

**CSA Staff Notice 31-364*****OBSI Joint Regulators Committee Annual Report for 2022***

**October 12, 2023**

**Introduction**

This notice is being published jointly by the Canadian Securities Administrators (**CSA**) and the Canadian Investment Regulatory Organization (**CIRO**) 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 and CIRO. In 2022, CSA designated representatives were from British Columbia, Alberta, Ontario and Québec. In 2022, the JRC also included representatives from the two self-regulatory organizations (**SROs**) that amalgamated on January 1, 2023, and are predecessors to CIRO, the Investment Industry Regulatory Organization of Canada (**IIROC**) and the Mutual Fund Dealers Association of Canada (**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 2022.

**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.<sup>1</sup> 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, with it joining all other CSA members.<sup>2</sup> The amended MOU also clarifies certain provisions, including those relating to information sharing and the requirement for an independent evaluation of OBSI.<sup>3</sup>

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

### **Overview of JRC Activities in 2022**

In 2022, four regularly scheduled meetings were held in March, June, September and December. The JRC also held an *ad hoc* meeting in May, met with OBSI's Board of Directors (the **OBSI Board**) in September and engaged with OBSI throughout the year. 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, and include matters on which OBSI provided updates to the JRC throughout 2022:

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<sup>1</sup> 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.

<sup>2</sup> The AMF became a party to the MOU effective as of December 1, 2015.

<sup>3</sup> For a copy of the MOU, please see the [Amended and Restated Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments among the Canadian Securities Administrators and OBSI](#).

- 1. OBSI's 2021 independent evaluation:** The MOU requires that an independent evaluation of OBSI's operations and practices on the investment side of its mandate commence every five years. OBSI delivered the 2021 *Independent Evaluation of the Ombudsman for Banking Services and Investments (OBSI) Investments Mandate (Investments Report)* to the JRC in 2022, and published it on June 13, 2022. As the JRC noted in its 2021 Annual Report, the independent evaluators found that, overall, OBSI met and exceeded its obligations under the MOU. The Investments Report includes 22 recommendations for improvements regarding governance, strategy, operations, additional value and awareness, and includes the recommendation that OBSI be empowered to make awards that are binding.

As noted in the 2021 Annual Report, the JRC met with the independent evaluators in 2022 to discuss the Investments Report. The JRC received regular updates from OBSI staff on the status of the evaluation process and met with the OBSI Board on September 28, 2022, to learn more about OBSI's position on the Investments Report's findings and recommendations.

The JRC receives ongoing updates from OBSI staff regarding OBSI's response to the Investments Report and related action plans. The JRC is collaborating with OBSI and considering stakeholder input on next steps in response to the Investments Report.

- 2. CSA's project to strengthen OBSI:** In 2022, the JRC continued to receive quarterly progress updates about the CSA's continued policy work to strengthen OBSI as an independent dispute resolution service, including its progress toward creating a binding authority framework for OBSI that is fair, efficient, accessible, and more closely aligned with international best practices among OBSI's international financial ombuds service counterparts.
- 3. Continuous monitoring of OBSI quarterly reports, compensation refusals and settling for lower amounts than recommended by OBSI:** The JRC continued to monitor data on investment-related complaints, including compensation refusals and settlements below OBSI's recommendations, through the review of OBSI's quarterly reporting. 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 a firm is participating in OBSI's services in good faith or consistently with the applicable standard of care.

There were no compensation refusals in 2022.

Overall, since OBSI's 2018 fiscal year, clients received approximately \$1.6 million less than what OBSI recommended. Low settlements continue to be an area of concern for the JRC. For OBSI's fiscal years 2018 to 2022, out of 844 cases that ended with monetary compensation, 42 cases (approximately 5%) involving 24 firms settled below OBSI recommendations. In the same five-year period, 10 of the 24 firms settled below OBSI's recommended amount more than once. Subsequent to follow up efforts by CSA jurisdictions and SROs regarding low settlement cases, 2 of these firms made additional payments on 3 cases in 2021 to align compensation amounts with OBSI recommendations.

About 57% of all low settlement cases involved recommendations over \$50,000. On average, low settlement cases settled for 60% of OBSI's recommended amount of compensation. In terms of the dollar amount, where OBSI made a recommendation for compensation of \$50,000 or less, the complainant received an average of \$8,373 less than what OBSI recommended. Where OBSI made a recommendation for compensation above \$50,000, the complainant received an average of \$59,373 less than what OBSI recommended.

The JRC recognizes the impact on complainants when firms refuse to compensate clients consistent with OBSI recommendations or settle for lower amounts than recommended by OBSI. Complainants rely on OBSI to help achieve a fair resolution to their complaint through a dispute resolution process that requires both engagement and resources from the parties involved. When a firm refuses to settle or makes a lower settlement offer, complainants may feel they are unable to pursue the matter further due to the time and cost involved, including to obtain legal representation and initiate a civil action against the firm. Settlement refusals and low settlements erode confidence in the fairness and effectiveness of the dispute resolution process for investors.

The JRC continues to monitor low settlements and supports the ongoing work of the CSA to provide OBSI with the authority to make binding awards.

4. **Systemic issues:** Under the MOU, the Chair of the OBSI Board is to inform the CSA Designates of any 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**). 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. Information sharing about individual complaints relating to Systemic Issues allows for evaluation of whether a systemic issue exists and assessment of its impact

on the applicable registrant, the registrant category and/or investors. Please see [OBSI and JRC Protocol for Handling Systemic Issues](#) for further information.

In 2022, one new Systemic Issue was reported to the JRC by OBSI or by the Chair of the OBSI Board:

- An order execution-only (OEO) dealer received two complaints regarding a system issue impacting Canadian investors purchasing certain US derivatives. The dealer resolved the issue shortly after discovering it. The matter was referred to the relevant SRO, which determined that the issue was limited to the two complainants.

The JRC also continued to receive updates on a previously reported Systemic Issue:

- A portfolio manager was the subject of multiple complaints alleging understating and misrepresenting the risk of a fund and disregarding documented investor risk tolerance in multiple cases. The issue was referred to the relevant CSA jurisdiction which, as a result of the jurisdiction's ongoing review, applied conditions of registration to the portfolio manager in 2022.

- 5. Emerging and ongoing complaint trends:** The JRC worked with OBSI to identify and monitor emerging and ongoing trends in complaint volumes, as well as the nature of complaints received. On a quarterly basis, OBSI provided the JRC with detailed aggregate data relating to products, issues and outcomes, as well as anonymized case outcomes and summaries to assist with the identification of these trends.

In 2022, the JRC observed a rise in complaints regarding restricted dealers pertaining to crypto assets. Most of these cases (85%) were related to fraudulent activities whereby the client was coerced or tricked into granting a third party access to the client's account and crypto assets were transferred to a third-party wallet. To date, OBSI has observed that despite warnings and fraud reduction steps taken by firms, such instances of fraud continue to be common. The JRC continues to monitor this trend and discuss opportunities for risk reduction, including with OBSI.

Within the final quarter of 2022, OBSI staff apprised the JRC of an increase in complaint volumes pertaining to mutual funds and issues of suitability. OBSI staff indicated that increases in complaints appear predominantly related to recent market conditions. For example, CIRO has noted an increase in complaints relating to certain fixed income mutual

funds, some of which have recently experienced losses due to the current interest rate environment. The JRC and OBSI continue to monitor this trend.

In 2022, the JRC observed a reduction in a previously reported complaint trend relating to OEO dealers. Complaints about OEO dealers had previously corresponded with an overall increase in newly opened accounts and trading activities in 2020 and 2021, with top complaint issues relating to margin, transaction errors and service issues relating to the trading platforms. CIRO provided updates to JRC on its efforts relating to this increase in complaints. These complaints decreased significantly over the year.

- 6. Review and consideration of stakeholder feedback:** The JRC receives stakeholder feedback predominantly through its dedicated inbox ([ContactJRC-CMOR@acvm-csa.ca](mailto:ContactJRC-CMOR@acvm-csa.ca)). The JRC regularly discusses the feedback, considers opportunities to enhance the effectiveness of its oversight in accordance with its mandate, and implements changes where appropriate. Where feedback falls outside of the JRC’s mandate and areas of oversight, it is referred to OBSI, the relevant CSA project or committee, or the relevant jurisdiction or to CIRO for consideration.
- 7. Industry communication regarding complaint escalation processes:** Continuing a review started in 2020, the JRC was apprised of websites of registered firms that presented complaint escalation processes in a manner that may be unclear or confusing for investors. Specifically, the websites were unclear that clients do not need to use a registered firm’s internal complaint escalation services prior to approaching OBSI when they are dissatisfied with a firm’s responses to their complaint. Following communication from a CSA member jurisdiction and SROs, all firms contacted revised their websites and other related investor-facing material accordingly.
- 8. IIROC proposed amendments regarding Reporting, Internal Investigation and Client Complaint Requirements:** IIROC provided the JRC with updates on proposed amendments to its Dealer Rules which would codify regulatory expectations around reporting to IIROC and certain complaint-handling best practices observed in dealers and internationally. IIROC received comments from stakeholders and kept the JRC apprised of next steps.
- 9. Consultation regarding the IIROC Arbitration Program:** The JRC reviewed the recommendations IIROC received from an external working group established to explore

improvements to the IIROC Arbitration Program. The JRC provided the working group and IIROC with feedback, noting in particular the complexity of the overall complaint handling landscape, the potential for investor confusion and how potential overlap between claims that can be pursued through either OBSI or IIROC Arbitration could impact consumer decision-making. IIROC published the working group's recommendations for public comment in December 2022, and JRC continues to receive updates. OBSI discussed its concerns with the JRC, including that application of the Arbitration Program to lower value, unrepresented complainants would increase the complexity of the dispute resolution system and investor confusion. On publishing the recommendations, IIROC encouraged commenters to address the Arbitration Program's coexistence with OBSI within the current dispute resolution framework and indicated that consideration is being given to making the Arbitration Program available only for claims that fall outside of OBSI's compensation limit, given the Arbitration Program is designed to be an alternative to litigation with a focus on complex and large claims.

**10. Federal developments relating to external complaint handling in banking:** The JRC discussed key themes and comments emerging from the federal consultation on external complaint handling bodies, and the federal government's proposal to introduce legislative amendments to provide for a single, non-profit external complaints handling body for banking complaints. On June 30, 2022, the federal government introduced a new financial consumer protection framework into the *Bank Act*, intended to strengthen complaint-handling procedures for banking consumers. These amendments, which, among other things, require banks to deal with consumer complaints within 56 days, have resulted in reduced complainant attrition, leading to record high overall banking and investment case volumes for OBSI. OBSI has also kept the JRC apprised of initiatives launched in response to the *Bank Act* changes, including the launch of a banking case disclosure webpage. Additionally, on September 1, 2022, OBSI published the *Independent Evaluation of the Ombudsman for Banking Services and Investments' (OBSI) Banking Mandate (Banking Report)*. The JRC has reviewed the Banking Report for information purposes and continues to monitor ongoing federal developments relating to external complaint handling in banking.

#### **JRC Meeting with OBSI's Board of Directors**

As required by the MOU, an annual meeting of the JRC with the OBSI Board was held on September 28, 2022. In addition to broader discussions on operating and governance issues and the effectiveness of OBSI's processes, discussion focused on the recommendations made in the

Investments Report, particularly relating to systemic issues reporting, OBSI's planned public consultations for 2023, as well as the CSA's work underway to strengthen OBSI's powers to secure redress for investors.

### **OBSI Annual Report**

For additional information on OBSI, readers may wish to review [OBSI's Annual Report for its fiscal year ending October 31, 2022](#).

### **Comments**

We appreciate the feedback received on previous 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](mailto:ContactJRC-CMOR@acvm-csa.ca).

### **Questions**

Please refer your questions regarding this CSA Staff Notice to any of the following CSA staff:

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