



Ombudsman for Banking Services and Investments

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Disclaimer

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Agenda

Part 1

- Purpose
- Amendments to NI 31-103
- Oversight

Part 2

- Introduction to OBSI

Part 3

- Guidance

Part 1

Purpose

The use of OBSI as the dispute resolution service is to provide investors with:

- access to a free, independent, consistent dispute resolution service,
- uniform handling of investor complaints for all types of advisors , and
- clarity on who investors should contact if complaints are not resolved by the advisor.

Amendments to NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Companion Policy 31-103

- Effective May 1, 2014, with three month transition
- Pertaining to the provision of dispute resolution services
- Outside Québec, a firm must take reasonable steps to ensure that the Ombudsman for Banking Services and Investments (OBSI) will be the dispute resolution services that is made available to a client that has an eligible complaint
- Requirement to inform clients in writing about the firm's obligation and to set out the steps a client must take in order to be able to access OBSI

Québec

- The Autorité des marchés financiers (the AMF) already provides a mediation service to clients residing in Québec
- The Québec regime will remain unchanged and **firms registered in Québec** should continue to inform **clients residing in Québec** of the availability of the AMF mediation services

OBSI Eligible Complaint

- Client has filed their complaint with the firm
- Complaint is within the prescribed period of time
- Complaint relates to trading or advising of the firm or its representative
- Complaint has been raised within 6 years of the date when the client knew or reasonably ought to have known of the act or omission that is a cause of or contributed to the complaint
- Claim does not exceed \$350,000
- Does not apply to a permitted client that is not an individual

Client Disclosure

- Required at three points in time:
 - Account opening;*
 - Time of complaint;
 - Time of decision

for existing clients, firms will need to update their Relationship Disclosure Information

Disclosure-at account opening

Firms must provide written disclosure of:

- the firm's obligations if a client has a complaint
- the steps the client must take in order for OBSI to be made available at the firm's expense
- Disclosure can be included in:
 - a single document (together with other required relationship disclosure information) or
 - in a separate document
- Avoid the use of technical terms and acronyms when communicating with clients

Disclosure-time of complaint

- Firms must provide the client with a written acknowledgement of the complaint, typically within 5 business days
- Must include:
 - information about the firm's complaint process, including timelines for responding to client complaints;
 - when and how to take their complaint to OBSI; and
 - contact information for OBSI
- May include:
 - Request for additional information
 - Decision if available

Disclosure-time of Decision

- Firms are expected to provide a decision within 90 days of receipt of the complaint
 - If rejecting a complaint or making an offer, the firm **must** provide the client with written notice of:
 - the decision, and
 - information about OBSI, including:
 - o timelines applicable for using OBSI
 - o monetary limits associated with OBSI, and
 - o contact information for those services
 - As a **best practice**, a firm should also include:
 - a summary of the complaint
 - reasons for the firm's decision
-

If Decision is Delayed

- If firm cannot provide a decision within 90 days, they should:
 - Inform the client of the delay,
 - Explain why the decision is delayed, and
 - Give a new date for your decision.
 - Remind the client that they have the option to access services of OBSI after 90 days

Note:

- Whether a decision is delivered or not, the client has the option to access OBSI after 90 days

Disclosure

Best Practice:

- Include the disclosure in the body of the firm's acknowledgment and decision letters, or
- Reference in the letters that it is being included

Why?

- Provides evidence that you fulfilled your obligation for client disclosure, and
 - May protect the firm in the event a client later claims they did not receive information about OBSI – particularly the 180 day timeline for accessing OBSI
-

Other Options for Clients

- Where a client declines OBSI services, there is no obligation to offer an alternative at the firm's expense;
- Client may decide to use other dispute resolution services, at their own expense;
- Clients always have the right to go to a lawyer or seek other ways of resolving their dispute at any time

Updating Relationship Disclosure Information (RDI)

- Firms are required to take reasonable steps to notify clients, in a timely manner, of significant changes in respect of the RDI
- The requirement to offer OBSI is considered a significant change therefore firms are expected to notify clients
 - Send the update separately
 - Send the update with an upcoming client communication
 - Before conducting the next transaction

Memorandum of Understanding with the CSA

In conjunction with the amendments to NI 31-103 OBSI has signed a Memorandum of Understanding (MOU) with the CSA that provides for:

- oversight of OBSI by securities regulators
- a framework for cooperation and communication

Joint Regulatory Committee (JRC)

Meets regularly with OBSI to discuss:

- governance and operational matters
- significant issues that could impact the effectiveness of the dispute-resolution system

CSA's designates:

- Alberta,
- British Columbia,
- and Ontario Securities Commissions

SROs:

- IIROC, and
 - MFDA
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Part 2

Introduction to OBSI

Introduction to OBSI

Presentation to OSC Registrant Outreach Session

Doug Melville
Ombudsman and Chief Executive Officer
October 2014

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ACCOMPANYING ORAL COMMENTARY**



OMBUDSMAN

for Banking Services | des Services Bancaires
and Investments | et d'Investissement

Introduction to OBSI

Who We Are

- OBSI is Canada's independent dispute-resolution service for banking services and investment clients with a complaint they can't resolve with their firm.
- An alternative to the legal system.
- Started in 1996 covering major chartered banks.
- Became the Ombudsman for Banking Services and Investments in 2002 when the financial industry expanded our mandate to include all members of the:
 - Investment Dealers Association (IDA), now IIROC
 - Mutual Fund Dealers Association (MFDA)
 - Investment Funds Institute of Canada (IFIC)



Introduction to OBSI

Who We Are

- Overseen by a Board of Directors with both community and industry representation.
- Industry is represented by Directors appointed from lists of nominees provided by IIROC, the MFDA, and the banking sector.



Process Review

Process Review

Overview

- Consumers and investors bring their complaint to us.
- When we receive a complaint, our assessment team looks at the file to make sure it falls within our mandate.
- We also look for a final written answer from the firm to the complainant, which allows us to start our review knowing the positions of both parties.



Process Review

Overview

- OBSI will look at disputes where the complainant is either unsatisfied with their firm's final response, or at least 90 days have passed since they first complained to their firm and the complaint remains unresolved.
- The individual must raise the complaint with their firm within six years of when they knew or should have known of the problem (OBSI will determine this).
- Then we conduct our investigation.



Process Review

Overview

- If we think the complaint has merit, we first try to facilitate a fair settlement between the firm and complainant.
- Aim of the facilitated settlement process is to address the complaint quickly with a fair outcome to both parties.



Process Review

Overview

- If a facilitated settlement is not possible, we then proceed to draft an Investigation Report that sets out conclusions and recommendation for compensation.
- We will send a draft investigation report to the firm and to the complainant for a brief comment period. Following the comment period, we will send both parties a final report that sets out our recommendation.



Process Review

Overview

- While our recommendations are not binding on either party, we have an excellent rate of acceptance: over 99% of complaints brought to our office since we were created have been successfully resolved.
- If a firm does not accept our recommendation, we are obligated under Section 27 of our Terms of Reference to publicize their refusal.



Process Review

Overview

- Approximately 40% of investment complaints end in a compensation recommendation. This number has remained fairly steady over the years. The flip side of this is that in a majority of cases we do not recommend the investor be compensated.
- While most recommendations are accepted, we have seen a number of cases over the past two years where the firms are refusing to pay our recommended compensation.



Process Review

Timelines

- OBSI's standard is to resolve 80% of investment cases within 180 days.
- In the past, this timeline was not met due to a variety of factors, but it is being met now.
- To meet this standard, there are set timelines for both firms and complainants at various stages of our process. We require cooperation from all the parties in order to meet our timeliness objectives.



Suitability Complaints

Suitability Complaints

Context

- In the majority of investment complaints we receive each year about advice-based accounts, investors complain that they received poor advice, their investments or investment strategies were unsuitable and/or that their investments did not perform as they expected.
- In such “suitability” complaints, investors ask to be compensated for the investment losses they incurred



Suitability Complaints

OBSI Process

- OBSI has a well-established process for investigating suitability cases and determining compensation.
- This approach has been the subject of several rounds of public consultation and modification based on stakeholder feedback.



Suitability Complaints

Step 1: KYC Determination

- Document review
- Interviews
- Other evidence



Suitability Complaints

Step 2: Suitability Analysis

- Determine investment characteristics and risks
- Disclosure doesn't validate an unsuitable recommendation

Suitability Complaints

Step 3: Determining Financial Harm and Compensation

- Calculate investment performance
- May compare against a benchmark, add interest, or recommend straight losses
- Consider investor responsibility
- Apportion financial harm

Memorandum of Understanding (MOU) with the CSA

MOU with the CSA

Framework

- The MOU replaces the previous oversight framework contemplated in the Joint Forum of Financial Market Regulators' *The Financial Services OmbudsNetwork – A Framework for Collaboration*, which was adopted and endorsed by the CSA in August 2007.
- Establishes standards for OBSI set by the CSA.
- Does not displace or reduce the duties and responsibilities of OBSI's Board of Directors in overseeing OBSI.
- The banking side of OBSI's mandate remains subject to the *Bank Act* regulations, overseen by the Financial Consumer Agency of Canada (FCAC).



MOU with the CSA

Regulatory Oversight

- The Alberta, BC, and Ontario Securities Commissions will act as the CSA's designates under the MOU.
- Joint Regulators Committee (JRC) was being established which includes representatives of the CSA Designates, IIROC and the MFDA.
- The JRC provides a oversight of OBSI's performance of our mandate as well as a forum for OBSI to address and resolve many of the issues that arise in our work.



MOU with the CSA

Governance

“OBSI’s governance structure should provide for fair and meaningful representation on its Board of Directors and board committees of different stakeholders, promote accountability of the Ombudsman, and allow OBSI to manage conflicts of interest.”



MOU with the CSA

Independence and Standard of Fairness

“OBSI should provide impartial and objective dispute resolution services that are independent from the investment industry, and that are based on a standard that is fair to both Registered Firms and investors in the circumstances of each individual complaint.

When determining what is fair, OBSI should take into account general principles of good financial services and business practice, and any relevant laws, regulatory policies, guidance, professional standards and codes of practice or conduct.”



MOU with the CSA

Processes to perform functions on a timely and fair basis

“OBSI should maintain its ability to perform its dispute resolution on a timely basis and deal with complaints without undue delay and should establish processes that are demonstrably fair to both parties.”



MOU with the CSA

Fees and Costs

“OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership.”

MOU with the CSA

Resources

“OBSI should have the appropriate resources to carry out its functions and to deal with each complaint thoroughly and competently.”

MOU with the CSA

Accessibility

“OBSI should promote knowledge of its services, ensure that investors have convenient, well identified means of access to its services, and provide its services at no cost to investors who have complaints.”



MOU with the CSA

Systems and Controls

“OBSI should have effective and adequate internal controls to ensure the confidentiality, integrity and competence of its investigative and dispute resolution processes.”



MOU with the CSA

Core Methodologies

“OBSI should have appropriate and transparent processes for developing its core methodologies for dispute resolution.”



MOU with the CSA

Information Sharing

“OBSI should share information and cooperate with the Participating CSA Members through the CSA Designates in order to facilitate effective oversight under this MOU.”



MOU with the CSA

Information Sharing

- OBSI must inform the CSA of issues that appear likely to have significant regulatory implications, *including issues that appear to affect multiple clients of one or more firms* [emphasis added]
- The Board of Directors will make itself available to meet with the CSA Designates and the Joint Regulators Committee at least once a year.
- The Ombudsman will also meet with the CSA Designates and the JRC, as appropriate, to discuss significant issues that could materially impact OBSI's operations or the effectiveness of the dispute resolution system for investors.



MOU with the CSA

Transparency

“OBSI should undertake public consultations in respect of material changes to its operations or services, including material changes to its Terms of Reference or By-Laws.”



MOU with the CSA

Independent Reviews

- Within two years of NI 31-103 coming into force, OBSI must undergo an independent review of the investment side of our mandate.
- Reviews will occur at least once every five years after that.
- Last review was completed in 2011.
- Reviews of the banking side of the mandate will be required every five years.



Taking on the mandate

Taking on the mandate

Ramp up

- OBSI has had several years to prepare for the expanded mandate under NI 31-103.
- We have already begun receiving complaints about EMDs and PMs that joined earlier than the regulatory deadline.
- For firms that joined effective August 1, OBSI will be able to look at escalated complaints beginning November 1 (unless complainants receive a final response from the firm sooner).



Taking on the mandate

Organizational experience

- Investigating complaints involving exempt market products, having seen them regularly in our IIROC and MFDA member cases over the years.
- Managed accounts as many IIROC dealers have them.
- PM complaints, mainly about PMs that are part of the banking groups.



Taking on the mandate

Staff experience

- Several investigators and managers come from provincial securities commissions where they dealt with the exempt market.
- Some have industry experience with the exempt market.
- OBSI is currently hiring additional Senior Investigators with an emphasis on exempt market experience <https://www.obsi.ca/en/careers> .



Taking on the mandate

Training

- Many OBSI investment team staff have completed exempt market courses, with the rest of the team expected to complete the courses by spring 2015.
- Ongoing training and guidance, regular Lunch and Learns, semi-annual group training at staff meetings, and external courses as appropriate.



Taking on the mandate

Stakeholder outreach

- OBSI's Board has held separate working dinners with staff and Board members of PMAC and PCMA.
- Management has and will continue to engage regularly with industry associations on the onboarding process and other issues.



Taking on the mandate

Key areas of focus

- For EMD complaints, OBSI's Board and management are discussing with regulators and the industry specific areas as they relate to OBSI's dispute-resolution process, including:
 - the accredited investor prospectus exemption
 - exempt market product risk assessments
 - loss calculations
 - dealing with uncrystallized losses



Taking on the mandate

Governance and operations

- OBSI will also be reviewing its governance structure after two years to determine how best to incorporate EMD, PM and SPD views on the Board.
- This will likely involve one of two options:
 - maintaining the current Board size but not having the industry seats assigned to any one sector (currently IIROC, MFDA, and banks).
 - increasing the number of industry seats to accommodate the new member categories while also increasing the number of independent directors to ensure OBSI's independence from industry



Ombudsman for Banking Services and Investments (OBSI)

www.obsi.ca

1-888-451-4519

or

ombudsman@obsi.ca

Part 3

Guidance

Guidance

CSA developed guidance to publish in conjunction with the new requirements that:

- summarized the requirements
- provided some best practices
- provided a sample disclosure developed to fulfill obligations

Note: CSA Staff Notice 31-338 – *Guidance on Dispute Resolution Services- Client Disclosure for Registered Dealers and Advisers that are not members of a Self-Regulatory Organization*

KYC/KYP and suitability obligations

- KYC/KYP and suitability obligations are fundamental obligations owed by a registrant
- Failure to comply with these obligations is a serious matter

Tips

- Engage in meaningful KYC discussion with each client
- Consider a client's willingness and ability to accept risk when assessing their risk tolerance
- Conduct a meaningful suitability assessment
- Document, document and document

How to comply

Firms are expected to:

- attain, and maintain, membership in OBSI as a “Participating Firm”
- deal fairly, honestly and in good faith with its clients
- Cooperate with the investigation process

Questions?

