

1.1.3 CSA Staff Notice 31-359 – OBSI Joint Regulators Committee Annual Report for 2019

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OBSI Joint Regulators Committee Annual Report for 2019

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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 2019, 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 2019.

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 In particular, the amendments: (1) clarify that the restriction on sharing of information in the MOU does not apply to information sharing relating to 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**) and that OBSI will share information about individual complaints when it relates to Systemic Issues; and (2) require an independent evaluation of OBSI's operations and practices to commence within two years of the Amendments coming into force (that is, commencement by May 1, 2016) and every five years thereafter.

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

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 To review the MOU, please see: <https://bit.ly/2DPY3Br> (English version) or <https://bit.ly/2Opq9YY> (French version).

- facilitate regular communication and consultation among JRC members and OBSI.

Overview of JRC Activities in 2019

In 2019, four regularly scheduled meetings were held in April, June, September and December. The JRC also held a meeting with OBSI's Board of Directors, 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. **Systemic issues protocol:** Under the MOU, the Chair of OBSI is to inform the CSA Designates of any 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 2019, no Systemic Issues were reported to the JRC by OBSI. Information on the OBSI and JRC Protocol for Handling Systemic Issues is available at: <https://bit.ly/2D3xJSy>.
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. As in 2018, there were no compensation refusals in 2019. According to OBSI statistics for the fiscal years of 2018 and 2019, out of 316 cases that ended with monetary compensation, there were 23 cases (approximately 7%) that were settled below OBSI recommendations involving 15 firms. About 70% of these cases involved recommendations over \$50,000 with an average settlement rate at about 62%. Of the 15 firms, four firms settled below OBSI's recommended amount more than once. Overall, in 2018 and 2019, clients received approximately \$1.04 million less than what OBSI recommended. This is an area of concern for the JRC.

The JRC 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. 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. CSA jurisdictions or SROs may pursue regulatory responses where warranted.

3. **Information on complaint handling:** For consistency of complaint handling information across various CSA member websites, the JRC is considering a review of the information currently available on each member's website.

The JRC also discussed IIROC's plan to conduct research with complainants⁴ outlined in its Strategic Plan.

4. **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.
5. **Amendments to MFDA By-law No. 1, Section 24.A (Ombudservice) and IIROC Rule 9500 Alternative Dispute Resolution:** In 2019, the MFDA published for comment and received approval of the proposed amendments to MFDA By-law No. 1, Section 24.A (Ombudservice)⁵ and IIROC published for comment proposed amendments to IIROC Rule 9500 Alternative Dispute Resolution⁶. The purpose of these proposed amendments is to remove inconsistencies between their respective rules and OBSI's Terms of Reference in relation to information sharing by OBSI.

Overview of OBSI Activities

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

1. **OBSI Video:** In 2019, OBSI released a video as part of their awareness campaign, and as a tool to inform customers and firms about OBSI's services. This video is available on OBSI's website at: <https://bit.ly/36SJtnT>.
2. **OBSI Seniors Report:** On July 18, 2019, OBSI published its first Seniors Report documenting the experiences of seniors using OBSI's services. The report shows that 38% of OBSI complainants were over the age of 60 and over half of these senior complainants report having household incomes below \$60,000. The report also includes types of complaints

⁴ IIROC Notice 19-0099, *IIROC's Three-Year Strategic Plan and Priorities for Fiscal 2020* (2019), <https://bit.ly/2UIGSAP>.

⁵ MFDA Bulletin #0800-P, *Approval of Proposed Amendment to MFDA By-Law No. 1, Subsection 24.A (Ombudservice)* (2019), <https://bit.ly/2GVg3uY>.

⁶ IIROC Notice 19-0181, *Proposed Amendments Respecting Disclosure of Information by Ombudsman Service to IIROC* (2019), <https://bit.ly/36QrGOk>.

received from seniors, case studies, observations and possible solutions to reduce challenges faced by seniors. A copy of the report is available at: <https://bit.ly/3bccq1J>.

3. **Firm Portal:** On September 26, 2019, OBSI announced the launch of a new Firm Portal that would provide OBSI's participating firms with web-based access to a broad range of features and services. Additional information about the features and services is available at: <https://bit.ly/3985Lnj>.
4. **Knowledge Management System:** In 2019, OBSI launched an internal knowledge management system for staff to share information and access key resources. Developing a business case for a knowledge management system was one of the recommendations in the 2016 report *Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate*.
5. **OBSI's Loss Calculation Methodology Presentations:** As part of OBSI's broader outreach initiative, OBSI presented to several JRC members and their staff on OBSI's loss calculation methodology, which provided a good opportunity for JRC members and their staff to gain a better understanding about OBSI's loss calculation methodology and have a dialogue with OBSI.

JRC Meeting with OBSI's Board of Directors

As required by the MOU, an annual meeting of the JRC with OBSI's Board of Directors was held on December 5, 2019. The meeting included discussions on operating and governance issues and the effectiveness of OBSI's processes.

OBSI Annual Report

For additional information on OBSI, readers may wish to review OBSI's Annual Report for its fiscal year ending October 31, 2019, available at: <https://bit.ly/2Uho3gf>.

Comments

We appreciate the feedback received on previous years' 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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