of interest and the Chair, or his or her delegate, will assign responsibility for investigating and resolving the Complaint to another OBSI staff member, or an external investigator, who does not have a conflict of interest.

9.3 Where Deputy Ombudsman or OBSI investigator is conflicted – In the event that a Deputy Ombudsman or an OBSI staff member investigating a Complaint has a conflict of interest, the Deputy Ombudsman or staff member will immediately cease all involvement in the investigation or resolution of the Complaint and will immediately inform his or her supervisor about the conflict of interest. In such cases, the Ombudsman will assign responsibility for investigation and resolution of the Complaint to himself or herself, to another Deputy Ombudsman or to another OBSI staff member who does not have a conflict of interest.

PART 10 – MONETARY LIMITS

10.1 Limit on single Complaints – OBSI may investigate a Complaint involving a claim for any monetary amount if the Complaint falls within OBSI's mandate under these Terms of Reference. However, OBSI may not recommend

that a Participating Firm pay an amount greater than \$350,000 in respect of any single Complaint.

10.2 Limit where multiple Complaints – The limit set out in section 10.1 does not apply to separate Complaints made by a Complainant about unrelated subject matters. In such cases, each of the separate Complaints has a monetary limit of \$350,000.

10.3 No improper division of Complaints – A Complaint shall not be divided into two or more Complaints about the same subject matter for the purpose of avoiding the monetary limit set out in section 10.1.

PART 11 – FIRMS’ COMPLAINT HANDLING PROCEDURES

11.1 Internal complaint handling procedures – All Participating Firms will have in place and use the internal complaint handling procedures mandated by their regulators. If no such procedures are mandated for a particular Participating Firm, it nonetheless should put in place and use internal complaint handling procedures that are fair and generally equivalent to those mandated by banking or investment regulators in Canada as applicable.

11.2 Fair practices – At a minimum, and regardless of whether the Participating Firm believes the Complaint falls within OBSI’s mandate, the Participating Firm should:

- (a) Appoint a senior official to act as the final internal decision-maker on unresolved Complaints;
- (b) promote their internal and external complaint-handling processes through websites, brochures, mailings, emails and other means necessary to ensure Customers have ready access to them in the event of a Complaint;
- (c) inform the Complainant in writing that they have a right to bring the Complaint to OBSI 90-calendar days after making their Complaint to the Participating Firm and within 180-calendar days of the Participating Firm rejecting the Complaint or making an offer to resolve it;
- (d) inform the Complainant in writing about the existence of time limits for commencing a lawsuit or arbitration, and that a lawyer should be consulted for advice about those time limits; and

(e) provide the Complainant with a substantive written response to their Complaint within 90-calendar days of receiving it, or, if a substantive response could not be provided within 90-calendar days, the Participating Firm should provide the Complainant with a statement in writing setting out:

- (i) the reason for the delay;
- (ii) an estimate of the date by which the Participating Firm would provide a substantive response to the Complaint; and
- (iii) a reminder that the Complainant has a right to bring the Complaint to OBSI because 90-calendar days have passed.

PART 12 – FIRM’S OBLIGATIONS DURING OBSI INVESTIGATIONS

12.1 Full Cooperation with investigation – Every Participating Firm must:

- (a) Fully cooperate with OBSI and assist in its investigation of a Complaint; and
- (b) ensure the appropriate parties representing its institution are available to discuss a Complaint, participate in an investigatory interview, and respond to a settlement proposal, in a timely manner.

12.2 Providing relevant documents, records and things in a timely manner – Every Participating Firm must provide OBSI with the following in a timely manner:

- (a) Copies of all requested documents, records and things in the Participating Firm’s possession or control relating to the subject matter of a Complaint;
- (b) information generated and uncovered in the course of the Participating Firm’s internal investigation into the subject matter of a Complaint;
- (c) redacted copies of any document, record or thing that contains information protected by:
 - (i) legal privilege or privacy laws; or

- (ii) a duty of confidentiality to a third-party, where consent to disclose has not been obtained, despite best efforts to obtain consent,

and

- (d) access to original documents if needed for an investigation, to verify the authenticity of a document or signature, unless doing so would cause a waiver of privilege, breach of law, or duty of confidentiality to a third-party where consent to disclose has not been obtained, despite the Participating Firm's best efforts to obtain that consent.

12.3 Extent of obligations – The obligations set out in sections 12.1 and 12.2 apply not only in respect of investigations into Complaints relating to the Participating Firm itself and its own present and former Representatives, but also in respect of investigations into Complaints relating to other Participating Firms and their present and former Representatives.

12.4 Consequences of failure to cooperate – If a Participating Firm fails to fully cooperate with OBSI's investigation of a Complaint:

- (a) OBSI must first disclose to the Board and the Participating Firm's regulators and then to the public:
 - (i) the name of the Participating Firm;
 - (ii) the fact that the Participating Firm has failed to comply with its obligations under these Terms of Reference; and
 - (iii) particulars of the non-cooperation, in such manner and detail as OBSI considers appropriate;
- (b) OBSI must disclose to the Participating Firm's regulators the identity of the Complainant and their representative or the Representative at the Participating Firm; and
- (c) OBSI may disclose to the Board the identity of the Complainant and the Representative at the Participating Firm.

12.5 Escalation before OBSI publicizes non-cooperation – Where the Participating Firm fails to fully cooperate in an investigation, the Participating Firm's reasons for its failure to cooperate will be escalated to the Ombudsman before OBSI publicizes the failure to cooperate.

12.6 Reporting Threats - The Participating Firm will inform OBSI of any threat, made by anyone involved in a Complaint, against the personnel or property of OBSI.

PART 13 – RECOMMENDATIONS AND REJECTIONS OF COMPLAINTS

13.1 OBSI determinations – After investigating a Complaint, OBSI will make a recommendation for payment of compensation or other action if, in OBSI's opinion, the Complainant has suffered loss, damage or harm because of an act or omission of the Participating Firm or its Representative in the Provision of a Financial Service in Canada.

13.2 Basis for determination – OBSI will make a recommendation or reject a Complaint with reference to what is, in OBSI's opinion, fair in all the circumstances to the Complainant and the Participating Firm, having regard to the general practices set out in Part 8 and, the provisions of this Part.

13.3 Settlement efforts while OBSI investigates – While investigating a Complaint, OBSI may seek to promote a resolution of the Complaint by agreement between the Complainant and the Participating Firm. The Complainant and the Participating Firm may also continue to seek to resolve the Complaint themselves if both parties agree. If no resolution is agreed upon, OBSI will complete its investigation of the Complaint and will either make a recommendation for its resolution or reject the Complaint.

13.4 Nature of compensation – Where OBSI recommends payment of compensation, it may do so to compensate the Complainant for monetary and non-monetary losses.

13.5 Quantum of compensation – Any payment OBSI recommends will not exceed:

- (a) The amount OBSI considers appropriate to compensate the Complainant for loss, damage and harm suffered by the Complainant due to the acts or omissions of the Participating Firm or its Representative in the Provision of a Financial Service; and
- (b) in aggregate, the monetary limits stipulated in Part 10.

13.6 Format of recommendations – All recommendations from OBSI will be made in writing and will include a summary of OBSI's reasons. Where OBSI conducts an investigation jointly with another Industry Ombudservice under section 5.9, OBSI may issue any compensation recommendation jointly with that other Ombudservice.

13.7 Recommendations not binding – OBSI’s recommendations will not be binding on the Participating Firm or the Complainant.

13.8 Consequences of refusal of a recommendation – If a Participating Firm refuses an OBSI recommendation for resolution of a Complaint:

- (a) OBSI must first disclose to the Board and the Participating Firm’s regulators and then to the public:
 - (i) The name of the Participating Firm;
 - (ii) the fact that the Participating Firm has refused the recommendation; and
 - (iii) particulars of the Complaint, as well as particulars of the recommendation, in such manner and detail as OBSI considers appropriate; and
- (b) OBSI must disclose to the Participating Firm’s regulators the identity of the Complainant and the Representative of the Participating Firm; and
- (c) OBSI may disclose to the Board the identity of the Complainant and the Representative at the Participating Firm.

13.9 Escalation before OBSI publicizes refusal – Where OBSI makes a recommendation for resolution of a complaint but the Participating Firm refuses that recommendation, the Complaint and the Participating Firm’s reason for refusal will be escalated to the Ombudsman before OBSI publicizes the refusal.

PART 14 – RECONSIDERATION REVIEWS

14.1 Request for reconsideration – OBSI will conduct a reconsideration review where the Complainant alleges:

- (a) OBSI overlooked material information;
- (b) OBSI failed to address material issues raised by the Complaint;
- (c) OBSI made a material error in analyzing information; or

- (d) new material information is available that was not previously considered by OBSI.

14.2 Time limit for requesting reconsideration – A request for reconsideration must be made by a Complainant in writing within 30-calendar days of OBSI issuing its notice rejecting the Complaint or issuing its recommendation.

14.3 OBSI may extend time – OBSI may extend the time limit stipulated in section 14.2 if the Complainant shows good cause for missing the time limit.

14.4 Decision following reconsideration – After completing a reconsideration review, OBSI may affirm its previous rejection of the Complaint, or may affirm, or modify, its previous recommendation, and OBSI will provide the Complainant and the Participating Firm with written notice of OBSI’s decision and the reasons for it.

14.5 Reopening of Complaint – Where a reconsideration results in the reopening of a Complaint under section 14.1 (a), (b) or (c), OBSI will notify the Participating Firm that the Complaint is being reopened.

14.6 New information – Where OBSI is satisfied, after a reconsideration review, that the criterion in section 14.1 (d) is met, OBSI may reopen the Complaint or consider the Complaint to be a new Complaint, and may deal with it accordingly, including ensuring the Participating Firm is provided an opportunity to investigate and respond to the new Complaint.

PART 15 – LIMITS ON ROLE OF OBSI BOARD

15.1 No appeal to Board – Decisions by the Ombudsman or by OBSI to investigate or not investigate a Complaint, to defer an investigation, to reject a Complaint, to recommend payment of compensation or other action, or to reconsider or not reconsider a Complaint are final and cannot be appealed to OBSI’s Board.

15.2 No interference by Board – The Board will not:

- (a) Seek the identity of any Complainant who has made an inquiry or Complaint to OBSI;
- (b) seek information relating to any specific inquiry or Complaint made to OBSI;

(c) make any representation about an inquiry or a Complaint to a Participating Firm or a Complainant; or

(d) act on any information received that reveals the identity of a Complainant or any information described in sub-paragraph (a) or (b) above.

15.3 Board may consider complaints about OBSI – The Board may consider any concerns brought to its attention about OBSI's complaint-handling process or about the conduct of any employee or officer of OBSI.

PART 16 – CONFIDENTIALITY AND DISCLOSURE

16.1 General principles – OBSI's dispute resolution process is confidential to the parties to the Complaint and OBSI. Accordingly, except as required by law or otherwise provided in these Terms of Reference:

(a) All discussions and correspondence between OBSI and the Complainant, the Participating Firm and their respective representatives that form part of the dispute resolution process are not to be disclosed for any purpose, other than to a professional advisor or a representative who has agreed to comply with this confidentiality requirement, and are not to be used by anyone in any ongoing or subsequent legal or regulatory proceedings except as set out in Part 16.5; and

(b) OBSI's files relating to every Complaint are to remain confidential and protected from disclosure.

16.2 Internal disclosure within OBSI – OBSI may disclose information about a Complaint to its employees, agents, advisors and consultants in the course of carrying out its activities, provided they are made subject to the same confidentiality obligations as OBSI, Complainants and Participating Firms.

16.3 Ombudsman and OBSI not to be called to testify – Complainants and Participating Firms must agree, and by participating in OBSI's dispute resolution process do agree, not to call or attempt to compel the Ombudsman or OBSI staff to testify in any legal or regulatory proceedings relating to a Complaint.

16.4 Use of initial consent letter – An initial consent letter signed by a Complainant submitting their Complaint to OBSI may be disclosed and used for the purpose of enforcing its terms, and also for the purpose of establishing when the suspension of any statutory limitation period commenced.

16.5 Disclosure to regulators - Nothing in these Terms of Reference prevents a Complainant from sharing information with a regulator for regulatory purposes. Participating Firms and OBSI must, and Complainants may, comply with a written request from a regulator for disclosure of information, documents, records or things. Where OBSI complies with such a request, or where OBSI notifies a regulator that a Participating Firm has refused a recommendation or failed to comply with its obligations under these Terms of Reference, the Participating Firm and the Complainant may discuss the Complaint and the underlying facts with the regulator.

16.6 Public disclosure – Where OBSI discloses to the public that a Participating Firm has failed to comply with its obligations under these Terms of Reference or has refused a recommendation made by OBSI, the Participating Firm and the Complainant may refer publicly to the information publicly disclosed by OBSI about the Complaint.

16.7 Confidentiality requests – If any person provides confidential or personal information to OBSI and requests that it not be disclosed to anyone else, OBSI will not disclose the information except with the consent of the person who provided the information to OBSI or as required by law or by a regulator. If consent is not given and the information is prejudicial to any party to a Complaint, OBSI will not use that information for purposes of making a recommendation adverse to any party to whom the information is denied.

16.8 Proprietary information – Notwithstanding section 16.7, when making its recommendations OBSI may take into account the need to maintain confidentiality regarding a Participating Firm’s proprietary systems and security measures of which OBSI has knowledge, even though no disclosure of those systems and measures has been made to the Complainant.

16.9 Reporting threats – OBSI will inform a Participating Firm of any threat, made by anyone involved in a Complaint, against a Complainant, the Participating Firm, or OBSI, including threats against personnel or property. Nothing in these Terms of Reference prohibits OBSI from notifying a Complainant or a Participating Firm and law enforcement officials about a threat. OBSI will not disclose to the person making such a threat any information about who from OBSI provided the notification, nor may the Complainant or Participating Firm make such disclosure, unless it is required by law, and then only to the extent so required.

PART 17 – ANNUAL REPORTING

17.1 Matters to be reported – OBSI will prepare and publicly disclose an annual report as well as other reports containing statistics, anonymized case

studies of Complaints for educational purposes (with Complainant and Participating Firm identifiers removed), other information that OBSI considers appropriate to the interests of interested parties and the general public, and information required by law or regulation.

PART 18 – THIRD PARTY EVALUATIONS

18.1 Periodic evaluation – OBSI must submit itself to knowledgeable, independent third-party evaluations of its operations, conducted according to timelines established by its regulators.

18.2 Evaluations to be made public – OBSI will make public the outcome of each evaluation conducted under section 18.1.