

## CSA Staff Notice 31-344

### *OBSI Joint Regulators Committee Annual Report for 2015*

April 7, 2016

#### **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 second 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 2015, CSA designated representatives were from British Columbia, Alberta, Ontario and Québec<sup>1</sup>), 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 report is to provide an overview of the JRC and to highlight the major activities conducted by the JRC in 2015.

#### **Background to Establishment of the JRC**

In December 2013, OBSI announced changes to its terms of reference<sup>2</sup> 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, outside of Québec, to use OBSI as the common service provider for dispute resolution services. In Québec, the Autorité des marchés financiers (AMF) provides a mediation service 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 mediation service.

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<sup>1</sup> The Autorité des marchés financiers became a member of the JRC as of December 1, 2015.

<sup>2</sup> See: <https://www.obsi.ca/download/fm/318> (English version) or <https://www.obsi.ca/download/fm/319> (French version).

After August 1, 2014 all registered dealers and registered advisers, outside of Québec, including portfolio managers, exempt market dealers and scholarship plan dealers, had to make OBSI available to their clients as their dispute resolution provider.

**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 for the CSA members and OBSI to cooperate and communicate constructively.

Effective December 1, 2015, the MOU was amended to add Québec as a signatory, thereby joining all other CSA members. The amended MOU also clarifies certain provisions, including those relating to information sharing and the requirement for independent evaluation of OBSI.<sup>3</sup> 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).

**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.

### **Overview of JRC Activities in 2015**

In 2015, the second year of the establishment of the JRC, four meetings were held: in February,

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<sup>3</sup> To review the MOU, please see: [https://www.osc.gov.on.ca/documents/en/Securities-Category3/mou\\_20151202\\_31-103\\_oversight-obsi.pdf](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-mobilières/0-ententes-vm/2015dec01-mou-csa-obsi-fr.pdf> (French version).

May, August and December. The meetings provided the JRC with an opportunity to be updated by OBSI on specific matters, as contemplated by the MOU.

There was a change in OBSI's CEO in 2015. Douglas Melville, the Ombudsman and CEO of OBSI, left his position at the end of May. The Board of Directors selected Sarah Bradley as the new Ombudsman and CEO, effective September 14, 2015. The Board Chair kept the JRC apprised of the process in place to ensure a smooth transition of executive level positions, and that OBSI's effectiveness was not adversely affected by a delayed transition.

The following matters were considered and advanced by the JRC:

**1. Form of quarterly reporting by OBSI to JRC and Operational Issues:** The JRC and OBSI established an enhanced standardized form of quarterly reporting to contribute to the monitoring of complaint trends and patterns, with more granular levels of information now being provided.

One of the data points reported is the length of time it takes OBSI to conclude complaints. OBSI reported that its process enhancements resulted in meeting the 180-day timeline standard set by its Board of Directors (80% of case files closed within 180 days). In addition, in 2015, the backlog that had built up from an increase in OBSI's caseload, arising from the 2008 market conditions, was cleared. Other data points reported include the amounts recommended by OBSI and the actual amounts paid by firms.

**2. Compensation refusals:** The JRC reviewed the compensation refusals published by OBSI. While OBSI recommendations are not binding, the JRC expects firms to act in good faith when participating in OBSI processes. The JRC will continue to monitor compensation refusal cases and consider patterns and issues they raise.

**3. Systemic issues protocol:** Given the removal of the investigation of systemic issues from the OBSI Terms of Reference, the MOU provides for reporting by the Chair of OBSI's Board of Directors about issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients. 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.

**4. Transitioning of new members to OBSI:** The JRC monitored the completion of the transitioning of new members to OBSI.

**5. Independent evaluation of OBSI:** The MOU requires that an independent review of OBSI's operations and practices on the investment side of OBSI's mandate commence within two years of the Amendments (by May 1, 2016). Following the issuance of a Request for Proposal in October 2015 and an evaluation of the candidates, OBSI's Board of Directors appointed Deborah Battell of Headway Consulting to be their evaluator. The appointment of her team was approved by the CSA in consultation with the JRC.

Consultations with stakeholders in the early part of 2016 will form part of the independent evaluation.

### **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 29, 2015. The meeting included discussions of 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 2015, available at: <https://www.obsi.ca/en/download/fm/502> (English version) or <https://www.obsi.ca/en/download/fm/501> (French version).

### **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](mailto:ContactJRC-CMOR@acvm-csa.ca).

### **Questions**

Please refer your questions to any of the following people:

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