

INVESTOR ADVISORY PANEL

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Re: Ombudsman for Banking Services and Investments (OBSI) Governance Review – Request for Public Comment (the “Consultation”)

The Investor Advisory Panel (Panel) welcomes this opportunity to comment on the OBSI Governance Review - Request for Public Comment (the “Consultation”). The Panel is an initiative of the OSC to ensure investor concerns and voices are represented in the Commission’s policy development and rulemaking process. Our mandate is to solicit and articulate the views of investors on regulatory initiatives that have investor protection implications.

General comments - The importance of board diversity and independence

We are very pleased to see OBSI addressing its organizational governance and seeking to understand how its board can best ensure that it has the opportunity to consider the perspectives of various stakeholders with financial service industry and consumer advocacy expertise in its decision making.

OBSI’s governance structure has been the subject of the Panel’s many recommendations for reforming the investment industry’s external complaint handling system, most recently in [our response](#) to the [Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints](#) which was conducted by Professor Poonam Puri. At that time, the Panel raised concerns about OBSI’s governance where we cautioned that “*A more balanced and appropriate Board dynamic will be achieved only if all the independent directors are required to possess a deep understanding of consumer perspectives and investor protection issues*” and recommended annual training on consumer and investor protection issues for all OBSI directors (including industry nominees) and integration of these characteristics into the skills matrix used by OBSI in its Board selection process.

Our recommendations were reflected in Professor Puri's Independent External Review which acknowledged the importance of board independence in in Section 2.1.3, "Industry Representation" and recommended that OBSI:

- amend its skills matrix to include relevant experience in one of more of the industry sectors
- and amend its by-laws to remove the requirement for three industry directors nominated by IIROC, MFDA, and CBA and instead seek director nominations from industry stakeholders and public advertisements and select industry directors based on skills and experience in the sectors OBSI serves.

The Panel is especially focused on the issue of OBSI's board and industry representation in the context of this report and, as such, we've provided our response to the two related questions below.

Question 1 - Should OBSI's board continue to have designated board positions for current industry participants and/or consumer advocates, or transition to a system without such designated positions?

In reviewing the present consultation on OBSI governance, the Panel again stresses the importance of board independence, and strongly recommends the removal of designated board positions. In a [recent post](#) on his governance-focused blog, York University professor, Richard Leblanc addressed the problematic absence of an objective standard for ensuring directorial independence on Canadian boards - an absence made even more urgent because of the power independent directors have to control management. Chief among his recommendations is a move away from designated board positions and the adoption of other modes of selection such as a "skill-based matrix process" that "involves a board to independently seek out the appropriate members based on relevant and important skills."

Board independence is an important key to good governance, transparency, objectivity, engagement, unbiased decision making (both actual and perceived), and importantly, fiduciary responsibility. Within defined parameters, a board should have control over its composition; therefore, in this context, a board with designated appointees does not have these characteristics by virtue of the process of selection, however well-intentioned the individual appointees may be.

On this front, Professor Puri's recommendations are unmistakable: the time has come to eliminate industry nominated board members. For OBSI, as an independent, pan-Canadian, and non-governmental organization mandated to be impartial in its approach to resolving disputes, it is doubly important for its board to consist of diverse members who are not necessarily representatives of specific industry organizations. At the same time, a foundation of diversity will lead to board members acting independently and being freer to debate the merits of complex governance matters. Additionally, the elimination of designated positions will mitigate the perceived or inherent conflicts that

arise with such designations between the individual's fiduciary duty to the board and their duties/loyalties to their organizations.

We agree that having industry and consumer expertise is incredibly important, especially given the complexity of the financial services industry and the wide range of disputes that OBSI aims to resolve. However, there is a material difference between having the correct expertise at the board level and having views provided by industry designates. Rather, a cross-section of requisite expertise will inherently address the intended purpose of designated individuals. Moreover, research shows the benefits of diversity in decision-making across a range of corporate and investment decision structures, and we believe that OBSI's board should reflect this reality.

In a non-designate model, OBSI's board has ultimate control and accountability over ensuring the directors are relevant and knowledgeable; however it remains unclear what mechanism specifically OBSI will rely on to attract and appoint such individuals.

Question 5 - Beyond designated board representation, how should OBSI ensure that the interests and expertise of industry and consumer stakeholders are incorporated into the organization's decision-making process?

Comparable work has been done in the financial services industry to engage stakeholder groups in ways that are both meaningful and effective. Examples include, but are not limited to, stakeholder outreach programs, roundtables, establishing subcommittees, and advisory panels with targeted expertise. While the Panel is aware that OBSI currently works to engage stakeholders on a number of levels, there are best practices and models that the organization can turn to in order to ensure that industry and consumer expertise are incorporated into its decision-making.

We also urge OBSI to ensure that there is true diversity in the external groups with which the board engages for input, training and perspective. In this context, we mean diversity of education, background, experience, as well as gender, geography, and race. If these factors for consideration are not clearly addressed in OBSI's skills-based matrix reference, then the Panel would like to see this explicitly defined. In other words, diversity extends beyond gender and should include a wide range of voices, including from indigenous groups, to ensure different perspectives are addressed and – as importantly – to create awareness of OBSI and its role to a broader spectrum of external groups than at present.

The Panel suggests that applications for suitable candidates may be sourced from industry and investor organizations and professional associations, in conjunction with recruiting firms specializing in board positions. The use of public avenues then expands the available pool of potential candidates.

We wish to thank you again for the opportunity to comment on this important initiative. We will, of course, be happy to provide any clarification or elaboration on our comments should the need arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ilana Singer', with a stylized, cursive script.

Ilana Singer
Chair, OSC Investor Advisory Panel