Kenmar Associates

January 31, 2022

Attention: Ms. Poonam Puri
Independent Reviewer
pp@poonampuri.ca

Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments (OBSI) with respect to Investment-Related Complaints
https://www.obsi.ca/en/news-and-publications/resources/Public-Consultations/OBSI-Securities-Investment-Mandate-Stakeholder-Consultation_Final_updated_EN1.pdf

Kenmar appreciate the opportunity to comment on OBSI's performance and effectiveness. Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at www.canadianfundwatch.com .Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing consumer protection issues primarily for retail investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused consumers and/or their counsel in filing investor complaints and restitution claims.

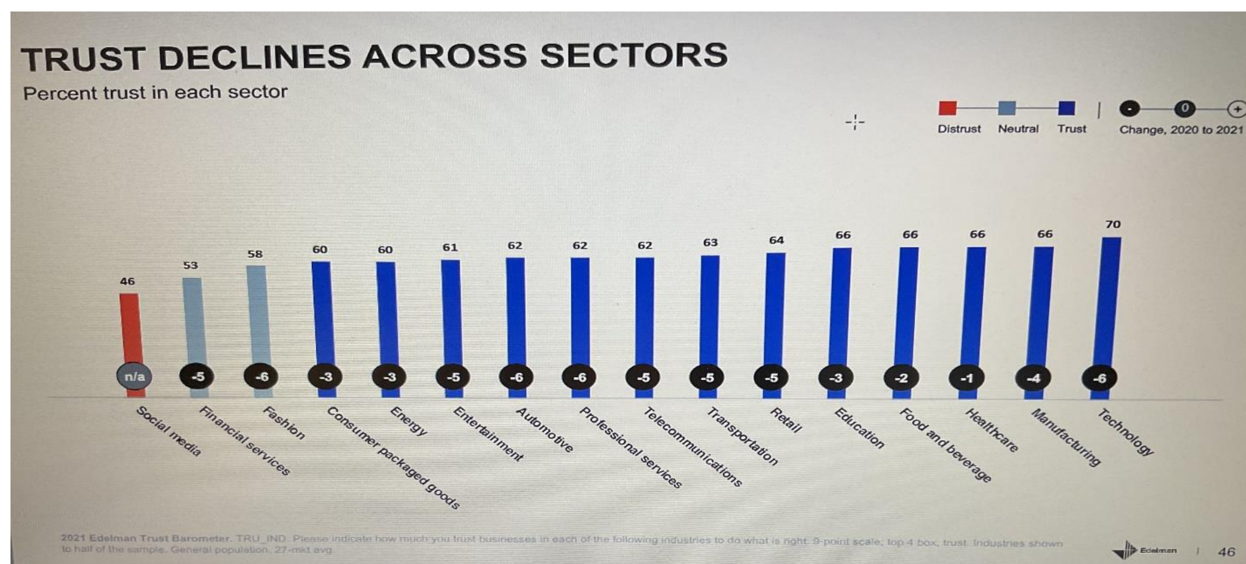
The consultation is limited to reviewing OBSI's compliance with the MOU.
The independent evaluation will review the following:
(1) Whether OBSI is fulfilling its obligations as outlined in the Memorandum of Understanding (MOU) between the Participating Canadian Securities Administrators (CSA) Members and OBSI; 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 MOU and/or recognized best practices for financial services ombudsmen.

The **needs** of Canadians have changed significantly since the MOU was signed in 2015. A wider range of complex products and services, technology, social issues and an increased number of vulnerable consumers due to age demographics and COVID-19 make complaint handling more complex.

The MOU refers to the head of OBSI as an Ombudsman but nowhere in the MOU are the obligations of the International Ombudsman Association referred to. The MOU deals with the characteristics of a dispute resolution service. At one time OBSI made reference to ISO standard 10003 Quality *management - Customer satisfaction — Guidelines for dispute resolution external to organizations* as a benchmark but since the departure of Ombudsman Doug Melville, this connection to the international standard has been dropped from OBSI communications. The MOU does not establish a cycle time for OBSI. Having a quantitative cycle time standard that is monitored and continuously improved would add to OBSI effectiveness.

For all these reasons, our response will therefore go beyond the constraints of the CSA MOU.

We question OBSI's commitment to *inspiring confidence in the financial services sector* as a role. Why such a commitment to a sector who ranked near the bottom of the 2021 Edelman Trust barometer scale?



Kenmar believe this confidence could mislead investors into be being less attentive to their investments and the advice they receive. OBSI should focus on providing feedback to the financial services sector on improvement opportunities and the elimination of systemic issues (the Public interest). Although not mentioned in the latest Strategic Plan, we assume that OBSI's mission statement continues to be: *"We help resolve and reduce disputes between consumers and financial services firms by conducting fair and accessible investigations and by sharing our knowledge and expertise."*

Kenmar has been an avid supporter and constructive critic of OBSI since its inception. The investigative staff are well trained professionals with empathy to complainants. Its complaint investigation practices are recognized as among the best in the world, far exceeding Canadian financial services industry standards. Our communications with OBSI executives is constructive. Generally speaking, OBSI has done a good job at resolving most retail investor

Most of the core issues hampering OBSI's effectiveness are external. See APPENDIX I for actions the CSA could take to optimize OBSI efficiency and effectiveness

According to empirical research by Andrew Teasdale (CFA), Canada has fewer complaints that reach an external independent medium than in other countries: Canadian ombuds complaints per capita are 2.3% and 5.6% of the UK's and Australia's per capita external complaints respectively, 6% of Norway's and 12% of New Zealand's. **More research is needed to better understand this**

lack of consumer uptake of external complaint bodies. Based on our experience, one explanation that should be discarded is that Canadian Firms and banks have more robust and fair complaint handling systems. [in fiscal 2020, total compensation of $1,211,783 was recommended with an average of just $9250 and low median of $2425 per file]

OBSI is a core component of Canada's investor protection framework. With an increasing number of Canadians living on fixed income, increased longevity, a decline in Defined Benefit Pension plans, a weak economy, a volatile return environment and the continuing impact of COVID-19, Canadians need an independent, trusted and respected ombudsman service as never before. It's a critical role we believe regulators and Government should allow it to fulfil.

Board composition

The current Board composition appears to derive from the complex history of OBSI rather than logic. Change is required. OBSI needs more financial consumer input.

Directors with consumer protection experience will bring the voice of the consumer into the OBSI Boardroom. **We recommend that the Board be overhauled with 75% of Directors being industry-independent with no prior history of industry employment or servicing. T**hree of the independent Directors (aka Community Directors) should have a consumer focus track record ("street creds" and passion). The Consumer interest Directors should be (a) capable of articulating the perspectives, needs and concerns of financial consumers and (b) be individuals in whom consumers and consumer advocacy organizations have trust/confidence.

Given the large number of complaints regarding financial advice and suitability, we suggest one Industry (or independent) Director be a credentialed professional planner or adviser.

With the planned consolidation of the MFDA and IIROC in late 2022, one Director position will be eliminated. This position could be filled by a director that would represent the interests of seniors and vulnerable complainants. Seniors are particularly vulnerable, because of challenges such as physical or cognitive impairments, insufficient time horizon to replenish capital losses or death of partners who traditionally managed the finances. See CARP Comment letter to Finance on ECB's
https://www.canada.ca/content/dam/fin/consultations/2021/echsb-etpsb-9.pdf

CanAge has suggested that the OBSI creates a Seniors Champion position to ensure that the interests of older Canadians are properly represented on the Board of Directors. https://www.canage.ca/wp-content/uploads/2021/10/CanAges-Banks-External-Complaint-Handling-System-Submission-.pdf (According to Statistics Canada projections, by 2031 nearly one in four Canadians will be over 65. Seniors tend to have significant accumulated wealth, so are attractive targets for "advisors". Add in the normal emotional, physical and cognitive issues associated

with aging and investor vulnerability increases). CARP also support a focus on seniors issues.

A fundamental change in Board composition will provide objective evidence that OBSI has consumer representation, that it has the necessary knowledge and expertise of consumer and investor issues and is equipped to act in the Public interest. The appointment of qualified people whose body of work is known to reflect and foster the interests of retail investors and consumers would boost consumer trust in OBSI, financial services and its regulator(s).

Kenmar also recommend that there should be better disclosure of the process by which the Board's Governance Committee identifies candidates and votes for the Board and for Committees.

Board governance

Over the past 10 years we have informed the CSA and JRC of Board decisions that we regarded as investor-unfriendly. We provided you this list during our video meeting. Most recently, the Board demonstrated its disrespect for the public by allowing just one month for commenters to respond to the detailed, long delayed five year consultation request. After we and others protested, the deadline for submissions was extended to a more reasonable January 31.

For some time, a Director was a senior executive of a Member Firm that had been Named and Shamed. This certainly raised questions about OBSI from the public.

From our perspective, OBSI has a passive Board that unfortunately appears to pursue policies and practices designed to assuage its regulatory masters (CSA/JRC and FCAC), curry favour with its paying Member Firms and occasionally placate investor advocates with token gestures. This comment is not intended to denigrate any individual Director but rather to highlight the fact that the CSA and FCAC are unduly negatively influencing and constraining Board composition, independence and influence. Changing the composition of the Board will help but it will be inadequate unless the CSA steps up to the plate for Main Street by supporting a true Ombudsman service and improved Dealer complaint handling.

Some improvement suggestions:

1. Voting thresholds must ensure that in effect, the industry does not have an actual or effective veto.
2. The Governance committee should be tasked with setting a Disclosure policy.
3. The nomination process for Directors should be made publicly available.
4. We recommend that a Practice standards Committee be formed with an Industry or Consumer Chair. Given the rapid product/service changes in the industry, a dedicated Committee is needed. The mandate would include international benchmarking, loss calculation approaches, working with vulnerable/ disadvantaged persons/seniors, impact of regulatory changes on OBSI, advanced root cause analysis, new tools including the use of AI etc.

Good governance should help reinforce trust and confidence not only in OBSI but in the regulatory system. A diverse and representative Board should be naturally compelled to act in the overarching Public interest associated with best practices for a financial services ombudsman.

Terms of Reference

Due to tight time constraints for comments established by OBSI, we were unable to review the Terms of Reference in the time allotted. Our April 2018 Comment letter is likely still valid. It is available at https://www.obsi.ca/uploads/47/Doc_636594906331221105.pdf?ts=636675919886115394 for reference by the independent review team.

Transparency

Transparency builds trust in an ECB. Lack of transparency creates the opposite effect. This is why we remain adamant that OBSI come clean on low ball settlements and CIAC work for example. In the video meeting with Ms. Puri, we provided other examples of opaqueness.

There is a real question regarding OBSI non-reporting of systemic issues. The CSA/JRC will need to dig deeper to better understand how OBSI evaluates systemic issues and why no systemic issues are uncovered or reported.

Strategic intent

OBSI demonstrates modest strategic intent on how valuable complaint information can improve dealer disclosures, products, services and complaint handling. **OBSI should take a more robust and proactive approach to preventing complaints, working closely with dealers, consumer groups, regulators and other stakeholders.** We appreciate this may be contrary to CSA and industry wishes but OBSI must at least try to move the ombudsman ball forward.

Effectiveness

OBSI definitely plays an important role in the financial lives of Canadians. Without a binding decision mandate and a mandate to investigate systemic issues m OBSI effectiveness potential is limited. Still, there are numerous opportunities for improvement.

In the WealthTerra Capital Management (WealthTerra) OBSI Investigation Report https://www.obsi.ca/en/news-and-publications/resources/RefusalInvestigationReports/Wealthterra---Final-Investigation-Report---August-2020_AODA.pdf
we read of a woman of modest means who lost $50 K and the Dealer walked away without having to compensate her per the OBSI recommendation. Is this the kind of treatment we want for vulnerable Canadians? Is this effective complaint resolution?

In answering the complainant satisfaction survey question *Did OBSI help you understand the complaint process and/or OBSI's terms of reference?* over one third (37%) gave OBSI an **unfavourable** rating. This is a clear opportunity for the Board to improve operational effectiveness.

Resolving the same type of complaints day after day, year after year is, as Einstein would say, insanity. If OBSI is allowed to investigate systemic issues (root causes), its value-add and effectiveness would dramatically increase.

The lack of a binding decision mandate leads to more mediation, haggling and negotiating thus reducing the time and cost efficiency of OBSI complaint handlers. The process can also lead to sub-optimal recommendations which adversely impacts effectiveness.

Vulnerable consumers experience challenges including, but not limited to age, language, literacy, mobility, distance, cognition, mental health, culture, computer competency and digital access barriers, as well as low income (Lower-income households represent almost 40% of OBSI cases) . These barriers result in complainants having different needs and may limit their ability to access/engage in the complaint-handling process. They may also be at greater risk of harm should the process not be effective .OBSI should analyze expanded demographic information to inform plans to enhance accessibility of OBSI services.

Given the changing demographics, we recommend that OBSI provide training to investigators in identifying vulnerable clients and to have access to the designated Trusted Contact Person.

We recommend more empirical research on what constitutes a letter that the typical Main Street complainant can understand so an informed decision can be made on the recommendation(s). OBSI response letters should be adequate and reasonable, seek to expose the background, context and reasons, cover why procedures were used in the way they were and include a rationale for the decision.

We recommend that OBSI develop and implement a program for conducting advanced data analytics. This could be used to identify trends and systemic issues.

We recommend that OBSI design and implement a formal continuous improvement program that is responsive to results from investor/consumer and Firm surveys and feedback with prioritized satisfaction and quality metrics. This could include for example increased stakeholder satisfaction ratings, deeper relationships, reduced cycle time and an expanded Participating firm base.

Kenmar recommend that OBSI build an internal policy/strategic function expertise to position OBSI to more effectively anticipate the need for change, prepare formal submissions to Government and regulators and to respond to requests for advice from Government and regulators.

With a $8.5 million budget, the cost-per-complaint (one metric for a complaint resolver) appears to be high. We recommend that the Board do some benchmarking.

From our perspective, we expected that OBSI would have been a more impactful harbinger of change in the securities sector. With CSA support, we believe there is a good opportunity for improving effectiveness here.

OBSI should develop metrics satisfactory to the CSA/JRC to measure cost-effectiveness and strategic value.

Binding decision mandate for OBSI

In its comment letter to the Ontario Task force on securities modernization, OBSI made it clear. It said: *"Inadequate powers to secure redress for investors can also lead to inefficient and unnecessarily protracted facilitated settlement processes. We have observed that for some firms, the perceived lack of serious consequence leads to disengagement or minimal engagement in our investigative and settlement processes."* Despite this admission of inefficiency and extended cycle times, the CSA has not provided OBSI with a binding decision mandate. A binding decision mandate for OBSI will embolden, inspire and support Dealer complaint handlers in delivering fair outcomes for complainants. Until the CSA acts, OBSI will continue to be an expensive, handicapped form of dispute resolution.

This issue of OBSI making a binding (on the Firm) decision has dragged on for over a decade. It is time the CSA made a decision to hold investment Dealers accountable for OBSI determinations. **Each day that the procrastination continues costs Canadians money in the form of low-ball (or denial) settlements at every stage of the complaints process.** This should be a TOP priority for the CSA.

As noted in the consultation paper: "In the Canada Financial Sector Assessment Program: Technical Note — Oversight of Securities Market and Derivatives Market Intermediaries (2019), the International Monetary Fund note that "providing binding authority for OBSI would improve investor protection.".

The January 2012 World Bank Report *"Resolving Disputes Between Consumers and Financial Businesses : Fundamentals for a financial ombudsman "* World Bank Document has this to say: *A financial ombudsman provides an alternative to the courts; so the ombudsman should be (and also be seen to be) as independent and impartial as a judge – as well as having the necessary legal and technical expertise to resolve financial disputes authoritatively*.

Kenmar strongly believe that Canada's G20 consumer protection obligations – including the obligation to ensure consumers have access to adequate complaint handling and redress mechanisms that are *"accessible, affordable, independent, fair, accountable, timely and efficient…"* – require giving Canadian consumers access to a dispute resolution process that will actually deliver a resolution of each

dispute, as is the case in other leading jurisdictions. In the UK, Australia, New Zealand and Malaysia, for example, decisions are binding if the consumer accepts the recommendation. Canadian consumers deserve no less. **Without such a mandate, true consumer protection cannot be achieved.**

The wealth management services industry complaint handling process is complex, adversarial and puts an unsophisticated investor against a Firm's highly sophisticated complaint handling team. As one would expect, the process is less than fair and retail investors receive far less in compensation (or no compensation) than they should. For most complainants, the cost of civil litigation is simply out of reach. This situation is precisely why the OBSI was created .The lack of a binding mandate has resulted in cases where Firms have simply exploited investors and provided low-ball or no compensation amounts. In other words, the securities industry complaint handling system is broken, to the detriment of ordinary Canadians.

The case for a potent financial ombudsman service has never been greater. Lower-income households now represent almost 40% of OBSI cases. Over 40% (41%) are over age 60. What we have here is a lot more than a regulatory issue- it is a socio-economic issue. With increased longevity, the situation will only get worse if not attended to. Providing OBSI with a binding decision mandate will provide Canadians a fair chance at compensation, lead to better Dealer complaint handling, build confidence in the financial services sector and visibly demonstrate that the CSA and Government really cares about the financial well-being of citizens. This would most definitely be acting in the Public interest.

An OBSI with a binding decision mandate, coupled with our other recommendations, will:

- Eliminate or reduce the need for haggling by OBSI complaint handlers
- Reduce OBSI complaint cycle time
- Eliminate low-ball settlements
- Reduce ability of dealers to divert complaints to their internal 'ombudsman"
- Increase retail investor uptake of OBSI services
- Drive dealers to improve their complaint handling policies and practices
- Increase the average settlement amount
- Lead to improved industry conduct and products/services
- Ultimately result in less investor complaints and
- Increase investor satisfaction with ,and trust in, the financial services industry

The major benefit of a binding decision mandate will be a better and fairer dealer client complaint handling system **.A binding mandate is a WIN for all stakeholders.**

We call on the CSA to implement a binding decision mandate for OBSI. This position is supported by independent reviews of OBSI, retail investors, consumer

and advocacy groups, Seniors organizations such as CARP and CanAge, OBSI's Board of directors as well as the Ontario Task force on securities modernization.

OBSI has a process for appealing its decisions, referred to as Reconsideration. There is no public information that provides any statistical information on how well Reconsideration works for complainants or how often it is utilized. We recommend that OBSI examine the Reconsideration process for fairness, effectiveness and eligibility criteria for usage as well as how it is communicated to complainants.

When OBSI is given a binding decision mandate, the Reconsideration process will need to be more independent and be seen to be independent, by the parties to the dispute. We believe OBSI should establish a separate Reconsideration organizational unit which could be staffed by dedicated OBSI staff and/or with qualified outside independent adjudicators. We suggest the following:

☐ Appeals can be made only if either party has good reason and just cause to question the OBSI recommendation
☐ The statute of limitations clock will remain stopped for 30 days after a Reconsideration decision has been rendered.
☐ In order to prevent an abuse of the process, we recommend that reconsideration can be made by Firms only for cases involving compensation amounts higher than $25,000.
☐ Reconsideration requests by Firms should be made public.
☐ The reconsideration process should be expeditious and be bound by OBSI's loss calculation methodology.
☐ All reconsideration response letters would have to be approved by the Ombudsman.
☐ If Reconsideration is denied, the OBSI decision would stand. If reconsideration alters the original decision, the Reconsideration decision would be binding on Firms.

OBSI cycle time standard

The OBSI cycle time standard is defined in qualitative, probabilistic terms: *"We close most banking cases in less than 60 days and most investment cases in less than 90 days. We close almost all banking cases in less than 90 days and almost all investment cases in less than 120 days. Some cases may take longer if they are complex or there are delays relating to availability or participation by the firm or consumer."* **We recommend that OBSI set a definitive time standard for investment complaints measured in calendar days from date of investor receipt and commit to conformance with the standard.** (NOTE: IIROC and the MFDA have set a 90 calendar day standard for Dealer complaints; non-SRO Dealers do not appear to have a standard. All Dealers however, must advise clients that they can bring a complaint to OBSI after 90 calendar days if they have not been provided a final response letter from their Dealer)

Kenmar have repeatedly asked the JRC to have OBSI define and tighten up its cycle time standards and disclosure. The absence of a specific standard limits OBSI accountability. A change in timeline disclosure will not only attract more complaints

to OBSI but will deter some complainants from being diverted to so-called internal bank "ombudsman". Of course, this behaviour of the bank "ombudsman" is supported by the weakness of the OBSI mandate that allow Firms to refuse to accept its proposed settlements.

Other financial ombudsman in other jurisdictions have lower and definitive cycle time standards. OBSI should be required to meet or exceed international standards. There is a need to bring the OBSI's complaints-handling processes in line with shorter international standards. **NI31-103 and the MOU should be amended to include a cycle time standard for investment complaints in calendar days (measured from the date of receipt of client complaint) that is comparable to other financial ombudsman services.**

Systemic issue mandate

Just before Christmas in 2013, OBSI in response to TofR analysis declared that it would no longer deal with systemic issues:

"OBSI took on the mandate to investigate systemic issues in 2010 at the request of financial regulators, including the federal Department of Finance, in response to a 2007 independent review of our operations. As noted in our original consultation paper, in developing regulations concerning banking dispute resolution the Department of Finance adopted a new policy direction: any potential systemic issues identified in the investigation of an individual complaint must be referred by external complaint- handling bodies such as OBSI to the FCAC, leaving the investigation of the issues to the FCAC. In light of proposals for enhanced oversight of OBSI by securities regulators, we believe that there should be one policy on systemic issues across the entire organization and that the policy be that systemic issues are for us to report to regulators and for regulators to investigate and respond to. As a result, OBSI is removing the systemic issue investigative powers from our Terms of Reference (former Section 11), which also necessitates a change to the definitions section."
https://www.obsi.ca/uploads/15/Doc_636445205509299317.pdf?ts=636917881173815899

With the stroke of a pen, OBSI self-eliminated itself from investigating systemic issues in banking and securities. Needless to say, consumer advocates were not pleased with this turn of events. See *OBSI releases its revised, consumer-friendly mandate* | Investment Executive
https://www.investmentexecutive.com/newspaper_/news-newspaper/news-47207/

The CSA did not oppose the changes so we assume it agreed with them. Some even believe the CSA was the driving force behind the swift change of direction. Regardless, we now have an opportunity to right a wrong. The CSA should seize the day.

Under existing rules and protocol, OBSI is required to provide the JRC sufficient detail about why it considers a matter to be a systemic issue. Root cause analysis

provides a solid basis for such a determination. Investigating systemic issues can benefit all stakeholders, particularly investors.

Poorly designed forms would be corrected, software glitches would be fixed, deficient rules and policies would be amended, compliance/ enforcement would be more focussed, disclosure documents clarified and complaint handling processes would be improved. What's not to like? Improving the "system" is totally congruent with, and supportive of, CFR. The lack of a systemic issues mandate is a very important negative, since if systemic issues are not fully investigated, the "system" will not improve. [Kenmar completely discount the Board's assertion that there were no systemic issues in Canada's investing and banking sectors in the past two years] OBSI never reported double billing, DSC mis-selling or OEO's collecting trailing commissions from fund companies as systemic issues. There was plenty of evidence that industry risk tolerance assessment methodology was unfit for purpose but this issue was never flagged by OBSI. **The CSA needs to find out why these systemic issues were not reported.**

Besides resolving individual complaints, the role of a real Ombudsman is to formulate and promote standards of best practise, of complaint resolution leading to positive change, of identifying how organizations can improve the way they do things and reduce the likelihood of similar complaints arising in the future, to feed back information and relevant systemic advice and of feeding the outcome of systemic findings into best practises. The absence of a meaningful role with respect to investigate systemic issues narrows the scope and effectiveness of OBSI. The CSA can correct that. **OBSI should at least be given the mandate to investigate systemic issues to the point that a root cause has been identified and confirmed.**

Once informed of a systemic issue, there must be an obligation of the regulator to act and report publicly on its actions to deal with the systemic issue(s) or explain why it chose not to act.

While the OBSI systemic issue protocol states that *where appropriate, it* [the applicable regulator] *may take further regulatory action such as terms and conditions or suspension of registration in accordance with the appropriate regulatory requirements* **there must also be an express requirement for the regulator to (1) take steps that would eliminate any possibility of harm to investors occurring due to the systemic issue and (2) advise OBSI of the steps taken. OBSI should follow up with the JRC if the issue has not been resolved based on continued complaint flow.** A closed-loop approach is needed to deal with systemic issues.

Comment on OBSI's approach to systemic issues
https://www.obsi.ca/en/how-we-work/systemic-issues.aspx

OBSI's Terms of Reference were amended in December 2013 to remove OBSI's systemic issue investigative powers[1].-[1] Systemic Issue was defined in the TORs as a matter such as undisclosed fees or charges, misleading communications,

administrative errors or product flaws discovered in the course of considering a complaint against a Participating Firm which may have caused loss, damage or harm to one or more other Customers of the Participating Firm in a similar fashion to that experienced by the original Complainant. **In effect, OBSI would no longer investigate on some of the most common root causes of retail investor complaints.**

This is AFCA's protocol: " AFCA has a formal obligation to identify systemic issues, serious contraventions and other breaches outlined in section 1052E of the Corporations Act, refer these to the financial firm for a response, work with them to resolve the issue and report the details to ASIC, or any other relevant regulator such as APRA or the ATO" https://www.afca.org.au/about-afca/systemic-issues Australia's consumer protection laws are more developed than Canada's.

OBSI cannot develop an idea or an issue beyond the very tight guidelines of the CSA MOU. There is no strategic influence and no willingness on the part of the system to look in upon itself. **This raises serious fairness issues with transparency and accessibility, process and outcome.** If we close down the systemic, we are effectively closing down access to justice as fairness for everyone who interacts with the system. There is a very good chance that retail investors who do not formally complain will pay a heavy price. **The CSA MOU is the root cause of investor unfairness.**

OBSI's current definition of a systemic issue is focussed on trends or patterns of complaints by retail investors. What if the issue is not based on a retail investor complaint? For instance, a flawed Dealer complaint system or a CSA/SRO rule that needs changing or clarification. For example, discount brokerage improperly collecting trailer commissions. Or poor risk disclosure in a prospectus. The root cause of a complaint may be a defective disclosure document but the investor doesn't frame that as the complaint. Ditto for a Dealer's fee calculation system. **This protocol needs to change if OBSI continues to assert it operates as an Ombudsman acting in the Public interest.**

In addition, we recommend that the CSA review the flow of systemic issue information. According to the prescribed information flow in the protocol, OBSI is to investigate the issue in sufficient detail to confirm it meets the definition of systemic issue before reporting it to the JRC. Once turned over to the JRC, it would be examined to confirm that it is a systemic issue and decide if regulatory action is warranted .If it is decided to take action, the principal regulator or SRO will decide if it will initiate a compliance review or an enforcement investigation or assess whether additional guidance and/or policy work are required to mitigate the systemic issue either at the CSA or SRO level. Would it not be more effective to have OBSI report the systemic issue directly to the appropriate regulator so that any harm to investors is promptly minimized? As written, the treatment of a systemic issue lacks any sense of regulatory or investor protection urgency**. We recommend that the CSA review the information flow for impact on retail investor savings.**

It seems odd to us that the OBSI protocol doesn't actually require the systemic issue to be promptly resolved in such a manner that there is no harm to retail investors even those who did not complain. The protocol appears to be focussed on regulatory matters, enforcement .OBSI seems to be out of the loop after reporting the issue. **We think this whole section needs a rethink by the CSA/ JRC and therefore recommend that the CSA/JRC and OBSI get together and figure out how to better identify and report on systemic issues and resolve them to expeditiously eliminate investor harm and provide fair compensation if harm was incurred.** We note parenthetically that regulators, unlike Ombudsman, routinely shy away from investor compensation issues ,so can only hope and pray their DNA changes when it comes to systemic issue closure.

Complaints involving insurance investment products

As pointed out many times, Kenmar has noted that OBSI provided no substantive reason why it was in the best interests of consumers to remove segregated fund complaints from its Terms of Reference. We could discern no logical rationale, and none was forthcoming from OBSI, explaining how this would improve the system of consumer redress. Kenmar are of the firm conviction that it makes no sense to review one investment (say a segregated fund) in isolation from the rest of the consumer's investment portfolio- it is in fact unprofessional . In light of generally accepted portfolio theory and practice, the segregated funds or insurance-investment related component of a client's portfolio must be considered when dealing with the complaint, and must be included in the analysis in order to avoid perverse and/or unfair findings.

With the increasing average age of the Canadian population and increased longevity, segregated funds may become a more common part of consumers' investment portfolios- seniors/ vulnerable clients should not be disadvantaged or burdened by having to file two separate complaints – one to OBSI and one to OLHI. Forcing investors to use two dispute resolution processes when the complaint involves one financial advisor and Firm is time consuming, inefficient, confusing to investors and creates greater barriers to access to redress than a single process.

A growing concern relates to regulatory arbitrage. Dual-licensed salespersons may be incented to recommend investments in DSC segregated funds instead of mutual funds because of the higher commissions associated with DSC and insurance industry conduct standards that are far below CFR requirements. So far, no regulator, even those with dual mandates, have banned toxic DSC segregated funds. NOTE: While OBSI may have a protocol established, in a lot of cases OLHI does not have the mandate to resolve them as they don't investigate cases related to employees/advisors of Managing General Agent insurance companies, only the companies themselves. This is something insurance regulators must deal with.

Implement Battell Report Recommendation 9- external review of sample decisions

The Battell Recommendation states: *That OBSI submits a small sample of decisions to an external reviewer on one or two occasions between formal five-yearly evaluations "This* would be helpful to validate OBSI processes and deflect unsubstantiated criticism of OBSI. We are of the firm conviction that this is a best practice that provides both investment Dealers and the investing public with some independent assurance over the robustness of OBSI decision-making as well as valuable feedback to OBSI staff on opportunities for improving complaint handling practices.

Review the 180 day limit

Under current rules. OBSI may refuse to investigate a complaint if the consumer did not file it with OBSI within 180 calendar days of receiving the Firm's response. Given the growing complexity of complaints, weak complaint handling rules and the impact of COVID-19 on Canadians, we recommend that OBSI consider increasing the limit to 270 days or even a year.

Review compensation cap

OBSI's compensation cap, at $350,000, has remained the same since 2002. The 2016 Battell Report Recommendation stated: *That OBSI reviews its compensation cap to bring it closer to the IIROC arbitration limit and amends its terms of reference to require the compensation cap to be adjusted in line with inflation, on a three yearly basis*. The Ontario Task force recommended a $500K cap appropriately adjusted over time. ADRBO, OBSI's banking competition, has no compensation cap. **Kenmar recommend that, as a minimum, OBSI provide a formula or mechanism for annually adjusting the cap.**

Utilize consumer feedback

To its credit, OBSI surveys complainants for feedback of their experience. Here are some select responses taken from OBSI's 2020 Annual Report.

1. How well did OBSI staff understand your problem or complaint? In banking, 50% unfavorable; **in investments, 37% unfavorable**

2. Was OBSI's final written conclusion or recommendation clear? In banking, 33%; **in investments, 20% unfavourable**

3. Did OBSI help you understand the complaint process and/or OBSI's terms of reference? 50% unfavourable in banking; **37% unfavourable in investments**

These responses provide valuable clues as to how OBSI can improve. **We recommend that OBSI Board analyze the results and inform the JRC (or FCAC for banking) and the public of the planned corrective actions to address the identified complainant issues.**

Marketing and promotion of OBSI

OBSI needs to undertake a consumer-facing public education campaign to build awareness and utilization for OBSI services. The more people that are made aware of OBSI's free dispute resolution services, the more likely the service will be used and diversions to internal "ombudsman" will be reduced.

We recommend that OBSI step up promoting its services to promote the uptake rate and counter internal 'ombudsman" representations. OBSI should consider creating and promoting more videos about its service, more advocacy tools such as instructional videos and more in-person or clinics around the country that can be attended by mentoring groups and individuals. Webinars could also be a useful tool. Periodic appearances on TV such as on BNN or CBC could reach a large audience. We are delighted to see that the latest 5 year Strategic plan will now involve expanding outreach to consumers, including vulnerable and disenfranchised communities, enhancing online and digital presence, and partnering with others to amplify the messages.

Out of mandate cases

In 2020, 23 cases or 6% of bank complaints received were out of mandate and 16 cases or 3% of investment complaints received were deemed out of mandate.

OBSI should track out-of-mandate cases, identify root causes and take steps to reduce such cases or work with an entity that can. It is not adequate that OBSI make a determination of out -of–mandate; an ombudsman service should assist the consumer in locating the correct venue for resolving the issue if such an entity exists. A simple list of common out-of-mandate issues with information about appropriate complaint handlers on the OBSI website would be of great assistance to consumers Reducing out-of-mandate cases will reduce OBSI workload and support its Public interest mandate.

With-holding of low-ball statistics

If a Dealer is able to negotiate a settlement with a complainant lower than the OBSI recommendation then the Dealer is immunized from the Name and Shame publicity and OBSI considers the file closed.

"Consumers and investors should not feel coerced to accept reduced offers rather than face the possibility of a firm refusal of OBSI's recommendation, resulting in no compensation at all. Addressing both refusals of recommendations and 'low-ball' settlements will be key priorities for the board in 2015."-OBSI Chair Fernand Belisle in 2014 Annual Report
We all know the grim result of that priority.

These stats are material information that should be publicly disclosed. While we appreciate that disclosure may reflect poorly on OBSI and reduce confidence in the Canadian financial services sector, we do not believe opaqueness is in the Public interest. We continue to question the wisdom of not treating low-ball offers as anything other than a rejection of an OBSI recommendation. **We recommend that**

the JRC direct OBSI to publicly release fulsome low-ball statistics. The MOU should be appropriately amended.

Registered accounts and making clients whole

RRSP's carry annual contribution limits based on income. RRIF's do not permit new contributions. Because of these features, losses within registered plans are therefore an issue wrt compensation. In order to make the complaint *whole* where losses in these plans have incurred, the loss must be reinserted in the plan or the value of the loss grossed up to take into account taxation. **We recommend that OBSI's loss calculation methodology define how it deals with investor compensation in registered plans (and in any cases where taxation is an issue).**

Clarification needed by regulators: Some areas require a position by regulators. These include Dealer accountability in cases where there is Off- book, Personal financial dealings or Outside Business Activity. We believe such cases should be able to be handled by OBSI.

Harmonize investment loss calculation model

OBSI use an opportunity- loss methodology while most of industry use the book-loss method. Harmonization will cut down on the number of disputes sent to OBSI, be more fair and improve the Dealer –OBSI relationship. **We recommend that the CSA prescribe the opportunity-loss methodology as the industry standard.**

Independent evaluation interval time

OBSI is mandated to undergo third-party evaluations of its operations at least once every five (5) years. The outcomes of these reviews are to be posted on OBSIs website. Kenmar recommend that this clause be amended to specifically include a requirement for a Public consultation that would augment the auditor's information database. All comment letters received MUST be publicly posted on OBSI's website.

The financial services industry is undergoing tremendous change due to social, technological/AI and economic factors. Digitalization, crypto currency, new payment schemes and more exposure to complex products add to the acceleration of change. **Given all this change, we strongly recommend that the independent review interval be compressed to a minimum of three (3) years, the original timeline in place when OBSI was first formed.**

Deal with Internal "ombudsman" threat

Independent "ombudsman" divert complainants from OBSI. They appear to be a complex form of internal appeals mechanism. It is our firm conviction that the internal dispute resolution step in the Dealer complaint process is inherently prone to misuse and abuse, in particular because it gives investment dealers an incentive

to reject complaints at the first step on the basis that only a relatively small number of complainants will persevere and the Dealer then has a second chance to rectify any shortcomings or, more likely, again provide an unsatisfactory offer. The internal "ombudsman" is neither independent of the Dealer nor is it transparent - it adds a barrier to accessing OBSI while the statute of limitation clock continues to run. Unlike OBSI, these entities do not disclose their loss- calculation methodology.

Dealers should resolve a complaint fairly and thoroughly at the first steps and give clients' direct unimpeded access to OBSI if they are dissatisfied with the Dealer's final response letter.

Internal "ombudsman" must comply with CSA , SRO (or AMF if a separate Quebec complaint handling rule comes into force) complaint handling and sales practice rules .**In other words , we expect the internal ombudsman (designated SCO) to be bound by laws, regulations and rules in the securities sector and to fall under CSA or SRO oversight. If not, internal "ombudsman" should not be permitted to be part of a Dealer's or CSA complaint handling process.**

If the CSA is unable or unwilling to do this, it should require that these "ombudsman" (or whatever other misleading name is conjured up) effect their work within the prescribed 90 day response time constraint and have a binding authority as a representative of the registered Dealer.

Furthermore, internal "ombudsman must make complaint records available to the applicable regulator(s) upon request. Confidentiality agreements must expressly state that the complainant has the right to share complaint files with applicable regulator(s).

Similarly. OBSI should not accept final response letters from internal "ombudsman" from an unregulated entity and/or one that cannot provide a firm offer for resolution. This approach will cut back on complainant frustration and anger with the existing client complaint handling system.

The 3 step complaint process is not seamless- to obtain internal "ombudsman "access, the complaint must be completely refiled and new, sometimes onerous terms/conditions imposed. This step adds to complainant stress and is a barrier to OBSI access. The internal "ombudsman" process favours the industry, not complainants. The process is no substitute for the independent CSA regulated OBSI complaint handling process. **Kenmar recommend that if the CSA (or SRO's) wishes to permit or acknowledge internal "ombudsman ", it should make consumer access seamless- eliminate the need for the complainant to completely refile the complaint.**

It is well known that the more steps in a complaint process, the more likely the retail complainant is to give up. **The internal "ombudsman" system is flawed by design and fundamentally unfair. It should be eliminated**

Assistance to complainants

Most investment dealers have neither deployed nor implemented procedures to provide additional assistance to clients who may have more difficulty escalating their complaint or navigating the complaint process, such as seniors, vulnerable clients, people with disabilities, consumers in rural areas or those in low-income households. This deficiency has the effect of causing investors to abandon valid complaints. This in turn reduces the volume of complaints reaching OBSI.

Most retail consumers have difficulty navigating the complaint system and have trouble properly framing their complaint. Complainants are almost never aware of the applicable rules, regulations and obligations of registrants.

The increasing complexity of financial products and of the financial services marketplace, coupled with the significant number of seniors/vulnerable clients/ recent immigrants in Canada, means that many financial consumers may not be capable of articulating the nature of their complaint to their ECB (or Dealer) and would benefit from this type of assistance. An incorrect framing of a complaint can result in undue economic loss for an unsophisticated complainant. Consumers may settle one problem, only to learn later that they are prevented from pursuing losses incurred from other problems that they did not know about.

The assistance should include helping with language difficulties, interpretation of applicable rules and terminology, explaining consumer rights, define expected timelines, explain statute of limitation constraints, framing of the complaint and revealing resolution alternatives but should not venture an opinion on the merits. Upfront assistance can help keep consumers steer clear of system bear traps and allow them to make more informed decisions.

The availability of this assistance service is generally unknown by those who need it most. Kenmar recommend that OBSI should do more to raise awareness that its mandate includes the ability to assist complainants with the complaint process, including helping them articulate their complaint to a Participating Firm where necessary. See *Super Complainers: Greater Public Inclusiveness in Government Consumer Complaint Handling*: Consumers Council of Canada https://www.consumerscouncil.com/wp-content/uploads/sites/19/2020/03/ccc_supercomplaints_web_en.pdf

Materials provided by OBSI could be clearer about the limitation period for commencing a civil action and when and how such limitation periods are affected by the OBSI process, including when the limitation period for commencing an action starts, when the OBSI process will suspend that limitation period, against whom it is stopped, and what triggers the recommencement of the limitation time clock. It is vitally important that consumers know this information at the outset of the complaints process, certainly before they can be diverted to an internal "ombudsman".

Role of Consumer and Investor Advisory Council (CIAC)

The CIAC should be empowered to act independently and required to respond to consultations that could impact OBSI or retail investor client complaint handling. Its research and recommendations should be publicly disclosed. The CIAC should be required to prepare an Annual report of its work, such report to be published on the OBSI website. The Consumer and Investor Advisory Council should also publish its meeting agendas and minutes of its meetings and any special reports related to consumer protection. **The CIAC should be formally integrated into the OBSI governance structure.**

Gagging of CIAC

We do not understand why the JRC is permitting the OBSI Board to ban public disclosure of CIAC work. This lack of transparency is not in the Public interest. The motives of the Board are perceived to be hostile to investor protection and the CIAC used as a OBSI PR tool. Given the high quality and integrity of CIAC members, we expect some serious issues are being raised yet we see little OBSI action or proposed reforms. We have urged the JRC to compel the Board to immediately remove the shackles and let the people of Canada know what the CIAC believes needs to be improved for better retail investor protection.

Presentation of findings

When OBSI has formulated a recommendation, it should present it to both the complainant and bank simultaneously. It is not good practice to approach the Dealer first and then present an agreed on recommendation to the complainant. This can place the retail complainant in an uncomfortable position.

Illegal activities reporting

OBSI does not disclose how it handles cases involving criminal and quasi- criminal activities. **We recommend that OBSI disclose its process for handling criminal activities such as fraud, theft, signature forgery, document adulteration, misrepresentation etc.**

Victims have expressed concern that they are not permitted to turn files over to police if they feel the files indicate fraud or other criminal activity. OBSI should amend its rules to permit this as a basic human right. Re Consent Letter https://www.obsi.ca/en/for-consumers/obsi-documents.aspx#Consent-letter *You cannot share the information you get from us with anyone except the firm's regulators and anyone who has also signed this agreement. You cannot use information you get from us in any legal action.*

Non-financial "losses"

The criteria for non-financial loss awards should be made clearer and possibly expanded. **Kenmar believe OBSI should be empowered to recommend an**

award for client stress, pain, suffering, indirect losses or fines or inconvenience caused by the dealer's complex or unfair complaint handling process and practices .Non-financial loss awards are especially important for seniors and vulnerable clients. Recommendations for non-financial loss awards do not always mean a financial compensation. OBSI should also be able to recommend that Dealers award clients in non-monetary ways, such as a letter of apology, restoring an account, correcting a credit rating bureau record, or other steps to address the Dealer's errors or negligence. **OBSI should review the eligibility criteria and size of awards it can make in future to ensure they are up to date and proportionate to the nature of the complaint in question.**

Impact of CFR on OBSI- transparency, not silence, needed

CFR is intended to enhance Dealer conduct standards and improve investor outcomes. Commencing in July there will be an implied requirement for investment dealers to put (a) the client's interests above the interests of the Dealer in the handling of complaints and (b) that Dealers resolve material conflicts-of-interest inherent in the complaints process in the client's best interest.

What impact will these higher standards have on OBSI investigation processes and compensation recommendations? Under CFR, reversing the burden of proof in favour of the complainant is the new norm. CFR has higher disclosure, conflicts-of-interests, KYC, KYP and suitability standards which should impact OBSI's approach to loss calculation. IIROC is currently proposing changes to its complaint handling rules that require Dealers to put the client's interests ahead of their interests or their Approved Persons' and employees' interests .The existing balancing of interests criterion will be eliminated.

Specifically, how will the new CFR requirements for including cost in suitability determination impact OBSI? Will the requirement to assess risk capacity alter OBSI methodology? How will more demanding conflict-of- interests and other enhanced disclosure obligations play into OBSI compensation recommendations?

The higher CFR standards must surely impact OBSI processes and practices - we are asking that the impacts be publicly disclosed and implemented. So far, no response from OBSI or the JRC.

NOTE: We have already seen how some bank-owned dealers have distorted CFR regulatory intent by slashing shelves down to proprietary products which may be more costly or inferior to third party funds. The CFR conflict-of-interests rules came into effect July 1, 2021.

OBSI can help crystallize CSA CFR policy/rules by using its fairness principles in making real world compensation recommendations based on its interpretation of CFR. This is true value- add of a financial ombudsman. The OBSI recommendations could be used as signposts for CSA/SRO CFR rule changes or guidance given their recognized status as having world-class complaint handling processes and loss calculation methodologies. Conversely, OBSI positions could elicit industry

challenges, requiring the CSA to make a determinative decision/clarification. This too is a positive activity as it helps reduce ambiguity for Dealers.

Publication of all OBSI decisions

One significant consequence of the lack of transparency attendant on OBSI's investigative and decision-making processes is that it prevents a systematic assessment of the decision-making practices employed, including whether or not OBSI did in fact maintain its impartiality in the process of coming to a recommendation, or alternatively whether it adopted particular working assumptions of complainant or Firm characteristics in its decision-making.

A number of leading financial ombudsman services such as the UK FOS publish all their decisions. Publishing all OBSI decisions with appropriate privacy safeguards would:

- Provide increased transparency of OBSI practices ;
- ensure that stakeholders had access to a, full accurate and balanced picture of how decisions are reached ;
- ensure that interested parties could see for themselves the decisions made – rather than the decision reported by one of the parties to have been made ; and
- give further assurance to all stakeholders about the quality and consistency of ombudsman decisions

The publication of decisions has the potential to benefit financial consumers as well as financial Firms – by making complaints handling by financial Firms better informed and by reducing the number of unnecessary referrals to the ombudsman service. It will also enhance OBSI transparency and accountability– and enable a broader range of stakeholders to make informed comments on the issues ADRBO handles. **We recommend that OBSI be obligated to publish all decisions with due respect to client privacy.**

Conclusion

In general, OBSI staff do a credible job at investigating individual complaints even with one arm tied behind their back. There are numerous improvements that can be made but the larger issue is the sorry state of complaint handling by the Canadian wealth management industry and the low standards regulators have established.

Fair and timely complaint handling is a cornerstone of investor protection. Consumers are at a relative disadvantage when it comes to a complaint against a financial institution; they cannot afford the cost of a thorough legal opinion, legal advice, or representation while banks either have counsel on staff or are retained to answer any question that arises.

In Canada, we lack a detailed and fully transparent regulatory commitment to both internal and external complaint handling. At the same time, we lack a fully evolved

financial ombudsman service. This is a very unhealthy combination for retail investors that the CSA must correct.

In many respects, this review is more about the JRC and the CSA than OBSI.

Since COVID-19, financial consumers in Canada are ever more fragile, and losses are felt ever more deeply. Confidence in structures like financial institutions and government are fading and worn. OBSI has more cases than it ever has - including during the 2008-2009 crisis. Deficient complaint handling is unduly harming retirement savings and children education funds. Now is the time for Government and the CSA to do the socially-responsible thing and provide OBSI a binding (on Dealers) decision and systemic issues mandate.

Canadians are exhausted, frustrated and angry at the CSA's and JRC unwillingness to act decisively regarding improving OBSI. The continued studies, contemplation, deliberation, procrastination, stalling and consultations has to end now. The CSA must act on the fair and reasonable recommendations of Canadians and Independent reviewers. If not, it should just come out and say that no OBSI improvements are needed, wanted or planned. **The nomenclature should not include the word *Ombudsman* as it clear that the CSA wants an ADRBO more than it wants a value-add Ombudsman** .At least that would be honest and stop wasting consumer time on endless consultations and wearing down their will. Investors would then clearly know that it's **Caveat Emptor**.

Kenmar agree to public posting of this letter.

We sincerely hope this feedback proves useful to Policy and decision makers.

Do not hesitate to contact us if there any questions or clarifications needed.

Ken Kivenko, President
Kenmar Associates

APPENDIX I Actions the CSA could take to optimize OBSI Efficiency and Effectiveness

As a result of COVID-19, the CSA has granted the investment industry relief, exemptions and reporting delays. Regulatory reforms have been put on hold. Regulators have saved the industry untold millions of dollars via its very effective regulatory burden reduction efforts. But what about the retail investor? Here's what the CSA can do:

NI 31-103 complaint handling requirements needs to be replaced

https://www.albertasecurities.com/-/media/ASC-Documents-part-1/Regulatory-Instruments/2018/10/5942166v1-31-103-NI-Consolidation-Eff-March-1-2021.ashx#page89

"External complaint bodies exist within systems and systems determine standards and competencies and accountabilities. Canada arguably lags best practices around the world when it comes to standards of competency and accountability for advice and when it comes to specifically defining rules, regulations and expectations for internal complaint and dispute resolution." – A. Teasdale CFA

This National Instrument:
- Does not specify a time constraint for acknowledging a complaint
- Does not specify a time constraint for responding to a complaint
- Does not define basic criteria for fair and effective complaint handling
- Does not provide minimum criteria required of a final response letter
- Does not specifically identify OBSI as the exclusive dispute resolution service
- Does not require a financial ombudsman service for the securities industry
- Does not set out any expectations for using OBSI as a strategic source of information that could improve regulations, investor protection, disclosure practices, products, or wealth management industry service / conduct standards.

This National Instrument is embarrassingly light on Dealer Complaint handling rules compared to other jurisdictions. In fact, it is not even a complaint handling rule at all. We have formally raised this issue with the CSA numerous times over the past 3 years. **Kenmar recommend that the CSA Dealer complaint handling rules be brought up to international standards as a TOP priority.** The increased standards will help reduce the number of complaints and improve investor outcomes. At the same time, the reduced complaint flow to OBSI will reduce their operating costs and the cost to Participating Firms and increase trust in the financial services industry.

We provide two examples of Guides as benchmarks

- **ASIC Guide Internal Dispute resolution** https://download.asic.gov.au/media/3olo5aq5/rg271-published-2-september-2021.pdf
- **DISP 1.3 Complaints handling rules - FCA Handbook** https://www.handbook.fca.org.uk/handbook/DISP/1/3.html

Quebec's AMF has also done some excellent work on complaint handling. We recommend the CSA connect with them.

Queen Margaret University Edinburgh Consumer Dispute Resolution Centre is a rich source of complaints handling research. The CSA may wish to contact them when redesigning the Canadian Dealer complaint handling system.

The key underpinnings of ethical and fair complaint handling include the capacity of the complaint handler to abandon normative solutions, respond to ethical challenges considering likely comparisons, adopt an interpretivistic and reflexive stance, and to act ethically, free from the constraints of organizational policy, process and power. Revisions to CSA rules should incorporate this mindset **if** a true financial ombudsman service is desired.

Amend the 2015 MOU with OBSI

It is no longer sufficient for OBSI to act as a shield to assuage individual mistreatments. One must also, and more importantly, work to attenuate the malefits of what can only be called the systemic governance failures caused by multiple forces through dealing explicitly with their systemic sources. This does not reduce the importance of protecting Main Street investors, and of ensuring that individual harms are taken care of, but it underlines that the burden of office of ombuds goes beyond these duties. What is required is the capacity to detect governance flaws at the origin of these failures, and to help launch the process that will ensure that the governance apparatus is appropriately repaired. The trigger may still be personal harm and complaints, but the answer can no longer be only personal redress; it must also entail eliciting what might be a plausible and reasonable appreciation of the nature of the dysfunction, and some promising organizational redesign and architectural repairs to the "system". **Eliminating root causes of investor farm should be an explicit goal of OBSI's complaint resolution process.**

Update the MOU to reflect the <u>needs</u> of Canadians using the Independent Evaluator reports as a baseline. Raise the standards to international levels. **Recognize OBSI as a financial Ombudsman service.**

Joint Regulator Committee (JRC) OBSI

We have communicated our views on the JRC effectiveness and responsiveness and recommended changes to you via the video conference call. Maintaining the status quo would not be reasonable. It is our firm conviction that the JRC has not led to any material improvements in OBSI or eliminated material deficiencies since its inception. Some of the most pressing issues continue to remain unresolved. **A fresh approach is vitally needed**. *See JRC OBSI panned as all talk and no action* https://www.wealthprofessional.ca/news/industry-news/jrc-obsi-panned-as-all-talk-and-no-action/358844

Regulator - OBSI information sharing

We hope that the independent evaluation will provide some guidance clarifying the nature and extent of permitted information exchange between OBSI and statutory regulators and SRO(s). With due respect to privacy considerations, we hope that sufficient information exchange is permitted to allow regulators to act on emerging trends, systemic issues, gaps in rules/ regulations, deficient Dealer complaint handling, cybersecurity issues , criminal activity and the like.

In particular we are concerned about eliminate barriers wrt IIROC- OBSI information sharing .Rule 9500 sets out IIROC requirements relating to a Dealer's participation in the OBSI. Section 9504 requires Dealers provide OBSI with any information or records requested relating to an investigation. However, subsection 9504(3) generally prohibits OBSI from sharing such information with IIROC (Information Sharing Prohibition), except in limited circumstances. It is our understanding that IIROC is taking steps to eliminate this prohibition.

Most importantly, Kenmar need assurance that regulators will actually act on the information provided. If, for instance, low-ball settlements are not investigated, we question the value of the sharing.

CSA should eliminate root causes in a timely manner

The CSA should act promptly when a pattern of complaints indicates a practice is harmful. A bad rule limits OBSI's ability to provide fair outcomes. The DSC mutual fund case is a prime example. For years, investors suffered financial harm from this toxic sales practice while the OBSI and others tirelessly tried to assist DSC victims. It is often the case, that solving the problem involves more than resolving individual complaints fairly- it requires eliminating the root cause of the problem. Sometimes it is a CSA / OSC or SRO rule that is the cause. See ***Ontario's delays to mutual fund reforms have cost investors $13.7-billion in fees, Auditor-General says*** - The Globe and Mail "….**Mr. Bureaud (Executive Director of FAIR Canada) said the government's meddling has left a "black stain" on the industry and he's not "sure what is worse for Ontario investors, the fact that it took so long and so much public outcry to protect investors from these unfair fees" or that the Ontario government and the OSC "seem unconcerned about the A-G findings."…"**
https://www.theglobeandmail.com/business/article-ontarios-refusal-to-adopt-mutual-fund-reforms-has-cost-investors-137/

Need for an investor protection fund

There is a need for the establishment of an investor protection fund similar to CIPF, to ensure redress is available to consumers, to deal with cases involving firms unable to respect a compensation recommendation**. The CSA should consider the establishment of a fund, or the use of an existing industry fund, to ensure that where investor losses are attributable to a Firm that is no longer solvent or no longer registered, compensation is available for harmed investors**. OBSI publications of Firm refusals in the past have commonly involved firms that are in financial distress, have been de-registered, or are being wound down. Unfortunately, in these circumstances redress for investors who have been harmed by the actions of the Firm or its agents is virtually impossible to achieve, resulting in injustice and adding to investor distrust of capital markets. An investor protection fund established to address such shortcomings would support investors' confidence in the regulated provision of investment products and services and be an example of socially responsible regulation acting in the Public interest.

Federal ECB changes

Finance has not yet taken a firm public position on a banking ECB. But we do know that FCAC wrote a damning report on the current system. From the questions asked in the consultation, it is reasonable to assume some dramatic changes are contemplated. These could mean a split of banking ECB responsibilities from OBSI which would severely impact OBSI funding, operations and fees. We have asked the OBSI Board to dialogue with Finance so that any adverse consequences for OBSI are eliminated or minimized. More direct Finance/CSA communication is also most appropriate and timely.

Quebec's proposed complaint handling rule

The AMF's proposed rule for Quebec Dealers is far superior to existing CSA and IIROC rules. The legislated cycle time is 60 days not the 90 days permitted by the SRO's. If passed into law, Quebec complainants will be permitted to access OBSI after 60 calendar days, not 90 as in other provinces. **We have urged the OBSI Board and JRC to inform the Public as to how OBSI plans to react to these changes (if implemented) and how they will be communicated to the Public.**

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