

# INVESTOR ADVISORY PANEL

October 30, 2019

*By E-mail*

Joint Regulators Committee (JRC)  
of the Ombudsman for Banking Services and Investments (OBSI)  
Contact JRC-CMOR@acvm-csa.ca

## **Re: CSA Staff Notice 31-355 - OBSI Joint Regulators Committee (JRC) Annual Report for 2018**

I am writing on behalf of the Ontario Securities Commission's Investor Advisory Panel (IAP) to comment on the OBSI JRC Annual Report for 2018. The IAP is an initiative by the OSC to enable investor concerns and voices to be represented in its rule development and policymaking process.

We are aware that the release of the JRC Annual Report has precipitated widespread disappointment among investor advocates over lack of progress toward giving OBSI authority to make binding awards. We share their disappointment. In particular, we are concerned about the specific consequences of OBSI's ongoing inability to make binding decisions as well as the inevitable implications of requiring OBSI to fulfil its broad responsibilities with limited authority.

The specific consequences of the CSA's unwillingness to move forward on binding decision making at this time is that some investors will continue to accept low-ball settlements. We acknowledge, based on the data available, that the number of low-ball settlements fell last year; but in our view, each of them represents an investor who was coerced into accepting less compensation than that deemed fair by OBSI. This is not an outcome the CSA should be prepared to countenance, particularly given that the first strategic priority in your 2019 - 2022 Business Plan includes the goal to "improve investor access to redress for losses... by supporting and strengthening OBSI."

We are also concerned about the inevitable implications of the CSA's decision to hold off determining whether OBSI should have binding authority. Put most simply, OBSI's lack of this authority overhangs the dynamic of the entire complaint handling process. It emboldens firms to aggressively challenge complaints and offer settlements for less than what is fair, while at the same time discouraging complainants from turning to an essentially powerless OBSI as an exercise in futility.

The public is left to wonder how much this has artificially suppressed OBSI's caseload numbers; and in our view that question confounds the CSA's analysis of OBSI's situation. Furthermore, by tying the prospect of future reform to an uptick in the number of refusals and low-ball settlements, the CSA is focusing on a very limited number of specific outcomes while ignoring much broader considerations that make the dynamics of complaint handling and complaint resolution tilted and investor-unfriendly in this country at this time.

Failing to move forward on binding authority perpetuates an inherently flawed complaint handling and redress process that requires complainants to traverse a lengthy and emotionally draining process with no assurance of a fair outcome. This does not foster confidence in the fairness of our regulatory system, nor does it square with your commitment to improve access to redress.

We urge you, therefore, to reconsider the CSA's approach or, at the very least, advance by taking the steps necessary to imbue OBSI with binding authority for complaints involving sums up to \$50,000 – an amount not significantly greater than the monetary jurisdiction of many Canadian Small Claims Courts, yet one that would be sufficient to capture the bulk of OBSI's investment-related complaints.<sup>1</sup>

We appreciate the opportunity to comment on the JRC Annual Report and invite you to contact us if you wish to discuss these issues further.

Sincerely,



Neil Gross  
Chair, OSC Investor Advisory Panel

---

<sup>1</sup> For the past 5 years, the average and median compensation amounts recommended by OBSI in investment complaints have ranged as follows: average \$15,552 (2016) to \$26,258 (2015); median \$4,238 (2018) to \$11,836 (2015).