

CSA Staff Notice 31-355

OBSI Joint Regulators Committee Annual Report for 2018

August 15, 2019

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 2018, 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 2018.

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 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. 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 for a securities regulatory oversight of OBSI as well as a framework for the CSA members and OBSI to cooperate and communicate constructively.

¹ 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.

In 2015, the MOU was amended to include the AMF as a signatory,² 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 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 and 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 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 2018

In 2018, the fifth year in which the JRC operated, five regularly scheduled meetings were held in January, April, June, September, and December. The JRC also held a meeting with OBSI's Board of Directors, and engaged with OBSI on an ad hoc basis. These 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. 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 2018, there was one matter relating to fee disclosure reported to the JRC that OBSI determined as raising a systemic issue. In response to OBSI's notification, the applicable regulator reviewed the matter and took appropriate regulatory action. More information on the Protocol for Handling Systemic Issues is available at: <https://bit.ly/2D3xJSy>.
- 2. Continuous monitoring of OBSI quarterly reports, compensation refusals and settling for lower amounts than recommended by OBSI:** The JRC continues to monitor data on investment-related complaints, including compensation refusals and settlements below OBSI's recommendations, through the review of OBSI's quarterly reports. The JRC considers patterns and issues raised by the data. As in 2017, there were no compensation

² The AMF became a member of the JRC as of December 1, 2015.

³ To review the MOU, please see: <https://bit.ly/2DPY3Br> (English version) or <https://bit.ly/2S6LESj> (French version).

refusals in 2018. In addition, the JRC noted that of the closed investment-related cases that ended with monetary compensation, approximately 8% of the cases were settled for amounts less than OBSI's recommendations as compared to 15% of such cases settling for amounts less than OBSI's recommendations in 2017.

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. **Consultation among JRC members and OBSI:** In furtherance of its mandate to facilitate regular communication and consultation among JRC members and OBSI, the JRC considered and provided comments to OBSI on proposed changes to OBSI's key documents, including documents published for stakeholder feedback such as OBSI's terms of reference, which OBSI responded to.
4. **Independent evaluation of OBSI:** As contemplated by the MOU, 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, 2016.⁴ The JRC received and discussed OBSI management's discussion of each recommendation and the status of those recommendations made in the Report that are being implemented by OBSI.

The JRC continued to engage in discussions regarding the recommendation made in the Report that OBSI be enabled to secure redress for customers.

The CSA continues to be committed to supporting a fair, accessible and effective OBSI dispute resolution process. 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 (OBSI) (the Joint Notice)*, the CSA or SROs may make enquiries if a firm shows a pattern of refusing to compensate clients after recommendations by OBSI or settling for lower amounts than recommended by OBSI and may pursue regulatory responses where warranted.

The CSA considered a regulatory framework that would empower OBSI to make awards that are binding on firms. The framework explored would require legislative amendments, changes to OBSI processes, enhanced regulatory oversight of OBSI, and consideration of the need for a review mechanism for OBSI decisions. The CSA has decided to continue to monitor refusals and settlements for less than recommended amounts, as well as the impact of the Joint Notice, before further considering whether to move forward with the work necessary for binding decisions.

⁴ The Report is available at: <https://bit.ly/2G6DpPG>.

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). In 2018, the OBSI Board and management team conducted a review of the 5-year Strategic Plan which will inform OBSI's 2019 business plan and objectives. Additional information on OBSI's Strategic Plan is available at: <https://bit.ly/2BhEffg>.

2. Firm Helpdesk

After a successful launch of the Firm Information Services pilot project in November 2017, OBSI launched Firm Helpdesk as a permanent service for participating firms who would like to discuss the approach, risk rating or methodology OBSI uses to make a recommendation. Additional information is available at: <https://bit.ly/2D4okuf>.

3. OBSI's Terms of Reference

In December 2018, following a public consultation process, OBSI updated its terms of reference.⁵ The terms of reference describe the principal powers and duties of OBSI, the duties of participating firms, the scope of its mandate and the process for receiving, investigating and seeking resolution of financial services customer complaints.

4. Plain language initiative

In 2018, OBSI launched a plain language initiative to make its communications clear and easy to understand. As part of this initiative, OBSI published an updated version of the consent letter together with a "What to Expect" document in plain language to help consumers understand the complaint process in a clear and concise manner. These documents have been made available on the OBSI website at: <https://bit.ly/2DbOg7p>.

5. OBSI's Consumer and Investor Advisory Council (CIAC)

In 2018, OBSI announced the appointment of five new members on the CIAC: Mohinder Singh Bajwa, Harold Geller, Wanda Morris, Harvey Naglie, and Andrew Teasdale. Information on the CIAC is available at: <https://bit.ly/2UzGKKp>.

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 21, 2018. 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, 2018, available at: <https://bit.ly/2U8VgYU>.

⁵ To read the updated terms of reference, please see: <https://bit.ly/2WA3Ouw> (English version) or <https://bit.ly/2S2g0FB> (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.

Questions

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

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