

Via email

February 17, 2016

Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints

To: Deborah Battell dbattell@gmail.com and Mark Wright mwright@obsi.ca

I greatly appreciate the opportunity to submit my comments on OBSI operations. Most often consumers do not know of these opportunities to speak out. This needs to change. A sincere and concentrated effort needs to be made to reach out to consumers so their important voices are also being heard.

A list of consumers with current and past involvement with either the OBSI or regulators could easily be utilized for this purpose. This way many more consumers would participate and provide crucial feedback. Too often the majority of responders are from the industry, giving then a one-sided view predominance in future plans and directives. I am strongly suggesting that consumer involvement needs to be more actively sought out to bring about the necessary balance in these kind of discussions.

OBSI is a critical public interest entity. Given the high cost of litigation, for many Canadians OBSI is truly their only option.

A well functioning OBSI can contribute to Canadian society well beyond its role in just settling complaints. From

<http://www.ombudsmanassociation.org/docs/BIOAGoodComplaintHandling.pdf>

The following examples of added value are not an exhaustive list, but demonstrate some of the differences that can be made:

- holding organizations to account for the ways in which they deal with people and respond to their complaints – in this way OBSI can act as a means of 'public protection' increasing public confidence
- acting as role models for other complaint handlers
- ensuring that learning is widely spread across the sector to which the organization belongs, and generally raising standards.

For a number of reasons, OBSI is not at the present time completely trusted by financial consumers. Below are a few suggestions I believe could help foster trust.

Consumer Outreach and Improving Industry Culture: There is nothing on the OBSI website that describes how they promote the use of their free service. The Board should set as a goal for 2016 to develop and implement a robust Consumer Outreach Program. It is a shame that hardly anyone knows of its existence. Obviously, if investors are unaware, they won't use OBSI. Firms must also tell consumers it is available and present it as a positive option. From my own personal experience I can testify that when I asked to have my complaint forwarded to OBSI the first words out of the firm's Dispute Resolution Officer's mouth was "We do not have to follow OBSI's recommendation." I found this response to be deplorable, unprofessional and perceived it as a veiled threat in an attempt to stop me from moving in the direction of OBSI.

Corporate Governance: It should go without saying, that there should be at least one

Director position dedicated to retail investor issues. Organizations like SIPA, CARP, FAIR, the Consumers Council and others can surely supply a list of suitable candidates. Community Directors should have a demonstrated track record in working towards better investor protection.

Termination of the Ombudsman for other than cause: The by-Laws should be amended to delete this provision. Why is it even there to start with? The optics of such a provision are poor.

Independent Review frequency: The independent review frequency is far too long to support good governance. I recommend a return to the minimum 3 year cycle.

Board of Directors: The Canadian Bankers Association which is a registered lobbyist, has the privilege of providing a list of nominees for a Director position on the OBSI Board. NO consumer group has a similar privilege. Why is that? The optics of this again are incredibly bad. One Director on the Board is from Richardson GMP who is a senior executive of a dealer who rejected an OBSI recommendation which resulted in this firm being Named & Shamed. How can investors be expected to trust an organization with such a structure? It appears there are far too many on the Board from the financial industry. This does not even give the illusion of fairness, impartiality or the proper balance that consumer interests are well understood and are being given equal weight.

Make OBSI Decisions Binding: This is an obvious shortcoming of the current structure. Naming and Shaming is no longer a sufficient tool. It is based on a premise that there is respect for the system in place and that firms willingly submit to the integrity of the Ombudsman for Banking Services and Investments office and its role. Clearly we have entered a new era where shame is no longer even experienced by some within the financial industry. OBSI went to extraordinary measures in an attempt to resolve things with the industry. Discussions and negotiations cannot go on indefinitely. Time frames need to be in place and respected, then firm and decisive actions need to happen. The stories of low ball settlements is also extremely unsettling to say the least. Once OBSI makes a decision it should be presented to both the complainant and the firm at the same time. To present it to the firm first, gives the appearance that negotiations are being made behind closed doors in order to make things palatable to the firm and to prevent OBSI from publicly having to state they were unable to reach a resolution. This is unfair to the consumer involved. The optics for fairness, transparency and impartiality appear severely compromised with this method and give the blatant appearance of pandering to the industry at the expense of the consumer.

Time to Resolve a Case: A set number of days should be established, not just that 80% will be resolved within a 6 months standard. Canadian investors need something more definite. The time frame to proceed with civil litigation is only two years and there is some real confusion regarding the "stopping of the clock".

Tolling Agreements: I know OBSI holds the dealer responsible for the actions of its agents which I applaud, but if the advisor is no longer employed by the firm does the stopping of the clock agreement include them? The advisor is obviously party to the dispute and a judge in a civil case may hold the advisor partially or even completely responsible. Clients who take a case to OBSI need to know with certainty if the clock does not stop for the advisor, since that may mean they could be jeopardizing a future legal claim. As it stands this issue is not clear to consumers who may assume the Tolling Agreement encompasses everyone involved, when in fact it may not. I consulted two different lawyers from two different firms and neither could

say with any degree of certainty that the clock was stopped for the advisor involved. Since, as I have said, a civil trial judge may hold the advisor partially or perhaps even completely at fault, a legal clarification is needed. OBSI has a not only a responsibility but a duty to make this information plain to consumers of their services. It is a cop-out for OBSI to just state, "We don't give legal advice." on such an important issue.

Systemic Issues: The mandate to probe systemic issues was removed by the Board, but who has taken up the slack? This needs to be addressed. I have raised this concern in a previous request for comments to OBSI. Without an appropriate body to refer these issues to, consumers are left open and vulnerable to systemic abuse problems.

Portfolio Reviews: Although OBSI's mandate is to investigate complaints about products and services in the banking sector and those that fall under the jurisdiction of security regulators, in the past OBSI exercised common sense and flexibility in its investigation and analysis of Segregated Funds when it formed part of a larger portfolio and a complaint. One of the reasons as a client I took a complaint to OBSI was because they agreed to look at the file in its entirety. I fear that sending a client to two different Ombudsmen will make an already incredibly stressful and confusing process even more difficult and cumbersome for clients. Since many complainants are also elderly, this practice is particularly difficult and unfair. The potential for confusion and misunderstanding by the professionals involved in assessing only part of a portfolio increases as well. The KYC is supposed to consider the totality of a client's situation; logically it follows that a review should do likewise.

Compensation Limit: Personally I see no reason a compensation limit should even be in place. If an error or wrong has been found, it should be restored.

Consumer Feedback about OBSI: The industry has both ample opportunity and avenues to provide feedback. There is no system in place for individuals who have been exposed to OBSI to provide constructive feedback on their experience. Also, if a consumer is unhappy or has a complaint about the handling of their case with OBSI there does not appear to be any structured venue for them to raise this matter. A customer satisfaction survey is an inadequate method to obtain detailed, useful and concrete feedback. Truly, the regulators and OBSI are sitting on a gold mine of retail consumer information that should be gleaned. Consumers would like to know that their voices are also being listened to and respected.

I sincerely hope you will consider these points when preparing your final report. Permission is granted for the public posting of my letter.

Ms. D. McFadden