

1.1.3 CSA Staff Notice 31-361 – OBSI Joint Regulators Committee Annual Report for 2020

**CSA STAFF NOTICE 31-361
OBSI JOINT REGULATORS COMMITTEE ANNUAL REPORT FOR 2020****August 5, 2021****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 2020, 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 2020.

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 2020

In 2020, four regularly scheduled meetings were held in March, June, September and December. The JRC also held a meeting 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:

1. **Impact of COVID-19:** The JRC worked with OBSI to monitor the impact of the COVID-19 pandemic on complaint volumes. The SROs and OBSI reported a significant increase in complaints earlier in the pandemic. By the second quarter of 2020, the MFDA observed a return to normal (pre-pandemic) level of complaints. By the last quarter of 2020, IIROC observed a return to normal level of complaints, although IIROC's complaints started to rise again at the end of 2020 and in early 2021, particularly with respect to the order execution only dealers, commonly referred to as discount brokers. Please see below under "Overview of OBSI Activities" for more information on OBSI's pandemic response.
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.

In 2020, there were two compensation refusals, resulting from two firms who refused to follow OBSI's recommendations and did not compensate clients for an aggregate of \$83,865. Both firms are no longer registered under securities laws.

According to OBSI statistics for its fiscal years 2018 to 2020, out of 456 cases that ended with monetary compensation, there were 31 cases (approximately 7%) that were settled below OBSI recommendations involving 18 firms. About 58% of these cases involved recommendations over \$50,000 with an average settlement rate at about 62%. Of the 18 firms, nine firms settled below OBSI's recommended amount more than once. Overall, since its fiscal year 2018, clients received approximately \$1.3 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, especially in the midst of the COVID-19 pandemic. Complainants rely on OBSI to help achieve a fair resolution to their complaint through a dispute resolution process that requires both time and patience 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.

The JRC continues 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. Further, such patterns could suggest the possibility that the firm may not have implemented and maintained effective complaint handling procedures. 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 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.

3. **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. In 2020, no Systemic Issues were reported to the JRC by OBSI or by the Chair of the OBSI Board. Please see [OBSI and JRC Protocol for Handling Systemic Issues](#) for further information.
4. **CSA's project to strengthen OBSI:** In 2020, the CSA renewed its focus on strengthening OBSI as an independent dispute resolution service, in order to secure fair, efficient and conclusive redress for investor losses where warranted. The CSA project is currently underway, and the JRC has been receiving quarterly updates on the progress.
5. **Review of firms' websites on complaint handling process:** In 2020, staff of the OSC and the SROs jointly conducted a review of a sample of registered firms' websites to assess whether their complaint escalation processes and timelines for accessing the services of OBSI were presented in a manner consistent with National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and applicable SRO rules. Staff focused primarily on firms that have an internal ombudsman. During the review, staff identified a number of issues, including a failure to clearly set out a client's right to immediately access OBSI if they are not satisfied with the firm's response. Instead, clients were

directed to the firms' internal ombudsmen.⁴ Staff found this practice to be problematic as it may mislead clients to believe that they are required to contact an internal ombudsman before escalating their complaints to OBSI. As well, staff observed that the availability of OBSI services was not given at least equal prominence to the information about the firm's internal ombudsman, which could significantly affect a client's ability to access OBSI services in a timely manner.

Following the review, staff of the OSC and SROs issued a joint letter to the firms and requested that their disclosure relating to the internal ombudsman be revised to ensure compliance with securities laws. The JRC understands that the firms have provided their responses and are taking corrective action. The OSC and SROs will continue to monitor firms' complaint handling practices, specifically on those firms who offer the services of an internal ombudsman, to ensure that the presentation of information is clear, fair and not misleading.

6. **OBSI's 2021 independent evaluation:** The MOU requires that an independent review of OBSI's operations and practices on the investment side of OBSI's mandate commence every five years. Since the last independent evaluation took place in 2016, OBSI has been preparing for a subsequent review that will take place in its fiscal year 2021.

In 2020, OBSI sought the JRC's feedback on the draft request for proposals and terms of reference. Overall, the JRC noted that the documents were substantively similar to the request for proposals and terms of reference used for the 2016 independent evaluation.

7. **Financial Consumer Agency of Canada (FCAC) review of OBSI:** In February 2020, FCAC released its review of bank complaint handling procedures and of the operations of external complaints bodies, which included OBSI. The JRC discussed the findings of this report, including how these findings could apply to OBSI's investment mandate. The JRC also discussed the Financial Consumer Protection Framework, which will require banks to ensure their consumer complaints procedures are satisfactory to the FCAC Commissioner, and how that may also apply to OBSI's investment mandate.
8. **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.

Overview of OBSI's Activities

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

1. **COVID-19 pandemic response:** 2020 was characterized by higher than normal case volumes and the adaptation to work-from-home routines for OBSI's workforce and the key stakeholders. Despite the higher case volumes and new work environments, OBSI reported that its service delivery and productivity exceeded pre-crisis levels. As case volumes are expected to remain elevated, OBSI has developed a number of controls to address the increase in active files and they do not anticipate a backlog at this time.
2. **Appointment of Consumer Interest Director:** In May 2020, the OBSI Board approved changes to OBSI's by-laws to require at least one director to be designated a Consumer Interest Director, who would have a particular interest in, access to, and experience representing the interests of the types of consumers OBSI serves. In September 2020, the OBSI Board announced the appointment of Wanda Morris to the OBSI Board as its first director to be designated a Consumer Interest Director. In accepting this role, Ms. Morris has resigned as Chair of the Consumer and Investor Advisory Council (CIAC).
3. **New Chair of the CIAC:** In October 2020, the Board announced the appointment of Harold Geller as the new Chair of the CIAC. The CIAC provides the OBSI Board with the perspective of consumers and investors, complementing the input OBSI receives from industry stakeholders, community and consumer organizations, and regulatory and government organizations.
4. **Consumer Portal:** In November 2020, OBSI launched a new [Consumer Portal](#) that provides consumers with web-based access to a broad range of features and services.
5. **Report on Income and Canadian Financial Consumer Complaints:** In October 2020, OBSI published its [Report on Income and Canadian Financial Consumer Complaints](#). The Report explored the relevance of household income to OBSI's case data, providing a breakdown of complaints by income group. The report includes case studies and observations by OBSI.

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, 2020. The meeting included discussions on operating and governance issues and the effectiveness of OBSI's processes.

⁴ See [Joint CSA Staff notice 31-351 Complying with requirements regarding the OBSI](#)

OBSI Annual Report

For additional information on OBSI, readers may wish to review [OBSI's Annual Report for its fiscal year ending October 31, 2020](#).

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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