

INVESTOR ADVISORY PANEL

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Sarah Bradley
Ombudsman and CEO
Ombudsman for Banking Services and Investments
401 Bay Street, Suite 1505
P.O. Box 5
Toronto, ON M5H 2Y4

By Email

cc: Jim Emmerton
Chair, Board of Directors
Ombudsman for Banking Services and Investments
401 Bay Street, Suite 1505
P.O. Box 5
Toronto, ON M5H 2Y4

Re: IAP Comments on 2017 OBSI Annual Report

The members of the Investor Advisory Panel (IAP or the Panel) welcome the opportunity to provide our comments on the recently released OBSI Annual Report 2017 (Annual Report) of the Ombudsman for Banking Services and Investments (OBSI). The IAP is an initiative by the Ontario Securities Commission (OSC) to enable investor concerns and voices to be represented in its rule and policy-making process.

In recent years, the IAP has consistently expressed concerns about OBSI and, most particularly, the non-binding nature of its settlement recommendations. Therefore, while we welcome OBSI's ability to achieve a number of its objectives in 2017 and commend the user-friendly, statistically-driven features of the annual report, we offer some recommendations for future reports:

Flag the missing financial institutions

We applaud OBSI's data collection efforts to support a more comprehensive analysis of issues and trends and we look forward to more information about the outcome of this analysis. We suggest that future reports make clear that statistics for the banking sector may be skewed since RBC, TD, and National Bank data are not available and, therefore, are not included in the pertinent statistics.

Include enhanced restitution data

While the statistics included in this annual report are a welcome addition, the Panel recommends that future reports include statistics relating to OBSI's restitution, specifying the amount calculated and recommended, and the actual amounts paid to the client. A comprehensive list showing the amount recommended by OBSI, calculation methodology, amount paid by the dealer, and advisor/dealer name would provide transparency and perspective to the reader. This transparency is important from a public policy perspective, even where individual claimants are bound by non-disclosure agreements.

Notwithstanding the statement in the annual report that "There were no refusals by any participating firm of an OBSI recommendation in 2017", it is our understanding that "low-balling" still occurs. This is an issue that needs to be addressed, as noted in the [June 2016 Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' \(OBSI\) Investment Mandate](#) , which states:

"The real mischief, however, is not that some consumers receive less, but that OBSI's current mandate allows this to happen. It, in effect, tilts the playing field in favour of firms. The fact this is happening in a complex industry that has a significant impact on people's well-being, and in which customer literacy is generally low, is of concern. Moreover, the limitations of OBSI's mandate have created an "operating model that is inherently inefficient -it is overly focused on resolution through negotiated settlements rather than judicious use of determinations."

If low-balling is still occurring, it should be brought to light.

Low levels of satisfaction

In the Consumer Feedback section, OBSI notes that only 20% of the 35% of surveys received from closed cases indicate that individuals were satisfied, or somewhat satisfied, with the outcome of their case. The report also states that 30% of consumers found out about OBSI through their own research.

We are concerned by these poor results. They appear to indicate that the needs of the retail investor are less well understood than the needs of the participating firms and that OBSI is not marketing itself as broadly and effectively as it should. The IAP urges OBSI to address these matters, particularly if they are reaffirmed by the participation consumer surveys currently in progress.

Governance

Regarding governance, the Panel reiterates its recommendation for meaningful retail investor representation on the OBSI Board. The consumer satisfaction statistics appear to indicate underrepresentation of the retail investor interest. The IAP believes that OBSI's current two-year cooling-off period for former industry participants is not long enough to constitute independence for a Board member.

The Annual Report does not identify specific activities and achievements of the Board, nor is it clear on what subjects or governance issues the Consumer and Investor Advisory Council advised or consulted on.

In this context, the Panel reiterates the recommendation it made in its February 18, 2016 submission to the independent evaluator:

“Enhance governance structure – The Panel believes it is time for a complete review of the governance structure at OBSI. There is no retail representation across the organization or in its governance structures – and that must change. OBSI must ensure there is a retail investor perspective brought to all its policymaking and in its governance. In addition, OBSI must have a governance structure that operates transparently and is appropriate for an organization able to make binding decisions.”

Independent Evaluator Recommendations

The Panel is disappointed that the Annual Report does not speak to the reason(s) for not implementing or discussing any of the 19 recommendations from the June 2016 Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments’ (OBSI) Investment Mandate.

We would expect these recommendations to be addressed and discussed as part of OBSI’s ongoing public reporting, especially in its annual report.

Conclusion

The Panel reiterates its strong belief and recommendation that OBSI must have binding power. It is our longstanding view that if regulators fail to give OBSI the powers it needs, it cannot, in turn, give investors what they need and deserve in terms of fair and independent resolution of their complaints. It is taking too long to close this obvious gap. Also, the Panel encourages OBSI to reform its governance structure by incorporating investor representation in a more formal and effective manner than exists at this time.

Sincerely,

“Letty Dewar”

Letty Dewar
Chair, Investor Advisory Panel