

INVESTOR ADVISORY PANEL

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By Email

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Re: IAP Comments on CSA Staff Notice 31-353 - OBSI Joint Regulators Committee Annual Report for 2017

The members of the Investor Advisory Panel (IAP or the Panel) welcome the opportunity to provide our comments on the 2017 Annual Report (the Annual Report) of the Joint Regulators Committee (JRC) 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 this capacity, we have voiced concerns about OBSI on many occasions over the past several years.

Given the importance of a fair and effective dispute resolution service, particularly for smaller investors, the IAP read the JRC's Annual Report from this specific investor perspective. Based on this approach, we have identified several concerns that are highlighted in the remainder of this comment letter.

Compensation and low balling

With its focus on fairness and effectiveness, the Panel is concerned by the JRC's finding that, while 150 of 382 closed investment-related cases in 2017 resulted in monetary compensation, 15% were settled for amounts that were less than OBSI's recommended compensation.

In response, the JRC stated that it 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."*

This is a disappointing response particularly given the findings of the [June 2016 Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments'](#) (OBSI) Investment Mandate (the Independent Evaluation Report). That report identified that OBSI's existing mandate tolerates, if not encourages, a process that often sees consumers receive less than the amount recommended.

As noted in the report:

“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.”*

Given the persistence of industry low-balling, the IAP considers the JRC’s proposed response of continued monitoring to be inadequate. How long must investors, with valid complaints, be denied the fair restitution recommended by OBSI before the JRC is prepared to pursue more substantive remedies?

Firms’ complaint handling and interactions with OBSI

During the year, OBSI sought to promote fairness in registrants’ complaint handling processes and their interactions with OBSI through the “Firm Information Pilot”. This service is meant to help firms fairly and effectively resolve complaints by providing them with information about OBSI’s approach and recommended settlements in previous comparable circumstances.

However, the Annual Report does not describe how this initiative benefited investors - the IAP would have very much appreciated the inclusion of this information in the Annual Report.

The IAP also shares staff’s concerns regarding the way some firms are using an internal “ombudsman” as part of the firm’s complaint handling system. This practice, which makes investor complaint handling more confusing and more time consuming, is neither fair nor efficient and should be prohibited as soon as possible.

The need for binding authority

The report also asserts that: *“The CSA jurisdictions are actively engaged in considering options for strengthening OBSI’s abilities to secure redress for investors, including considering developing recommendations for implementing binding authority.”*

The IAP reiterates its strong belief and recommendation that OBSI must be provided with binding authority. 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, effective and independent resolution of their complaints.

Notwithstanding the difficulties involved, it is taking too long for regulators to implement binding authority for OBSI. The IAP urges the JRC to redouble its efforts to address this obvious gap in OBSI's authority.

Governance

We note that a key recommendation in the Panel's [February 18, 2016 submission](#) to the independent evaluator, not addressed in the JRC's Annual Report, remains outstanding today:

“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.”

Conclusion – The time for monitoring and taking note has passed, the time for meaningful action has arrived

Several serious concerns remain with OBSI including the lack of binding authority, low-balling of restitution amounts calculated by OBSI, and the absence of consumer/retail investor representation in OBSI's governance structure.

The IAP believes that we are well beyond the time for monitoring and taking note. These issues have been identified by a number of observers over a number of years and in the interests of fairness and efficiency it is important that they be addressed now. Complex as some of these issues may be, the process of dealing with them must be started. Continued monitoring by the JRC without substantive action will jeopardize its responsibility to promote investor protection and confidence in the external dispute resolution system.

The IAP also calls for action and transparency and we continue to wonder what happened to the 19 recommendations that were included in the Independent Evaluation Report.

Sincerely,

“Letty Dewar”

Letty Dewar
Chair, Investor Advisory Panel