

CSA Staff Notice 31-353

OBSI Joint Regulators Committee Annual Report for 2017

March 29, 2018

Introduction

This notice is being published jointly by the Canadian Securities Administrators (CSA), the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) to serve as the fourth Annual Report of the Joint Regulators Committee (JRC) of the Ombudsman for Banking Services and Investments (OBSI).

Members of the JRC are representatives from the CSA (in 2017, CSA designated representatives were from British Columbia, Alberta, Ontario and Québec), and the two self-regulatory organizations (SROs), IIROC and MFDA. The JRC meets regularly with OBSI to discuss governance and operational matters and other significant issues that could influence the effectiveness of the dispute resolution system.

The purpose of this notice is to provide an overview of the JRC and to highlight the major activities conducted by the JRC in 2017.

Background to Establishment of the JRC

In December 2013, following substantial governance reforms, OBSI announced changes to its terms of reference¹ and to its processes.

In May 2014, amendments to *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Amendments**) came into force requiring all registered dealers and advisers to make OBSI available to their clients as their dispute resolution service, except in Québec where the dispute resolution service administered by the Autorité des marchés financiers (AMF) would continue to apply. In Québec, the AMF provides dispute resolution services to those clients of all registered dealers and advisers who reside in Québec. The Québec regime remains unchanged and firms registered in Québec have to inform clients residing in Québec of the availability of the AMF's dispute resolution services.

¹ See: <https://www.obsi.ca/en/about-us/resources/Documents/Terms-of-Reference-.pdf> (English version) or https://www.obsi.ca/uploads/45/Doc_636445205538219317.pdf?ts=636464301232602786 (French version).

Memorandum of Understanding / Amendments: In conjunction with the passing of the Amendments, the CSA and OBSI signed a Memorandum of Understanding (MOU) which provides an oversight framework intended to ensure that OBSI continues to meet the standards set by the CSA.² The MOU also provides for a securities regulatory oversight of OBSI as well as a framework for the CSA members and OBSI to cooperate and communicate constructively.

In 2015, the MOU was amended to include the AMF as a signatory,³ thereby joining all other CSA members. The amended MOU also clarifies certain provisions, including those relating to information sharing and the requirement for an independent evaluation of OBSI.⁴ In particular, the amendments: (1) clarify that the restriction on sharing of information in the MOU does not apply in respect of information sharing relating to systemic issues, thereby giving effect to the understanding that OBSI will share information about individual complaints when it relates to systemic issues; and (2) require an independent evaluation of OBSI's operations and practices to commence within two years of the amendments to Regulation 31-103 coming into force (that is, commencement by May 1, 2016) and every five years thereafter.

JRC Mandate: The CSA jurisdictions and OBSI agreed with the SROs to form the OBSI JRC with a mandate to:

- facilitate a holistic approach to information sharing and monitor the dispute resolution process with an overall view to promoting investor protection and confidence in the external dispute resolution system;
- support fairness, accessibility and effectiveness of the dispute resolution process; and
- facilitate regular communication and consultation among JRC members and OBSI.

Overview of JRC Activities in 2017

In 2017, the fourth year in which the JRC operated, three meetings were held: in March, June, and September. The meetings provided the JRC with an opportunity to be updated by OBSI on specific matters as contemplated by the MOU. The JRC also held a meeting with OBSI's Board of Directors.

² The MOU sets out the standards that OBSI must meet on: governance, independence and standard of fairness, processes to perform functions on a timely and fair basis, fees and costs, resources, accessibility, systems and controls, core methodologies, information sharing, and transparency.

³ The AMF became a member of the JRC as of December 1, 2015.

⁴ To review the MOU, please see: https://www.osc.gov.on.ca/documents/en/Securities-Category3/mou_20151202_31-103_oversight-obsi.pdf (English version) or <http://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/0-ententes-vm/2015dec01-mou-csa-osbi-fr.pdf> (French version).

The following matters were considered and advanced by the JRC:

- 1. Systemic issues protocol:** In 2015, the MOU was amended to define potential systemic issues and to set out a regulatory approach to address these issues when reported by OBSI. The Protocol for Handling Systemic Issues requires the Chair of OBSI to inform the CSA Designates of issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients of one or more firms. In 2017, there were three matters related to investment suitability and disclosure reported to the JRC that OBSI determined as raising a systemic issue. In response to OBSI's notification, the applicable regulators reviewed the matters and took appropriate regulatory actions. More information on the Protocol for Handling Systemic Issues is available at: <https://www.obsi.ca/en/how-we-work/systemic-issues.aspx>.
- 2. Continuous monitoring of OBSI quarterly reports, compensation refusals and settling for lower amounts than recommended by OBSI:** The JRC continues to monitor data regarding investment-related complaint cases through the review of OBSI's quarterly reports and considers patterns and issues raised by them. Since 2015, OBSI provides more granular information in its quarterly reporting that we will continue to enhance as appropriate. While there were no refusal publications in 2017, through our review of the quarterly reporting, the JRC noted that 150⁵ of 382 closed investment-related cases ended with monetary compensation. Of the 150 cases, 15% were settled for amounts less than OBSI's compensation recommendations. The JRC also noted that in 7% of the cases, a firm compensated clients for more than OBSI's monetary compensation recommendations. These typically involved cases where OBSI recommended payment of low amounts.

The JRC will continue to monitor for complaint trends and patterns, including refusals to compensate clients consistent with OBSI recommendations, or repeatedly settling for lower amounts than recommended by OBSI. The JRC believes this data can sometimes provide risk-based indications of potential problems with a firm's complaint handling practices, or raise questions about whether the firm is participating in OBSI's services in good faith or consistently with the applicable standard of care.

- 3. Publication of CSA and SROs joint Staff Notice:** On December 7, 2017, the CSA, IIROC and the MFDA released a joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA

⁵ This figure also includes cases where OBSI did not recommend monetary compensation but a firm compensated clients, usually with a low amount.

Bulletin #0736-M, *Complying with requirements regarding the Ombudsman for Banking Services and Investments (OBSI) (the Joint Notice)*. The Joint Notice highlighted regulators' concerns about some registered firms' complaint handling systems and participation in OBSI's services, and set out potential regulatory responses.

Highlighted in the Joint Notice is that CSA and SRO staff will take note of registered firms':

- a) refusals to compensate clients consistent with OBSI recommendations; or
- b) repeatedly settling for lower amounts than recommended by OBSI.

Depending on the facts and circumstances in each instance, CSA and SRO staff may conclude that enquiries regarding the firm's actions or compliance system are appropriate. The likelihood that CSA and SRO staff may make enquiries will be significantly higher if a firm shows a pattern of either refusing to compensate clients after recommendations by OBSI or settling matters at discounts from OBSI's recommendations. Staff may also make enquiries if a firm is involved in a disproportionate number of settlements, whether for the amount recommended by OBSI or otherwise.

The Joint Notice also outlines staff's concerns regarding the manner in which some firms are using an internal "ombudsman" as part of the firm's complaint handling system.

The Joint Notice is available

at: http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20171207_31-351_ombudsman-banking-services-investments.htm (English)

or <http://www.osc.gov.on.ca/documents/en/Securities-Category3/20171207-31-351-avis-acvm-fr.pdf> (French).

- 4. Independent evaluation of OBSI and JRC next steps:** As described in the OBSI JRC Annual Report for 2016,⁶ OBSI underwent an independent evaluation of its operations and practices for its investment mandate and released the report, *Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate (the Report)*, on June 6, 2016.⁷

⁶ To review the 2016 Report, please see: http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20170323_31-348_obsi-joint-regulators.pdf (English) or http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20170323_31-348_obsi-joint-regulators-fr.pdf (French)

⁷ The Report is available at: <https://www.obsi.ca/en/news-and-publications/resources/PresentationsandSubmissions/2016-Independent-Evaluation-Investment-Mandate.pdf>

The Report included the recommendation that OBSI be enabled to secure redress for customers, preferably by empowering OBSI to make awards that are binding on the firm, and on the customer if they accept the award, accompanied by an internal review process.

The JRC continues to be committed to supporting a fair, accessible and effective OBSI dispute resolution process. The members of the JRC continue to engage in discussions with a view to focusing on options for strengthening OBSI's ability to secure redress for investors. It will take time to work with all the key stakeholders and any consideration of strengthening OBSI's ability to secure redress for investors by making OBSI recommendations binding involves complex issues, including:

- 1) consideration of the framework of authority to facilitate binding decisions and any related legislative amendments,
- 2) potential changes in OBSI processes that would add complexity if OBSI obtains the ability to impose a definitive liability, while preserving the efficiency of these processes,
- 3) the need for and extent of enhanced regulatory oversight of OBSI, and
- 4) consideration of the need for a review mechanism of OBSI decisions and the implications for complainants, firms, OBSI and regulators of that review mechanism.

The CSA jurisdictions are actively engaged in considering options for strengthening OBSI's abilities to secure redress for investors, including considering developing recommendations for implementing binding authority.

The approach outlined in the Joint Notice provides an intermediate step by regulators to promote fairness in registrants' complaint handling processes and their interactions with OBSI.

Overview of OBSI Activities

The following are a few of the initiatives that OBSI updated the JRC on:

1. OBSI's Strategic Plan

On January 19, 2017, OBSI released its Strategic Plan, which outlines the key strategic priorities that OBSI will pursue over the next five years (2017-2021). Additional information on OBSI's Strategic Plan is available at: <https://www.obsi.ca/en/about-us/resources/Documents/OBSI-Strategy-2017--English.pdf>.

2. Public Affairs Initiatives

2.1. Launch of new website: On November 15, 2017, OBSI launched a new, accessible and more user-friendly website. The site features improved usability, responsive design for mobile devices and a simplified complaint process for consumers in both official languages, as well as new features for participating firms. See <https://www.obsi.ca/en/>.

2.2. Launch of stakeholder e-News: In October 2017, OBSI launched a quarterly electronic newsletter to its stakeholders to increase insights and information sharing. The newsletter includes updates about OBSI projects, initiatives, and announcements regarding upcoming events OBSI will be participating in. It also highlights key statistics on complaint data including complaint volumes, complaints by region, and top investment products and issues. More information is available at OBSI e-News. See <https://www.obsi.ca/Modules/News/Search.aspx?feedId=a8023b85-7f41-4f9a-88b2-0793f4975f61&lang=en>.

3. Firm Information Service (FIS) pilot project

On November 1, 2017, OBSI launched the Firm Information Service pilot project to all participating firms. The service provides information about OBSI's experiences and approach in order to help firms fairly and effectively resolve complaints. The project will run until the end of April 2018. More information is available at: <https://www.obsi.ca/en/for-firms/firm-information-service--fis-.aspx>.

JRC Meeting with OBSI's Board of Directors

As required by the MOU, an annual meeting of the JRC with OBSI's Board of Directors was held on September 19, 2017. The meeting included discussions on the implementation of OBSI's Strategic Plan, operating and governance issues and the effectiveness of OBSI's processes.

On February 27, 2018, OBSI announced the appointment of Jim Emmerton as the new Chairman of OBSI's board of directors. Mr. Emmerton will succeed Fernand Bélisle, who is retiring from the board after five years as Chairman. The JRC commends Mr. Bélisle on his stewardship of OBSI. The Board also announced the appointment of two new members: Rick Annaert and Ronald Smith.

OBSI Annual Report

For additional information on OBSI, readers may wish to review OBSI's Annual Report for its fiscal year ending October 31, 2017, available at:

<https://www.obsi.ca/Modules/News/index.aspx?feedId=c84b06b3-6ed7-4cb8-889e-49501832e911&lang=en&newsId=04f89285-891d-4861-bbfb-4670304fa8dc>

Comments

Readers are invited to share their comments on any matter relating to the JRC's oversight of OBSI. Please send your comments to: ContactJRC-CMOR@acvm-csa.ca.

Questions

Please refer your questions regarding this CSA Staff Notice to any of the following CSA staff:

Louise Gauthier
Senior Director of Distribution Policies
Autorité des marchés financiers
418 525-0337, ext.4821
1 877 525-0337, ext. 4821
louise.gauthier@lautorite.qc.ca

Tyler Fleming
Director, Investor Office
Ontario Securities Commission
416 593-8092
tfleming@osc.gov.on.ca

Mark Wang
Director, Capital Markets Regulation
British Columbia Securities Commission
604 899-6658
mwang@bcsc.bc.ca

Lina Creta
Senior Advisor, Investor Office
Ontario Securities Commission
416 204-8963
lcreta@osc.gov.on.ca

Meg Tassie
Senior Advisor
British Columbia Securities Commission
604 899-6819
mtassie@bcsc.bc.ca

Carlin Fung
Senior Accountant
Compliance and Registrant Regulation
Ontario Securities Commission
416 593-8226
cfung@osc.gov.on.ca

Eniko Molnar
Legal Counsel, Market Regulation
Alberta Securities Commission
403 297-4890
eniko.molnar@asc.ca