



Canadian Securities Administrators
Autorités canadiennes en valeurs mobilières

CSA Staff Notice 31-362 *OBSI Joint Regulators Committee Annual Report for 2021*

November 3, 2022

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 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 2021, CSA designated representatives were from British Columbia, Alberta, Ontario and Québec) and the two self-regulatory organizations (**SROs**), IIROC and MFDA.

The JRC believes that a fair and effective independent dispute resolution service is important for investor protection in Canada and is vital to the integrity and confidence of the capital markets. The JRC supports a fair, accessible and effective OBSI dispute resolution process. 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 2021.

Background to Establishment of the JRC

In May 2014, amendments to National Instrument 31-103 *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 services 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. Investors in Québec are nevertheless entitled to use the services of OBSI for disputes that fall within OBSI's mandate, in lieu of the dispute resolution services provided by the AMF.

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.¹ The MOU also provides 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,² with it 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.³

JRC MANDATE

The CSA jurisdictions and OBSI agreed with the SROs to form the 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.

1 The MOU sets out the standards that OBSI is expected to 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.

2 The AMF became a party to the MOU effective as of December 1, 2015.

3 For a copy of the MOU, please see the [Amended and Restated Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments among the Canadian Securities Administrators and OBSI](#).

Overview of JRC Activities in 2021

In 2021, four regularly scheduled meetings were held in March, June, September and December. The JRC also met with OBSI's Board of Directors (the **OBSI Board**) and engaged with OBSI on an *ad hoc* basis. These meetings provided OBSI with an opportunity to update the JRC on specific matters as contemplated by the MOU.

The following matters were considered and advanced by the JRC, and include matters on which OBSI provided updates to the JRC throughout 2021:

1. **OBSI's 2021 independent evaluation:**

The MOU requires that an independent evaluation of OBSI's operations and practices on the investment side of OBSI's mandate commence every five years. In 2021, OBSI kept the JRC apprised of the competitive request for proposal process (**RFP**) and consulted with the JRC on the selection of the independent evaluator and timelines for completion of the evaluation. Concurrent independent evaluations of OBSI's banking and investment mandates contributed to some delays to the RFP process. OBSI kept the JRC apprised of efforts to address these delays. In October 2021, the OBSI Board appointed Professor Poonam Puri to lead independent evaluations of OBSI's banking and investments mandates. As stakeholder consultation is a key component, the JRC concurred with an extension to the stakeholder consultation period to ensure that stakeholders who wished to participate in the consultation regarding the evaluation of OBSI's investments mandate had sufficient time to do so.

Subsequent event:

OBSI delivered the *Independent Evaluation of the Ombudsman for Banking Services and Investments (OBSI) Investments Mandate (Report)* to the JRC in 2022 and published it on June 13, 2022. The independent evaluators found that, overall, OBSI met and exceeded its obligations under the MOU. In particular, the Report noted that:

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

The independent evaluators made 22 recommendations in the Report for improvement on the topics of governance, strategy, operations, additional value and awareness, including that OBSI should be empowered to make awards that are binding.

The JRC issued a statement⁴ following the Report's publication reaffirming the importance of a fair, efficient and accessible dispute resolution system and its strong support for OBSI as the dispute resolution service. The JRC has met with the independent evaluators to discuss the Report, has met and will continue to meet with OBSI staff and met with the OBSI Board in late September 2022 to learn more about OBSI's position on the Report's findings and recommendations. The JRC is analyzing the findings and recommendations, along with other stakeholder input, in considering next steps in response to the Report.

2. CSA's project to strengthen OBSI:

In 2021, the JRC continued to receive quarterly progress updates about the CSA's continued work to strengthen OBSI as an independent dispute resolution service. The CSA working group informed the JRC that it met frequently, and reviewed OBSI's processes for making recommendations as well as international best practices for financial sector ombudsmen. The CSA working group also considered legal issues relating to binding decisions and conducted significant design work on a binding authority framework for OBSI that is fair, efficient and accessible⁵, with the goal of improving investor protection and achieving fair outcomes for both individuals and firms.

3. Continuous monitoring of OBSI quarterly reports, compensation refusals and settling for lower amounts than recommended by OBSI:

The JRC continued to monitor data on investment-related complaints, including compensation refusals and settlements below OBSI's recommendations, through the review of OBSI's quarterly reporting. 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 a firm is participating in OBSI's services in good faith or consistently with the applicable standard of care.

In 2021, there were no compensation refusals. A CSA jurisdiction maintained its engagement with a firm about a refusal that occurred in late 2020 (and was reported in JRC's Annual Report for 2020), and the CSA jurisdiction's effort⁶ in communicating with the firm to better understand the reasons for the refusal resulted in the firm subsequently compensating the client. This firm is no longer registered.

4 See [OBSI Joint Regulators Committee Responds to Independent Evaluator's Report](#), June 13, 2022.

5 Please refer to CSA [Business Plans](#), including [CSA Business Plan 2019-2022 Achievement Highlights](#)

6 As set out in [Joint CSA Staff Notice 31-351](#), [IIROC Notice 17-0229](#), [MFDA Bulletin #0736-M Complying with requirements regarding the Ombudsman for Banking Services and Investments](#), the CSA or SROs may conclude that enquiries are appropriate if a firm shows a pattern of either refusing to compensate clients after recommendations by OBSI or settling for lower amounts than recommended by OBSI. Where patterns are detected, this may lead to regulatory responses where warranted.

For OBSI's fiscal years 2018 to 2021, out of 674 cases that ended with monetary compensation, 39 cases (approximately 6%) involving 23 firms settled below OBSI recommendations. About 56% of these low settlement cases involved recommendations over \$50,000. On average, low settlement cases settled for 60% of OBSI's recommended amount of compensation. In the same four-year period, 10 of the 23 firms settled below OBSI's recommended amount more than once. Subsequent to follow up efforts by CSA jurisdictions and SROs regarding low settlement cases, two of the 10 firms made additional payments to the clients in three cases in 2021 to align compensation amounts with OBSI recommendations. Overall, since OBSI's 2018 fiscal year, clients received approximately \$1.5 million less than what OBSI recommended. This continues to be an area of concern for the JRC.

The JRC recognizes the impact on complainants when firms refuse to compensate clients consistent with OBSI recommendations or settle for lower amounts than recommended by OBSI. Complainants rely on OBSI to help achieve a fair resolution to their complaint through a dispute resolution process that requires both engagement and resources from the parties involved. When a firm refuses to settle or makes a lower settlement offer, complainants may feel they are unable to pursue the matter further due to the time and cost involved, including to obtain legal representation and initiate a civil action against the firm. Settlement refusals and low settlements erode confidence in the fairness and effectiveness of the dispute resolution process for investors.

4. Systemic issues:

Under the MOU, the Chair of the OBSI Board is to inform the CSA Designates of any issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients of one or more firms (referred to as **Systemic Issues**). In 2015, the JRC finalized with OBSI a protocol to define potential Systemic Issues and to set out a regulatory approach to address these issues when reported by OBSI under the MOU. Information sharing about individual complaints relating to Systemic Issues allows for evaluation of whether a systemic issue exists and assessment of its impact on the applicable registrant, the registrant category and/or investors. Please see [OBSI and JRC Protocol for Handling Systemic Issues](#) for further information.

In 2021, two Systemic Issues were reported to the JRC by OBSI or by the Chair of the OBSI Board:

- A portfolio manager was the subject of multiple complaints alleging understating and misrepresenting the risk of a fund and disregarding documented investor risk tolerance in multiple cases. The issue was referred to the relevant CSA jurisdiction. Staff noted OBSI's systemic issue report and OBSI cases in their on-going review of the portfolio manager's activity.
- A scholarship plan dealer (SPD) was the subject of multiple complaints alleging inadequate disclosure with respect to the consequences of an important deadline that, if missed, would result in the significant forfeiture of plan income for consumers of a widely sold scholarship trust plan. The issue was referred to the relevant CSA jurisdiction for further investigation. Staff reviewed the complaints relating to the issue and followed up with the SPD. Staff reviewed the relevant documents provided by the SPD and did not find inadequate disclosure of the deadline.

5. Impact of Covid-19 on OBSI and on complaint trends:

The JRC worked with OBSI to monitor the ongoing impact of the COVID-19 pandemic on complaint volumes. OBSI reported a significant increase in complaint volume during 2021, with a 24% increase in cases from 2020. The elevated complaint volume was partially attributable to ongoing market volatility and economic stressors related to COVID-19. OBSI also reported that despite higher case volumes and the challenges of remote work, it continued to meet service delivery and productivity standards.

Since mid-2020, there has been an increase in IIROC member firm complaints relating to order execution only (OEO) dealers, commonly referred to as discount brokers. Complaints about OEO dealers corresponded with an overall increase in newly opened accounts in this sector, with top complaint issues relating to margin, transaction errors and service issues relating to the trading platforms. As noted below in item 6, IIROC has established a working group to assess if a regulatory response is needed to address service issues relating to OEO dealers.

The JRC reviewed complaint data from IIROC, MFDA and OBSI to identify potential predictive relationships and assist with anticipating future complaint volumes. Analysis of this data found that although some correlation may exist between SRO complaint volumes and complaints received by OBSI, additional data and analysis is required to establish a more predictive relationship.

6. IIROC follow-up with OEO dealers regarding systems issues and analysis:

IIROC provided updates to JRC on its efforts to gather and analyze data relating to an increase in complaints regarding system outages and service levels of OEO dealers. As a first step IIROC sent a survey to all OEO dealers requesting information regarding various aspects of the technology services they provide to their clients. Although the survey responses provided an important initial view, in order to assess various options for strengthening investor protection standards in this area, IIROC established an OEO service-level working group with membership open to all OEO dealers. The working group meetings have now concluded and IIROC is considering next steps. The JRC continues to receive quarterly updates from IIROC.

7. IIROC's qualitative research among complainants:

The JRC reviewed a research report commissioned by IIROC to explore the experiences of investors that dealt with IIROC's Complaints & Inquiries team. IIROC staff presented findings to the JRC, noting details relevant to OBSI and complainants' experiences with the overall complaint process. The research showed considerable confusion among the interviewed complainants about the complaint process.

8. Ontario Capital Markets Modernization Taskforce, Final Report:

The JRC discussed the recommendation in the Final Report relating to designation of a dispute resolution service with the power to issue binding decisions, noting similar objectives with the CSA's project to strengthen OBSI, such as improving retail investor protection through a binding, reputable and efficient dispute resolution framework and increasing investor confidence in the capital markets by improving mechanisms for redress.

9. Federal developments relating to external complaint handling in banking:

The JRC discussed the potential impacts for OBSI of the federal consultation on external complaint handling bodies, the federal government's commitment to establishing a single, independent ombudsperson for banking complaints with binding authority, and inclusion of this commitment in the Mandate Letter of the Deputy Prime Minister and Minister of Finance.

10. CSA member website information regarding complaint handling:

The JRC worked with OBSI and the CSA Communications Committee to enhance communication regarding complaint handling and OBSI's services across CSA member websites. The JRC noted that investor education websites of some CSA jurisdictions already provided extensive information about complaint handling and OBSI.

11. Monitoring of general inquiries and complaints:

The JRC continues to monitor and respond to general inquiries and complaints relating to OBSI received by the JRC members or through the JRC email address. The JRC values the feedback submitted by stakeholders and regularly considers opportunities to enhance the effectiveness of its oversight in accordance with the MOU.

12. Development of OBSI's 2022-2026 Strategic Plan:

In 2021, OBSI developed its five-year strategic plan for 2022-2026. The new plan was released in the first quarter of 2022.

13. Recruitment of the new Chair for OBSI's Board:

In December 2021, Maureen Jensen joined the OBSI Board and was subsequently appointed Chair. Ms. Jensen is the past Chair and Chief Executive Officer of the Ontario Securities Commission.

JRC Meeting with OBSI's Board of Directors

As required by the MOU, an annual meeting of the JRC with the OBSI Board was held on September 23, 2021. In addition to broader discussions on operating and governance issues and the effectiveness of OBSI's processes, topics discussed included the importance of prompt selection of an independent reviewer and initiation of the independent review, strategic direction and development of OBSI's five-year strategic plan, work underway to strengthen OBSI's powers to secure redress for investors, and OBSI complaint volumes, including the marked increase in investment complaints relating to service issues.

OBSI ANNUAL REPORT

For additional information on OBSI, readers may wish to review [OBSI's Annual Report for its fiscal year ending October 31, 2021](#).

COMMENTS

We appreciate the feedback received on previous annual reports from various stakeholders and welcome comments on this annual report and any matter relating to the JRC's oversight of OBSI. Please send your comments to ContactJRC-CMOR@acvm-csa.ca.

QUESTIONS

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