

OBSI Response to External Review Recommendations

October 26, 2022

Introduction

In recent months, OBSI [published](#) the results of our 2021 independent external reviews, which commended OBSI for its success over the five-year period under review, acknowledged OBSI's strong improvements since the [previous external review](#) in 2016, and found our organization to be effective, fair and professional.

When the reports were published, our board [thanked](#) Professor Puri for her excellent work and committed to considering the reports' recommendations for further improvement carefully and engaging with our stakeholders to ensure that we make any changes needed to continue to fulfill our public interest mandate.

In this document, we outline our responses to the reports' key findings and recommendations.

Background

OBSI's Terms of Reference require OBSI to submit to knowledgeable, independent third-party evaluations of its operations conducted according to timelines set out by banking and securities regulators. Since 2014, OBSI's banking and investment mandates have been overseen by separate regulators with distinct independent review requirements.

Canada's Bank Act requires each approved External Complaints Body (ECB) to submit every five years to an evaluation of the discharge of its functions and performance of its activities as an external complaints body that is conducted by a third party in accordance with the terms of reference established in consultation with the Commissioner of the FCAC.

Pursuant to its [2014 Memorandum of Understanding with the Canadian Securities Administrators](#), OBSI is required to submit itself to an independent evaluation of its operations and practices for investment-related complaints every five years.

In October 2021, following a public request for proposals, OBSI's board appointed Professor Poonam Puri, one of Canada's leading experts in corporate governance, corporate law and securities law, to conduct independent evaluations of OBSI's banking and securities mandates. The evaluations began in November 2021. The [2021 Independent Evaluation of the OBSI Investments Mandate](#) (the 2021 Investments Review) was published on the OBSI website and through a press release on June 13, 2022, and the [2021 Independent Evaluation of the OBSI Banking Mandate](#) (the 2021 Banking Review) was published in the same manner on September 1, 2022.

The purpose of these independent reviews is to determine whether OBSI is fulfilling its regulatory obligations and operating effectively in accordance with recognized best practices for financial services ombudsmen.

The 2021 Investments Review was OBSI's second review of its securities mandate. OBSI previously participated in the [2016 Independent Review of the OBSI Securities Mandate](#) (the 2016 Review).

The 2021 Banking Review was OBSI's first independent review of its banking mandate since being designated as an ECB in 2015. Previous independent reviews of OBSI's combined banking and securities mandate were undertaken in [2007](#) and [2011](#).

Response to 2021 Independent Review

Overall, the reviews make many important favourable observations and conclusions about the quality of OBSI's services and operational practices.

The 2021 Banking Review concluded that OBSI had met and exceeded its obligations under the Bank Act Complaints Regulations and the requirements under the Commissioner's Guidance-13. The 2021 Investments Review concluded that OBSI had met and exceeded its obligations under the Memorandum of Understanding (MOU) with the CSA. Both reviews also found that:

- OBSI has dealt with complaints in a timely manner;
- Investigators were able to identify key issues in a complaint and requested additional documents where necessary;
- Investigators were skilled at conducting interviews and assessing credibility;
- Investigators kept the parties apprised of progress in the investigation, were candid with the parties about the merits of the case, and explained their views well and as early as possible;
- Decision reasons were fair, proportionate, and were explained in plain language; and
- Case conclusions flowed from the evidence.

Additionally, the reviews set out numerous recommendations that are well-founded and actionable that can serve as a catalyst for some important changes and modernizations at OBSI. We observe that the scope of most recommendations is somewhat narrower than in past reviews, which may be reflective of OBSI's overall improvement since the 2016 Review and organizational maturity. OBSI has undertaken a substantial program of structural and operational improvement in recent years, which has been recognized by the reviewers, and the recommendations in the reviews focus primarily on mandate enhancements from regulatory authorities and specific operational and governance improvements.

The 2021 Banking Review report makes 25 recommendations, and the 2021 Investments Review makes 22 recommendations, some with sub-recommendations, in four general categories. There is considerable congruence between the recommendations in each review. Below, we set out OBSI's position in respect of the major recommendations in each category.

Governance Recommendations

Both reviews recommend that OBSI's board should undertake a strategic review of its governance structure to determine how best to ensure that key stakeholder interests are most effectively considered in board oversight and decision-making. The reviews recommend enhancements to the board's diversity commitment, as well as structural changes to board composition to eliminate categorical requirements regarding the number of industry and community directors and consider alternative mechanisms for stakeholder engagement.

We agree with much of the fundamental reasoning behind these recommendations and believe that our board deliberations on these important issues would benefit from consultation with key stakeholders. To ensure that all stakeholder perspectives are considered, we will be conducting a public consultation on OBSI's organizational governance to explore the questions of board composition, nominations and stakeholder engagement raised by the review recommendations. We expect to launch this consultation in late October 2022.

Strategic Recommendations

Another fundamental recommendation of the external reviewer was that OBSI should be empowered to make awards that are binding on the firm and on the consumer, if accepted by the consumer.

The report stated that OBSI's inability to universally secure redress for consumers through the name and shame system continues to limit its effectiveness, because it provides an economic incentive for both parties to settle for amounts below the OBSI recommendation. The reviewers observed that binding authority is more consistent with international best practices and would bring more legitimacy to the system.

OBSI supports this recommendation, which is consistent with the recommendations of previous external reviews and with our organization's public position for many years. However, we do not have the power to unilaterally determine this issue.

In recent years, Canada's securities regulators have publicly committed to moving forward with appropriate legal and regulatory changes necessary for OBSI decisions to be binding on participating firms and OBSI has engaged closely with regulators to advance this initiative. We intend to continue this work with a view to developing regulatory and procedural solutions that meets the needs of consumers, regulators and participating firms.

We also agree with the review's recommendations regarding increasing our organizational transparency through increased publication of aggregate case outcome data.

With respect to Canada's ECB system, the reviewers said that they shared the concerns identified in the FCAC's 2020 report on the multiple-ECB model, which observed that competition among ECBs was not consistent with international standards, introduced inefficiencies and complexity for consumers and negatively affected consumers' perceptions of the fairness and impartiality of the system. Although the reviewers provided their perspective on the issue, they did not include a recommendation on establishing a single ombudsman for banking complaints as they said it was outside the mandate of their review and the subject of current government action pursuant to the most recent federal budget.

OBSI remains strongly supportive of the government's commitment to establish a single not-for-profit ECB for the banking sector, because such a system meets international best practices, supports a strong, effective and trusted federal banking system and is in the best interests of Canadian bank consumers.

Operational Recommendations

We generally agree with the reviewer's recommendations regarding enhanced transparency regarding our experience and our methodologies. We look forward to implementing these greater transparency measures in the months and years to come.

We also agree with a number of the reviewer's recommendations regarding improvements to our operational and case management practices. We will be implementing programs and pilot projects in the coming months intended to explore the use of videoconferencing for consumer and firm interviews, establishing specific recommendation tiers for non-financial harm recommendations, and adjusting our internal complaint tracking and timeliness standards where feasible.

The reviewer also recommended that OBSI should work with banking and securities regulators to review and improve our systemic issue reporting system, expanding the definition of systemic issue to include circumstances that are apparent from a single complaint and ensuring more robust communication on issues of a systemic nature. We also support the recommendations relating to greater transparency in relation to our systemic issue reporting.

The reviews recommend additional training for OBSI staff on serving seniors and on specific investment products. We are supportive of these recommendations, which complement our current programs of continuous education for our investigative teams.

We also agree with the recommendation in the 2021 Investments Review that we should conduct a public consultation on our loss calculation methodology for exempt market product cases. Our [last consultation on our loss calculation methodologies](#) took place in 2011-2012. We intend to undertake an updated loss calculation methodology consultation in 2023.

The reviews have also recommended that we make changes to the information in our consent letters, What to Expect document and closing letters relating to limitation periods. We do not agree with this recommendation. In our experience, the limitations disclosures in our closing letters are appropriate and contain sufficient information for consumers without straying into legal advice, and to include information about every province will add undue complexity and length to the closing letters. We also note that no consumer has ever voiced dissatisfaction to us about this content.

The reviews recommended that we increase our current compensation limit of \$350,000 per complaint to \$500,000. We are supportive of this recommendation, though we observe that our current compensation limit allows us to assist the overwhelming majority of consumers who approach us with a complaint. Implementation of higher compensation limits will require regulatory support and we will work with regulators towards this goal.

Value-added and Awareness Recommendations

The reviewer made a number of suggestions relating to measures OBSI should take to increase the transfer of information to consumers, among staff, and between staff and participating firms. We generally agree with these recommendations and many of them are reflected in our [2022-2026 Strategic Plan](#).

We will be acting on recommendations from the external review regarding improvements to our reconsiderations closing letters, participation in public consultations and engagement in thought leadership more broadly.