

CSA Staff Notice 31-348

OBSI Joint Regulators Committee Annual Report for 2016

March 23, 2017

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 third 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 2016, 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 2016.

Background to Establishment of the JRC

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

In 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 service², except in Québec where the dispute resolution 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 dispute resolution services.

¹ See: <https://www.obsi.ca/download/fm/318> (English version) or <https://www.obsi.ca/download/fm/319> (French version).

² The Amendments came into force May 1, 2014 and provided for a transition period of three months ending August 1, 2014.

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 standards³ set by the CSA. 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 signatory⁴, 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.⁵ 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 National Instrument 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;
- facilitate regular communication and consultation among JRC members and OBSI.

JRC Chair: There was a change in the JRC Chair in 2016. The JRC thanks Mary Condon for her significant contributions as Chair since the formation of the JRC in 2014 and is happy to be working with new Chair, Grant Vingoe, current Vice-Chair of the Ontario Securities Commission.

³ 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.

⁴ The AMF became a member of the JRC as of December 1, 2015.

⁵ 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).

Overview of JRC Activities in 2016

In 2016, the third year in which the JRC operated, four meetings were held: in March, June, September and December. The meetings provided the JRC with an opportunity to be updated by OBSI on specific matters as contemplated by the MOU.

The following matters were considered and advanced by the JRC:

1. **Independent evaluation of OBSI:** As required by the amended MOU, OBSI underwent an independent evaluation of its operations and practices for its investment mandate. OBSI's Board of Directors appointed Deborah Battell, the former New Zealand Banking Ombudsman, to be their evaluator. The appointment of her team was approved by the CSA in consultation with the JRC.

- 1.1. **Release of independent evaluation of OBSI.** Ms. Battell completed her review of OBSI in early 2016 and her report, *Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate*, was released by OBSI on June 6, 2016 (the Report).

The review found that OBSI continues to fulfill its obligations to its stakeholders, has performed well within its current mandate and meets the requirements of the MOU with the CSA. The review also found that OBSI decisions were fair and consistent, and OBSI was found to be impartial and fair to both firms and investors.

- 1.2. **Recommendations made in the Report.** The Report also includes nineteen recommendations for OBSI, including:

- 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.
- That OBSI includes a public policy function within its stakeholder relations team to prepare formal submissions on relevant regulatory or legislative proposals, and respond to regulatory requests for advice on the effectiveness of existing regulation.

- That one of the community director positions on OBSI's board be reserved for a consumer/investor advocate and that this appointment be based on nominations from consumer/investor advocacy groups.
- That OBSI reviews its compensation cap to bring it closer to the IIROC arbitration limit⁶ and amends its terms of reference to require the compensation cap to be adjusted in line with inflation, on a three yearly basis.
- That OBSI reintroduces earlier written recommendations in appropriate cases, expands settlement letters, where appropriate, to include the rationale for the final settlement amount, and develops a short guide for firms and consumers on how the negotiated settlement process works.
- That the OBSI Board supports a strategic approach to ombudsmanship, incentivizing staff to use the intelligence gained from cases to provide suitable additional services to participating firms and guidance to customers.

1.3. **JRC response.** In response to the release of the Report, the JRC issued a statement on June 6, 2016 affirming its members' strong support for OBSI as the dispute resolution service and setting out the JRC's next steps in reviewing and analyzing the Report's findings and recommendations.⁷ The JRC also met with Ms. Deborah Battell and with OBSI staff and its Board of Directors to discuss the Report.

1.4. **JRC next steps.** The members of the JRC strongly support OBSI as the dispute resolution service and continue to engage in discussions with OBSI, with a view to focusing on options for strengthening its ability to secure redress for investors – a key recommendation made by the independent evaluator.

2. **Compensation refusals and actual amounts paid by firms:** The JRC continues to review the compensation refusals published by OBSI. In 2016, one firm refused to follow an OBSI recommendation. While OBSI recommendations are not binding, the JRC expects firms to abide by their obligations and participate in OBSI's services in a manner consistent with their obligation to deal fairly, honestly and in good faith with their clients, and to respond to each customer complaint in a manner that a reasonable investor would consider fair and effective.

⁶ IIROC's arbitration limits compensation to \$500,000.

⁷ See: http://www.osc.gov.on.ca/en/NewsEvents_nr_20160606_obsi-independent-evaluators-report.htm

The JRC will continue to monitor compensation refusal cases and settlement amounts following recommendations and consider patterns and issues raised by them.

3. **Continuous monitoring of OBSI quarterly reports:** The JRC continues to monitor OBSI's quarterly reporting which since 2015 provides more granular levels of information as part of its monitoring of complaint trends and patterns. The JRC receives data points on the volume of complaints, the main types of investment issues and products related to complaints, the timeliness of resolution compared to the 180-day timeline standard set by its Board of Directors (80% of case files closed within 180 days) and the outcomes of closed files including amounts recommended by OBSI and the actual amounts paid by firms.
4. **Continuing monitoring of onboarding and exiting members of OBSI:** The JRC continues to coordinate with OBSI in monitoring the onboarding of new members for those firms who are newly registered with securities regulators and those exiting as a "participating firm" when they surrender their registration.

Overview of OBSI Activities

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

1. **OBSI Board of Directors' response to the independent evaluation:** In response to the recommendations included in the Report, the OBSI Board of Directors released a response on December 13, 2016 that states its position with respect to the major recommendation categories: strategic (including binding authority), governance, compensation limits, operational and value-added and public awareness. The Board expressed support for many of the recommendations, including that OBSI be enabled to secure redress for customers, preferably by empowering OBSI to make awards that are binding on the firm. However, they also disagreed with some of the recommendations, including that one of the director positions on the board be reserved for a consumer/investor advocate. The response is available at: <https://www.obsi.ca/en/download/fm/575>.
2. **OBSI's Strategic Plan**
On January 19, 2017, OBSI released its strategic plan, which outlines the key strategic priorities that they will pursue over the next five-years (2017-2021). To achieve its objective of further building its value and reputation as Canada's trusted, independent financial ombudsman, OBSI will be focused on the following four core strategies:

- i. Deliver a high value service and be the dispute resolution provider of choice.
- ii. Build enduring relationships through stakeholder awareness of the value of the OBSI service.
- iii. Drive continuous improvement and organizational resiliency.
- iv. Invest in OBSI's people.

OBSI's Strategic Plan is available at:

<https://www.obsi.ca/fr/download/fm/581/filename/OBSI-Strategy-2017-1489006947-16145.pdf>.

3. OBSI Fee allocation model

OBSI collects membership fees from all participating firms. In 2016, OBSI reviewed and adjusted its fee allocation model to better reflect case volumes and operational resource requirements on an industry sectoral basis. The adjustment also allows for improved flexibility to accommodate for case volume variations between industry sectors each year. The revised model was applied for 2017 fees.

4. New case management system

In 2016, OBSI introduced a new internal case management system which is expected to yield process efficiencies and provide greater scope for data collection and analysis. Every stage of the complaint-handling process is managed within the system, resulting in better accountability and workflow management.

JRC Meeting with OBSI Board of Directors

As required by the MOU, an annual meeting of the JRC with OBSI's Board of Directors was held on September 27, 2016. The meeting included discussions on the Report, operating and governance issues and the effectiveness of OBSI's processes.

OBSI Annual Report

For additional information on OBSI, readers may wish to review OBSI's Annual Report for its fiscal year ending October 31, 2016, available at: <https://www.obsi.ca/en/news-and-publications/annual-report>.

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:

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