



Canadian Securities Administrators  
Autorités canadiennes en valeurs mobilières

## CSA Staff Notice 31-365 *OBSI Joint Regulators Committee Annual Report for 2023*

July 11, 2024

### 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 2023, CSA designated representatives were from British Columbia, Alberta, Ontario and Québec.

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 2023.

## 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 predecessor organizations to CIRO 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.

<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](#).

## Overview of JRC Activities in 2023

In 2023, 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 December and engaged with OBSI throughout the year. These meetings provided OBSI and JRC with an opportunity to discuss 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 2023:

### 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. The 2021 *Independent Evaluation of the Ombudsman for Banking Services and Investments (OBSI) Investments Mandate (Investments Report)* found that overall, OBSI met and exceeded its obligations under the MOU. In addition to these findings, 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.

In 2023, the JRC continued to receive written and verbal reporting from OBSI staff regarding OBSI's response to the Investments Report, and continues to review and support progress of related action plans.

The JRC met with OBSI following the conclusion of a public consultation regarding OBSI's governance structure prompted by recommendations made in the Investments Report. OBSI discussed the responses received from stakeholders, shared plans to implement changes to its organizational governance, and engaged in constructive dialogue with the JRC regarding those plans. At a subsequent meeting of the OBSI Board, OBSI implemented changes including the introduction of a revised skills matrix for board members, an increase in the number of consumer interest directors from one to three, and removed requirements for industry directors to be nominated by industry associations.

The JRC and OBSI also discussed the definition of 'systemic issues' and the application of the OBSI Systemic Issues Protocol with the CSA. In addition to potential systemic issue reports, JRC and OBSI also had robust discussions pertaining to detailed aggregate data shared by OBSI on a quarterly basis, addressing products, issues and outcomes, as well as emerging trends and potential areas of future risk. For example, as discussed further in item 5, OBSI brought the activities of certain claims management companies to the JRC's attention, resulting in the publication of an Investor Alert.

### 2. CSA's project to strengthen OBSI:

In 2023, the JRC continued to receive quarterly progress updates about the CSA's continued policy work to strengthen OBSI as an independent dispute resolution service. In November 2023, the CSA published for consultation a proposed framework for an independent dispute resolution service whose decisions would be binding.<sup>4</sup> Under the proposed framework, it is anticipated that OBSI would be the designated or recognized independent dispute

<sup>4</sup> [Canadian securities regulators propose binding regime for investment-related disputes](#), November 30, 2023.

resolution service for the investment industry, and would be subject to coordinated oversight by CSA jurisdictions. This coordinated oversight is expected to reflect certain existing oversight regimes such as those in place for self-regulatory organizations (**SROs**), clearing agencies and exchanges.

### **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 2023.

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 2023 out of 1013 cases that ended with monetary compensation, 44 cases (approximately 4%) involving 25 firms settled below OBSI recommendations. In the same five-year period, 11 of the 25 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 about 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 \$8,745 less than what OBSI recommended. Where OBSI made a recommendation for compensation above \$50,000, the complainant received an average of \$58,216 less than what OBSI recommended.

The JRC recognizes the impact on complainants when firms refuse to compensate clients consistent with OBSI's recommendations or settle for lower amounts than recommended by OBSI. As OBSI's recommendations are not binding on a firm, complainants may feel compelled to accept a lower settlement offer or risk receiving nothing. While commencing a civil proceeding to seek full compensation is another option for the complainant, such proceedings can be time-consuming, expensive, and stressful. This dynamic may dissuade some complainants from using OBSI's non-binding process.

Low settlements and settlement refusals may erode retail client confidence in the fairness and effectiveness of OBSI's dispute resolution services, the CSA's approach to independent dispute resolution generally, and may contribute to reluctance to engage with firms or to invest in financial markets using the services of firms if there is no assurance of an effective dispute resolution service.

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 2023, one new potential Systemic Issue was reported to the JRC by OBSI. OBSI identified the potential systemic under-representation of risk in some mutual fund risk ratings in recent years. OBSI reported having observed many funds reducing risk ratings on the basis of the ten-year standard deviation and relatively few increasing or maintaining them by using upward discretion.

Further to OBSI's reporting, a CSA jurisdiction undertook a review of mutual fund risk ratings and found that mutual fund risk ratings have not been systemically under-representing risk in recent years.

OBSI also reported seeing an increasing number of exempt market issuers using standard deviation as the sole approach in risk rating their exempt market funds. However, the CSA jurisdiction noted that the CSA risk classification methodology was not developed with exempt products in mind and exempt market issuers are not required to use the CSA methodology. For exempt market products that use leverage or have access to asset classes that are not permitted under the regulatory framework in place for publicly offered mutual funds, the distribution of returns might involve more tail events<sup>5</sup> and it would not be appropriate to use the CSA methodology to provide risk ratings.

The CSA jurisdiction has shared the findings from the review with CSA counterparts and has also met with OBSI staff. The CSA jurisdiction continues to discuss next steps and share regular updates with the JRC.

The JRC also continued to receive updates on two previously reported Systemic Issues:

- 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. In 2023, the CSA jurisdiction advised that the firm resolved the compliance issues and no longer had any terms and conditions on its registration.
- An order execution-only dealer received two complaints regarding a system issue impacting Canadian investors purchasing certain U.S. derivatives. The dealer resolved the issue shortly after discovering it. The matter was referred to the SRO, which determined that the issue was limited to the two complainants. The dealer has a business conduct compliance examination scheduled and CIRO will keep the JRC apprised of relevant findings.

<sup>5</sup> Tail events refer to the occurrence of extreme events that deviate significantly from the expected outcomes in financial markets.

## 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 2023, OBSI experienced a significant increase in overall complaint volumes, driven largely by complaints from banking consumers. The JRC received regular updates from OBSI on steps taken to respond to record-setting case levels, including its significant recruitment efforts. While OBSI reported that these trends resulted in delays in assigning cases to investigators, OBSI continued to complete investigations in a timely manner. OBSI advised JRC that they have implemented various initiatives and expected to see improvements in the case assignment and resume meeting all timeliness benchmarks for investment cases in early 2024.

Investment complaints also increased, with a 43% increase in opened complaints and a 32% increase in complaints closed in 2023. OBSI reported that these increases were primarily attributable to trends reported in 2022, including a rise in complaints relating to market conditions and products that experienced losses due to the changing interest rate environment, as well as a continued increase in cases relating to crypto asset fraud. These trends moderated in the last two quarters of 2023.

While OBSI observed a decrease in crypto asset related complaints in the latter half of 2023, OBSI continued to observe that despite warnings and fraud reduction steps taken by firms, instances of crypto asset fraud continue to be common. Throughout the year, CSA jurisdictions, CIRO and OBSI have each released publications advising investors of the risk of fraudulent activity involving crypto assets. The JRC continues to monitor this trend and act on opportunities for risk reduction, including with OBSI, internally within their jurisdictions and with CSA counterparts.

The JRC also heard from OBSI regarding an increase in complaints received from claims management companies. These companies may engage in activities such as advising, investigating, and managing complaints on behalf of investors for a fee that is either charged upfront or taken as a percentage of any money that may be recovered through the claim or complaint process. JRC referred the matter to an appropriate CSA jurisdiction, which coordinated with other CSA jurisdictions, CIRO and OBSI to publish a joint Investor Alert<sup>6</sup> in March 2024.

## 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.

<sup>6</sup> [Investor Alert: Investors are not required to use claims management companies to communicate with the CSA, CIRO or OBSI](#), March 19, 2024.

## **7. Consultations regarding SRO proposals:**

The JRC received updates from CRO regarding a consultation pertaining to a review of the IIROC Arbitration Program. CRO shared recommendations from an external working group and sought comments on the program and its role in the current dispute resolution framework, its coexistence with other dispute resolution options available to investors, and in particular, the dispute resolution services provided by OBSI. CRO also updated the JRC regarding a proposal to distribute funds collected through its disciplinary proceedings to harmed investors, and advised that an internal working group is reviewing comments received and conducting additional research. The JRC continues to receive updates on the status of both projects.

## **8. OBSI designated as the sole banking complaints ombudsman by the federal government:**

On October 17, 2023, OBSI was designated as the single external complaints body (ECB) for the banking industry. Following a transition period, OBSI will assume its responsibilities as Canada's single ECB on November 1, 2024. During this transition period, the JRC will continue to work with OBSI to monitor and respond to challenges such as increases in overall case volumes, significant anticipated organizational growth and any other potential impacts on OBSI's operations that may affect OBSI's performance under its investments mandate.

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

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As set out by the MOU, an annual meeting of the JRC with the OBSI Board was held on December 13, 2023. In addition to broader discussions on operating and governance issues and the effectiveness of OBSI's processes, discussion focused on the CSA's proposed regulatory framework for securing redress for investors, actions taken and underway in response to the recommendations made in the Investments Report, and the implications of OBSI's designation as the single ECB for the banking industry.

## **OBSI ANNUAL REPORT**

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For additional information on OBSI, readers may wish to review [OBSI's Annual Report for its fiscal year ending October 31, 2023](#).

## **COMMENTS**

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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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