



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES



May 22, 2009

Dr. Peggy Anne Brown, Chair
Ombudsman for Banking Services and Investments
P. O. Box 896, Station Adelaide
Toronto, ON
M5C 2K3

Dear Dr. Brown:

Thank you for giving us an opportunity to meet with the OBSI Board at its June 2 meeting to share with the Board our thoughts about issues of accountability, transparency, timeliness and cost-effectiveness, and to discuss with the Board possible approaches. You asked us to provide our views in writing so that our letter could form the agenda for our discussion.

We have previously identified many of these matters in our individual submissions commenting on the proposed changes to the OBSI *Terms of Reference*, but consolidate them here to help focus our meeting discussion. Each topic provides both a description of the concern along with some suggestions as to what outcomes we believe would address our concerns.

General Issues

Enhanced communication and consultations with industry: There appears to be some misunderstanding about the role and responsibilities of the industry directors on the OBSI Board. On the one hand, as directors of OBSI, they have a responsibility to OBSI, as an individual with certain expertise, to give the Board the benefit of their expertise and knowledge. On the other hand, it appears that the Board expects the industry to be aware of information made available to industry directors. This has created a difficult situation where industry directors often feel conflicted, particularly about their ability to share information made available to Board members.

We suggest that OBSI could achieve enhanced communication with industry stakeholders through a two-pronged approach. A representative Industry Advisory Committee could provide staff and committees with preliminary informal feedback at the early development stages for important issues or proposed changes that OBSI is considering. It could also offer an early warning of and opportunity to discuss informally emerging industry issues. This would provide a broader range of views than is possible at the Board level where industry representation is limited to preserve independence. The recommended process would subsequently include broader and more formal consultations with member firms through their industry associations.

Mandate: The role of an ombudsman is to be, and be perceived by the public and its stakeholders to be, an impartial and balanced arbiter of fairness. This means that OBSI should not be perceived as either a consumer advocate or a defender of firms. Its news releases, reports, newsletters and other public messaging should present the facts in a balanced and impartial manner. We are concerned that, perhaps inadvertently, many of OBSI's public messages are increasingly assuming the appearance of a consumer advocate. Generalizations in its newsletter about firms placing lower priorities on complaint resolution in the current economy, annual reports that include testimonials only from consumers, and media articles criticizing member firms tend to jeopardize the perception of

OBSI as a neutral party. To maintain the confidence of the industry, it is important that OBSI make greater efforts to ensure that it is perceived as a neutral party in the resolution of complaints between member firms and their customers.

Strategic Planning, Budgets and Business Plans

OBSI is in a relatively unique position relative to many of its contemporaries in the financial ombudsman world as it was established as a body independent of both government and industry. Given OBSI's lack of direct accountability to either government or the member firms that pay for its operation, we believe that it is important that OBSI do its utmost to make the processes by which it operates as consultative and transparent as possible. Member financial firms should have more information about OBSI's operations and finances and the opportunity to provide input to the Board's decision-making process as it considers its strategic direction, business plans, budgets and funding.

Our experience to date is that, notwithstanding the involvement of industry directors, the member firms that financially support the operation of OBSI have no input to its strategic planning, including the development of business plans and budgets. In fact member firms are not aware of OBSI's budget until the first invoice arrives. Firms cannot operate on the basis of unknown and uncontrolled third-party expenses.

Outcomes that we believe would enhance accountability and transparency for OBSI's strategic planning process and that would improve members' ability to communicate with the Board about issues critical to the industry include the following:

1. Involve associations:
 - a. Proactively provide draft plans (i.e., budget, business and strategic) to the three industry associations with sufficient time for us to solicit our respective members' input and provide feedback – it would be important for such consultations to provide comparative information related to several previous years to give us a frame of reference
 - b. Hold meetings with major stakeholders to walk members through the budget and business plan, answer questions and elaborate as required
 - c. Provide an opportunity for subsequent discussion and negotiation through associations
2. Broad stakeholder consultation:
 - a. Post each year's proposed business plan/budget on OBSI's website with sufficient time and a specific request for broader stakeholder input
3. Transparency re input and decisions:
 - a. Share detailed stakeholder views on the budget and business plan with the OBSI committee responsible for recommending the budget to the Board and/or with the Board as a whole
 - b. Respond to stakeholders' comments (one collective anonymized response would work) outlining the rationale for accepting/rejecting the various stakeholder recommendations
 - c. Provide the final business plan and budget to members and/or their associations in a timely manner following final approval by the Board
 - d. Post final approved business plans and budgets on OBSI's website

General Accountability and Transparency

Beyond the development of the strategic plan and each year's budget and business plan, there are many issues and decisions that come before the OBSI Board that affect member firms. We recognize that there are staffing and individual member issues that are not appropriate for general input or disclosure beyond the Board. Member firms should, however, have reasonable input on policy and procedural issues that affect member firms generally. Examples of issues that should be included are changes to the bylaws or the *Terms of Reference*, policies establishing new ways of implementing OBSI's mandate, changes in investigative processes, reviews of funding formula, amendments to statistical reporting, and plans for implementing the results of third party reviews. Other issues may also be appropriate for consultation.

Currently there is no systematic way for members to be informed about or have input to Board decisions affecting the industry. Similarly, members are not able to attend or receive information related to annual meetings. In the interest of transparency and accountability to member firms, OBSI should make more information available to member firms about Board decisions affecting the industry and about OBSI annual general meetings. Suggested ways of enhancing general accountability and transparency follow:

1. Industry Advisory Committee
 - a. Take issues and problems that need to be solved to the Advisory Committee for suggestions at to viable approaches.
 - b. When preparing working documents for important issues with industry implications, conduct informal consultations with advisory committee members to obtain early input and perhaps alternate suggestions for accomplishing the desired outcomes
2. Board meetings:
 - a. Provide the results of Board decisions on policies and procedures affecting the industry to members/their associations in a timely manner
3. Annual meetings
 - a. Provide annual meeting notices and information on agenda items to all members
 - b. Invite member firms to attend and participate at annual meetings (recognizing that they are not voting members)
 - c. Provide information and reasons for decisions made to all members
4. Periodic reports:
 - a. Include full comparative financial reporting in each annual report and post on OBSI's website (We note that the 2008 fiscal financials were posted on May 1, 2009)
 - b. Report on progress with implementing third party review recommendations
 - c. Report on OBSI's performance against standards for resolving complaints (see below for more detailed discussion)

Complaint-Resolution Performance

Member firms place a high degree of importance on their relationships with their customers and on maintaining a high level of customer satisfaction. Where problems arise in the relationship, it is critically important to have a complaint process that is effective and efficient so that problems are

resolved in the shortest time possible. The recourse to OBSI is an integral part of each firm's complaint-resolution process and, as such, needs to have and perform to standards of operation in keeping with those at member firms. We believe that OBSI should establish – with member firm input – and openly publish its own standards and report on its performance for resolving the complaints that it receives.

These standards should differentiate amongst the various types of queries and complaints that OBSI receives. As we understand it, there are quick calls that are referred or answered immediately, complaints that are resolved with minimal intervention, and complaints that require full investigation. It would be important to establish clear guidelines for categorizing complaints and to assign different time lines for each, given their differing complexity. We are not in favour of combined reporting of resolution times for all complaints since it is the investigations that are most critical to the industry. Combined reporting could provide an artificially high performance report that is not at all reflective of how long it takes to resolve investigations. OBSI may have already established such standards, but the member firms are not aware of them, nor are we aware of any public reporting on how OBSI's performance compares to such standards.

The associations individually have commented on the proposed new format for statistical reporting and expressed our concerns that – if statistical reporting is restricted to such data – the new format will inhibit OBSI's ability to report publicly and clearly on its performance on resolving investigations.

Enhanced accountability and transparency for OBSI's complaint-resolution process might involve the following:

1. Standards for handling complaints: In consultation with member firms,
 - a. Establish guidelines for categorizing queries and complaints with clear definitions set out for readers' better understanding
 - b. Establish time standards for each type of complaint – in addition, perhaps different standards are needed for investment vs. banking complaints
 - c. Make standards publicly available so that interested stakeholders (consumers, government and member firms) are aware of them
2. Reporting on performance:
 - a. Provide aggregated quarterly reporting to member firms and their associations that includes statistics showing OBSI's performance for the quarter in meeting complaint-resolution standards
 - b. Provide separate quarterly reports to individual firms on the progress with resolving the complaints about that firm
 - c. Include performance reporting in the annual report

Transparency of Investigation and Adjudication Process

When investigating a client complaint, our members perform a detailed analysis to efficiently and effectively resolve the complaint in a timely manner, prior to OBSI's involvement. Should the complainant pursue the complaint with OBSI, our members cooperate by sharing the necessary information previously collected in the internal investigation. When the outcome of OBSI's review appears to ignore or be in conflict with the material our members provided, they have difficulty understanding the outcome and applying it to future complaints. Our enquiries about the rationale behind OBSI's conclusions, in light of the facts and information supplied, are often rejected; there

currently appears to be no obligation for OBSI to present any details on the decision taken. Further, there is no opportunity for the firm to challenge these findings. In other cases, we have found that there appears to be inconsistent application of standards when similar situations seem to result in different decisions.

We recommend that OBSI make the adjudication process more transparent to our members by providing firms with additional information on:

1. the rationale for decisions when the consumer's complaint is upheld
2. how the information provided by the firm was taken into account

We welcome the opportunity to elaborate on the above subjects, to answer the Board members' questions and to discuss both our suggestions and any additional ideas that Board members identify.

Yours sincerely,



Nancy Hughes-Anthony
President
Canadian Bankers Association



Ian Russell
President
Investment Industry
Association of Canada



Joanne De Laurentiis
President
Investment Funds Institute
of Canada

cc: D. Melville, Acting Ombudsman