

Independent Review

Ombudsman for Banking Services and Investments

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2. Introduction

The Navigator Company was selected by the Ombudsman for Banking Services and Investments (OBSI) Board to undertake an independent review of the OBSI in April 2007.

Preparation and document-based pre-reading and review was undertaken during May and early June, with the field work at the OBSI premises completed over a week and a half in late June. Analysis and drafting was completed over July & August.

We would like to extend our thanks to the Chair, Dr. Peggy-Anne Brown, Dr. Jim Savary and Adrian Burns of the Standards Committee of the OBSI Board, who between them provided our initial briefing, scoped the review and who were insightful, supportive and professional throughout the process. Thanks to Ombudsman David Agnew and the staff of OBSI, who made us very welcome, looked after us, gave generously of their time and patiently answered our endless questions. Special mention and a particular thanks to Shanti Suppiah who coordinated our briefing materials, arranged interviews, explained systems and processes and gently pointed out our many errors and misunderstandings.

Thanks also must go to staff from the industry and consumer associations, from the regulators and from participating firms who also gave of their time and were frank and open in their interviews with us. Finally, without the clients who kindly consented to be interviewed, our Report would have lacked the substance that comes from direct engagement with the clients of OBSI.

We would also like to make a few introductory remarks aimed at setting the scene for the report. In part (we hope) the OBSI Board's choice of Reviewer was based on our experience of undertaking an independent review of five financial sector industry ombudsman schemes in Australia and examining case files in the course of consulting to another two ombudsman schemes. Useful experience or not, there is always the risk when retaining consultants from outside your own environment that their findings can be discounted for reason of unfamiliarity - "they just don't understand the Canadian environment".

We would prefer that our report was considered on its merits and not on the basis of the dubious lineage of its authors, so we make the following few observations in our defence - in advance.

2.1 Knowledge of the Canadian environment

The Ombudsman staff and Board provided us with excellent background on the Canadian financial sector environment. Stakeholders were also most helpful at interview to patiently explain relevant background. To the extent that we have misunderstood, that is entirely our fault, and certainly not for want of a proper briefing.

2.2 Comparisons

It is inevitable that we will make some comparisons between the Canadian environment and the Australian one - and between the OBSI's context and that of comparable services in Australia, the UK, Ireland and New Zealand. We have attempted to be disciplined in our approach to these comparisons - by first being clear about the important things that are different.

2.2.1 Regulatory support

The first fundamental difference between the OBSI and many other services is that the OBSI is neither a government agency, nor supported by specific government regulation or licensing. That is not to say that it is not monitored and informally supported by Canada's regulators - however it does not have the formal authority that the key comparable organizations have.

2.2.2 Binding authority

Further, the OBSI's rules of membership do not equip it with binding authority over participating members. It is moral and reputational suasion that provide its ability to make recommendations. This is also in contrast to its comparable counterparts in other jurisdictions.

2.2.3 Complaint-handling within participating firms

In the other ombudsman services that we are aware of, there are some regulatory, self-regulatory or ombudsman-driven obligations on the participating firm to complete their internal handling of the complaint within a defined time limit, along with an obligation to make the existence of the external ombudsman known from an early stage in the

complaint process. From our experience these features have a significant impact on the number of complainants willing to see the matter through to an independent ombudsman, the nature of complaints that come through and the behaviour of participating firms.

2.2.4 Complaint fees

Most other ombudsman services have a sliding scale schedule of fees that act as a progressive incentive for participating firms to consider settling the complaint - either in the interests of goodwill or simply on commercial grounds. Whilst this approach has its own problems, there is no doubt that it results in many more matters being settled at an earlier stage. Fees and charges are outside the scope of our review and we make no further comment other than to note the difference.

2.2.5 Consumer protection environment

The final difference that we will note is our observation that Canada's financial services environment has noticeably lower levels of formal consumer protection by comparison with other parts of the developed world – including Australia.

This makes for a fine judgment in writing the report. On the one hand, our task is to assess the OBSI within its own context - and on the other hand to bring to that assessment our knowledge of comparable financial sector ombudsmen services in Australia and in other jurisdictions and our awareness that the global financial services industry is remarkably similar and becoming more so by the day. International comparisons inevitably arise when assessing the more subjective aspects of quality such as fairness, transparency and so on. Where we do so, we have attempted to explain what we think are the underlying principles, on which we have based our necessarily subjective observations.

2.3 The Philosophy

A risk that occurs for a review of any industry ombudsman scheme is that participants in the review process will have significant differences in their 'mental model' of what an industry ombudsman scheme should be and what role and stance it should take. We have set out below some of the key underpinning views that shape our thinking.

2.3.1 An integral part of the consumer protection framework

We take the view that an independent ombudsman scheme should be considered as an integral component of the overall consumer protection framework of any country. To the extent that other components of the framework (the legislative obligations on the financial service providers, regulatory agencies, the courts, etc) take a greater or lesser role – then the ombudsman’s role should vary in response. For example in environments where the costs of going to the courts are higher, we would expect to see higher financial jurisdiction limits for the industry ombudsman scheme or where regulators are less active we would expect to see more attention to systemic issues by the industry ombudsman scheme.

2.3.2 Stakeholder support

Industry ombudsman schemes survive by the good grace of their three principal constituent stakeholders - participating firms and industry bodies; consumers; and government and regulators. Without minimum levels of confidence and support from these three ‘legs’, the stool cannot stand - and at the next stress point will surely be replaced by some other mechanism. We therefore give considerable weight to the attitudes of each stakeholder grouping - and to the necessity for active management of the three sets of relationships to ensure the long-term success of an ombudsman scheme.

This is particularly the case for the OBSI. As noted above, the OBSI lives without many of the formal supports to its authority and role that other services operate with. Good will and voluntary support is all the more essential.

2.3.3 The ‘level playing field’

The question of what is a ‘level playing field’ between a financial services provider and the retail or small business consumer is a ‘live’ consideration for every industry ombudsman scheme we have experienced and can be the subject of much heated debate. The obligations on both parties can be formally defined in statute, in policy or in contract - but our experience of more than a hundred interviews with consumers that have used an ombudsman service shows that these formal definitions are - for the most part - quite irrelevant to the consumer experience.

We take the view that the industry ombudsman service - within all the constraints of the law, its rules and constitution - should be taking a practical, down-to-earth view of what it is reasonable to expect of both the consumer and of the financial services provider, given the asymmetries of their respective knowledge, sophistication and resources.

2.3.4 Proactivity of the ombudsman

There are a range of views about the 'proper' role of the industry ombudsman. Some interpret the idea of neutrality to mean that the ombudsman service should act as a kind of inert post-box, dealing only with what comes through the door, taking the narrowest interpretation of the facts and turning a blind eye to all else.

Others would have the industry ombudsman take up arms on behalf of the consumer, waging a righteous crusade against evil-doing in the financial industry whenever and wherever it may arise. Of course, neither position is correct.

Industry ombudsman services are in a unique position in the financial system. No one else has their information, no one else has their perspectives of the consumer issues prevalent in the sector, no one else understands the consumer experience as they do and no one else has their familiarity with common (and best) practice across the sector.

No other body is in as good a position to be simultaneously trusted and respected by each of the three sets of stakeholders. As old-fashioned as it may sound, that simultaneous trust and respect cannot exist unless the ombudsman service is clearly seen to be using their unique position to stand for and do what is right - within its own remit.

We come down on the side of greater proactivity. An industry ombudsman service is a resource of great potential value to each of the three stakeholders and it would be a great waste if this resource were not put to good use for the community.

We recognize that the extent of (sensible) proactivity is in part a function of resourcing - and will make comment on that at points where it is relevant.

2.3.5 Encouraging staff interaction

Investigative environments such as an ombudsman's office lend themselves to fairly solitary work. An investigator can work for long periods of time in comparative isolation. Even where structured reviews of case files occur – they are often largely done in a solitary fashion by a supervisor or mentor simply reviewing the documentation. In a chicken and egg fashion, this environment can in turn attract and retain staff with a preference for working in comparative isolation.

In most ombudsman schemes we encourage processes that increase interaction between staff. We think this acts to increase the speed at which new staff accumulate experience, to spread innovation and best practice, and to encourage more consistent judgments about what is the stance that the scheme will take in common scenarios. In addition, a more lively, dynamic office environment will act to retain a more diverse mix of staff – and hence perspectives – an essential ingredient to long term health in complaint-handling.

It is of course open to the OBSI and its stakeholders to take a different view! We include these remarks for the sake of establishing the framework from which we make our observations.

3. The Review Process

The review process began with the receipt by courier of a background folder of information prepared by OBSI – which comprehensively set out the constitution, rules, procedures, publicity, reporting and statistics of the OBSI operation. We were also provided with an excellent summary of the history, development and current issues facing the service. Steps used in the process included:

- a) Reading OBSI documentation (procedure manuals, policies, rules, annual reports, case studies, statistical reports, etc).
- b) Preparing a representative sample (90) of OBSI case files to use as a basis for our analysis and interviews.
- c) In person and telephone interviews with participating firms and industry association officers.
- d) Telephone interviews with regulators and consumer association spokesperson
- e) Briefings and interviews with the Ombudsman and OBSI staff.
- f) A briefing with the Chairman of the OBSI Board, a member of the Board and the Board Standards Committee.
- g) Detailed case file reviews.
- h) Telephone interviews with clients after review of their case file (a total of 21 clients were ultimately spoken with and 30 files examined in detail).
- i) Reviewing a range of OBSI material provided in response to queries and issues raised.
- j) Analysis of statistics and case management system outputs

4. Executive Summary

Overall, our review found a professional and effective ombudsman operation at OBSI, albeit one in which some aspects of its performance are just reaching their potential. We found an organization that is experiencing a period of significant change - growing in size, sophistication and professionalism - and finding a level of maturity and self-confidence which was pleasing to see.

Our pre-review briefing had set out some of the changes that have occurred at the OBSI - and that is exactly what we found. To some extent, the findings of a review of any changing organization are a function of the timing of the review. Had we reviewed the scheme two years ago, we would have had some question marks about its delivery and if we had been asked to review it another year into the future, we are confident that we would have had rather less to suggest.

Few of the areas for improvement that our Review identified will be of any surprise to the OBSI management or Board. They are highly consistent with OBSI's own priorities for improvement. The key areas in which we have recommended improvement are:

- a) Increase the scope of its operations to include more early settlement and the ability to act on systemic issues
- b) Building awareness and referrals
- c) Improve liaison and information-sharing with stakeholders
- d) Strengthening peer and other review processes internally to improve quality and consistency
- e) Continue efforts to increase early resolution of files and speed overall timeframes

A very brief summary of the report conclusions for each of the OBSI's own standards are shown below.

4.1 Consent to Participate

This standard is clearly met. Participants sign consents as required and generally have a sound understanding of the process.

4.2 Accessibility

We found that this standard is met - with a professional standard of access. However for a fully effective performance in this area, some work has begun and further work is required in building OBSI's public profile and ensuring that consumers are effectively referred to OBSI by participating firms and other points of referral.

4.3 Appropriateness

This Standard is met. Considerable effort has been invested in improving and documenting OBSI's processes and procedures. We have encouraged the use of staff reviews and other techniques for further improving quality, clarity and consistency. Under this standard, we note that there is a significant gap in OBSI's capacity to deal with systemic issues and we have recommended that this be changed.

4.4 Fairness and Independence

This standard is met with well documented procedures and high quality correspondence to participating firms and clients demonstrating both fairness and independence. We were satisfied with the governance framework of the service - although noted that its independence was an issue for some stakeholders.

4.5 Competence

This standard is met. We found a professional standard of recruitment, training, performance management - appropriate to the size and challenges of the organization.

4.6 Timeliness

This standard is now being met. OBSI has strengthened its performance in this area significantly in recent times and continues to make improvement on a

number of fronts. We encourage this continuous improvement and have made detail suggestions in this section.

4.7 Confidentiality

This standard is met. OBSI has the necessary formal structures in place and staff have a sound awareness of this requirement.

4.8 Transparency

This standard is met. OBSI has a number of effective methods for sharing information and liaising with stakeholders and participants. We made a few recommendations aimed at further strengthening this area - in particular with participating firms.

4.9 Legality

This standard is met. OBSI's procedures and documentation are clear and give due weight to the legal obligations on the service.

4.10 Capacity

This standard is met. Current resourcing seems appropriate, including a sensible capacity for improvement initiatives. If accepted, our recommendations will no doubt require some additional resource. OBSI's technology base is competent; however it will require some upgrading into the future.

4.11 Continual Improvement

This standard is met. We were impressed with the degree of improvement activity that we saw and we made a number of recommendations that would lend themselves to this type of improvement.

4.12 OBSI's own standards and Framework Guidelines

Provincial and federal regulators, with OBSI and the other members of the Financial Services OmbudsNetwork, have approved (during the course of our review) a Framework for Collaboration setting out their relationship and roles in consumer protection. The Framework includes Guidelines that provide some externally set performance guidance for independent dispute resolution services. In a brief Appendix we have commented on the differences and overlaps between the new Guidelines and OBSI's existing Standards and provided our preliminary view as to OBSI's likely performance against the new Guidelines.

In summary, while we could not be definitive without detail testing, OBSI should expect to readily meet most of the Guidelines. Where there are likely gaps, we think that most of those would require only a small effort to meet. There are, however, a couple of issues (systemic investigations and participating firm promotion of OBSI) that will require change on the part of OBSI and importantly, its stakeholders, to achieve full compliance.

5. Consent to Participate

Code of Practice - Standard 1. Consent to participate

Participation in the OBSI dispute resolution process is voluntary for clients, and agreeing to participate does not affect legal rights. Consent to participate should be based on full knowledge and understanding of the process and possible outcomes.

Operational measures:

- Signed Release Form after having process explained and questions answered.
- Includes a checklist for investigators to ensure significant issues are explained.

This standard is clearly met.

The OBSI has well established procedures and clear standard letters to explain to clients the OBSI process and to obtain their consent to the release of information. OBSI also obtains participating firms' signed consent to the release of information. We observed that the consent and release process was being followed.

Consumers lodging a complaint are contacted shortly after their lodgement by OBSI staff, who explain to them by telephone how OBSI operates and ensure that the process is clearly understood.

We listened in to these conversations (from the OBSI side) and found them to be clear, patient and professional. When interviewed, the feedback from clients was overwhelmingly positive about this stage of the process.

6. Accessibility

Code of Practice - Standard 2. Accessibility

We can be contacted by toll-free telephone, mail, e-mail, fax, through our web site, and through electronic or other links from other organizations. Our services are offered in both official languages, and they are free to clients. Our services are non-legalistic and participation does not require legal representation. Findings are not admissible in any subsequent litigation or arbitration.

Operational measures:

- Publicize - toll-free number, mailing address, email, fax and website.
- Links from other sites.
- Both languages - written materials, reception (telephone) and investigators.
- No charge.
- Do not take evidence under oath.
- Signed agreement between the parties OBSI's work is not admissible in any subsequent litigation or arbitration.

This standard is met - with clear evidence that each of the specified indicators is met and evidence of further work underway to raise the OBSI profile.

The question of accessibility for an ombudsman scheme can be considered at three levels. Taken from the consumer's perspective, the first is finding out about the option of going to the Ombudsman in the first place. The second is the ease of actually connecting with the Ombudsman's office and the third concerns the obstacles - if any exist - that prevent the consumer using the Ombudsman's service.

This OBSI Code of Practice Standard encompasses these three levels, however as expressed, its focus is heavily on the second two - the physical/logistical dimension of connecting to the Ombudsman and the existence of any obstacles to the use of the Ombudsman service. (If the Standard itself were being reviewed, it should probably be cast wider to give sufficient emphasis to awareness of the scheme - an area where significant improvement could be made; and to ease of use - an area where we thought the OBSI did very well.)

We will deal with these two first and return to the question of finding out about the Ombudsman (awareness) at the end of this section.

6.1 Contacting the Ombudsman

We found that, at a physical and logistical level, OBSI provides a degree of accessibility which is at or above the expected standard for consumers, both in the financial sector and for users of other assistance agencies.

It provides toll-free telephone and fax lines and runs its telephone enquiry service for extended business hours in order to better service the range of time zones in Canada. Front-line customer service staff are bilingual (and report a high proportion of French-speaking callers). OBSI has recently contracted a multi-lingual translation service that provides services for a wide range of languages.

The website provides an email link and a downloadable complaints form. A PO Box is advertised for mail complaints. All complaints are acknowledged by telephone where a contact number is provided, by email if it is not and in any case by letter.

6.2 Obstacles to using the Ombudsman

The primary potential obstacle - cost - is not an issue for the OBSI, which provides its services free to consumers. As we have found with other schemes, participating firms can resent what they see as a 'free' opportunity for consumers to bring unmeritorious complaints against the financial services provider.

We did not find any evidence of opportunistic abuse of the system by clients during our review, but to the extent that it may occur, our experience suggests that it would be very isolated and that the benefit of free access to consumers so outweighs any potential risk to members that it must be accepted as a necessary part of a successful scheme.

OBSI procedures do not allow for the taking of evidence under oath and OBSI also makes it clear under its rules, in information made available to the public and by means of the signed agreement of both parties, that its work will not be admissible in any subsequent litigation or arbitration

Every file that we saw was complete in this respect, with signed agreements on file.

6.3 Awareness

Although general public awareness of OBSI has not yet been quantitatively measured – our briefings, our examination of participating firms’ materials, our stakeholder interviews and - of course - our discussions with actual consumer users of the scheme all indicate a quite low awareness level.

It is this lack of consumer awareness of the existence of OBSI that is the major weakness in the scheme’s accessibility to Canadian consumers. This has been rightly identified by the OBSI as a priority for improvement.

Our experience is that independent complaints handling schemes throughout the world have low awareness levels. Consumers (quite sensibly) have little interest in how a financial services complaint might be handled - until they have one. The challenge for the ombudsman service is to build sufficient levels of awareness in the community that consumers know where to turn once they have a complaint.

We observed a number of factors that act to make OBSI’s task in building consumer awareness greater than most. We discuss some of them below.

An assessment of awareness for industry ombudsman schemes should be considered at three levels:

- a) **Public awareness** - Mass media, directory listings, the man in the street - ie. public profile at its most general.
- b) **Key referral points** - Legal services, consumer agencies, government consumer advisory bodies, industry associations, etc. The places consumers might turn to for help or advice.
- c) **Member referral** - Referral of dissatisfied consumers to the industry ombudsman by participating firms.

6.4 Public profile

The OBSI has recently appointed a Public Affairs Manager who has begun the important task of preparing a framework designed to boost the OBSI profile. Although her efforts are still at an early stage, we thought the indicated direction and planned activity was very good.

Amongst other things, effort will be going into developing publication and consultation systems and networks of contacts and developing an improved capacity to make better use of media opportunities to raise the OBSI profile. We saw examples of planned activities including Seniors initiatives and participation in the public Investor Forum discussions planned for October this year.

We entirely support the thrust of the OBSI direction - and offer a mild caution. External Ombudsman schemes live or die on their reputation – with consumers, members, industry bodies and government/regulators. A higher profile brings with it greater potential for criticism by stakeholders and greater risk to reputation. The key management consequence of greater profile is the increased effort and resources required both to service that greater profile and to maintain reputation.

By way of example, the recent ‘naming’ of a participating firm that refused to honour an OBSI recommendation provoked a critical (albeit self-serving) article in an industry paper accusing OBSI of ‘tyranny’. This criticism could not go unanswered and so OBSI must commit resources to craft the response necessary to protect the OBSI’s public reputation.

6.5 Key interest groups and referral points

This source of awareness jumps a level of importance – because it is many times more likely to be of benefit to financial services consumers who recognize that they have a problem or potential complaint.

The activities being planned by the OBSI should be effective at improving this source of awareness, as well as that of the general public. However, we think that greater focus could be placed on the systematic development of a network of consumer referral points that actively promotes the role of the OBSI through a wide range of aware and effective voices.

We understand that the Canadian environment does not have strong networks of community centers, legal aid networks or financial counsellors. Canada’s somewhat fragmented system of financial sector regulation also means that consumers are less likely to have an immediate top-of-mind regulator to go to (who would then refer them to OBSI). It also makes the task of ensuring consistent advice is given to refer consumers to OBSI more difficult.

OBSI has been consulting with some of the regulatory bodies to improve the accuracy of referral information and does have an extensive database of contacts that will make up the mailing list for the upcoming newsletter. This is an

excellent resource – and an obvious place to start building a picture of the network of key referral points.

In past assignments, we have conducted ‘mystery-shopping’ research, where a researcher telephones a series of key referral points asking for help with a (mythical) financial services complaint. In the past, we have found a surprising degree of inaccurate and incomplete information being provided to consumers - even by government agencies. OBSI could consider using a similar exercise to periodically test the availability and accuracy of referral information.

RECOMMENDATION 1.

That OBSI conduct periodic research to test the availability and accuracy of referral information. This research and the development of strategies to improve referral information might be conducted jointly with industry associations or regulators. Strategies might include joint awareness-raising activities, production of joint referral material or joint education initiatives.

6.6 Participating firm referral

This is the most important pillar of awareness. If 1 in 1000 members of the public need to know about OBSI and 1 in 100 with an enquiry to a referral point need to know about OBSI - every single dissatisfied financial services consumer needs to know about OBSI.

We view the quality of referral from participating firms as critical to overall scheme awareness. This referral needs to occur in a way that ensures that dissatisfied clients can at all times make informed choices about options open to them. (In particular, that means in our view that consumers should know about the option of the independent external ombudsman before considering any offer from the participating firm.)

6.6.1 Advice about OBSI by participating firms

For most files that we reviewed, we found evidence that the participating firm had provided clients with information about OBSI – this was usually a mention in the letter to the client at the end of the internal complaint-handling processes.

Quite apart from the question of whether this practice is fair, we have found in previous reviews that this is not an effective way to communicate this information - and our findings in the Canadian setting were entirely consistent. Despite the clear evidence on file - a significant number of clients did not recall receiving that advice from their financial service provider and reported that they found out about OBSI from personal research, friends or other advisers.

Our hypothesis is that the whole matter is so stressful and confusing to the clients that when they read the final letter, they only register the rejection of their claim - all other detail is ignored. In the Canadian setting, confusion may be exacerbated by the participating firms calling their internal complaints handling process an 'ombudsman service' (see comments below).

6.6.2 Timing of advice about OBSI

Our interviews with participating firms confirmed that many, as a matter of policy, do not make their customers aware of the existence of an independent external Ombudsman - until all internal avenues have been exhausted. There were a couple of exceptions where participating firms took a noticeably more transparent approach.

Although failure to notify clients about OBSI is explained away as well intentioned by the financial services provider ("we want to solve our own customer's problems"), the practice is poor and the rationalization is threadbare. Keeping the consumer in the dark about further options in the complaints process is seen by the consumers we interviewed as untrustworthy and designed to keep the consumer at a great information and power disadvantage to the very last. We spoke to a number of clients who reported to us that they 'almost' settled before discovering the option of going to OBSI.

Clearly, not all financial services providers are using this policy with dishonourable intention - in our interviews we spoke with many firms who were genuine and clearly committed to delivering to customers what they perceive to be the right outcomes.

However, the point for OBSI is that the poor referral by participating firms is a serious public and customer relations risk for OBSI. We do not think that OBSI can afford to be seen by its clients as acquiescent or complicit in a system that withholds critical consumer protection information from consumers.

We understand that OBSI has worked with the Ontario Securities Commission, the Investment Dealers Association and the Mutual Fund Dealers Association to address these issues of access. As a result, the two self-regulatory organizations – whose members must participate in OBSI – are preparing new rules requiring participating firms to adopt a multi-pronged approach to increasing client awareness of OBSI. This includes providing all new customers with information about the complaints-handling process (including the right to escalate unresolved complaints to OBSI), providing it again at the time a complaint is first received and again at the conclusion of each stage of the internal complaints-handling process.

We fully support any efforts on this front – fully informed consumers are an essential component of an effective consumer protection framework. OBSI has a role in persuading participating firms that a willingness to have complaints independently reviewed by OBSI enhances the firm’s long-term reputation with all of its customers. This will far outweigh any short-term tactical advantage gained by withholding that information from the relative handful of customers who actually have a complaint.

RECOMMENDATION 2.

That OBSI actively support industry initiatives to oblige participating firms to make consumers aware of their right to access to OBSI - at an early stage.

Further, that OBSI actively campaign for an obligation on participating firms to provide OBSI-generated materials to consumers when informing them of their right to access to OBSI

6.6.3 Name confusion

Discussions with clients suggested that at least some were confused by the information they were provided. In cases where the participating firm had a part of their internal complaint-handling process described as an Ombudsman, there were clients who were clearly confused about whether that Ombudsman was the same or different from OBSI.

In one case, the client we interviewed still did not realize that the OBSI was a separate or independent organization – they thought (when OBSI

had taken on the complaint) that one ombudsman staff member had simply been replaced by another.

We think that this confusion is understandable given the use of the word Ombudsman by both participating firms and the OBSI and given the way in which some participating firms describe their internal Ombudsman Office. To give one example:

“The Ombudsman’s Office is independent of the Bank. The job of the Ombudsman’s Office is to review the facts in an impartial manner, assess whether the client was treated fairly and whether a mutual agreement can be reached.”

We understand from our enquiries that (some) participating firms have an attachment to the term, however we cannot see how the consumer’s interests or the participating firm’s reputation or the OBSI’s interests are actually served by persisting with this convention.

RECOMMENDATION 3.

That OBSI meet with participating firms that have an internal Ombudsman’s Office function to discuss this naming problem and to suggest a re-naming/re-description of the internal function to reduce confusion by consumers between the firm’s internal function and OBSI.

6.7 Ease of use

All consumers interviewed reported very clear procedures for lodging a complaint, for provision of information and rated the assistance received from OBSI very highly (see also comments under Standard 1. Consent above). We are aware that in the recent past, the customer service function was under-resourced so this may not have been the universal experience of clients – however from our observation this is now functioning well.

Despite that high satisfaction, to our eyes, some of the standard correspondence to consumers at the beginning and end of the complaints process looked a little more complex and dense than was necessary. We thought that they could use a few more headings and that the text could be broken up into a few sections. This is probably not a high priority given the evident effectiveness of the follow-up

telephone calls; however it should be a matter for progressive continuous improvement.

We generally found letters to clients to be of a high standard and saw clear improvement in the consistency of this quality over the past twelve months. Clients that we interviewed were very supportive of the ease of use of the service, generally citing patient explanations from staff and few demands for additional information beyond the initial requests.

7. Appropriateness

Code of Practice - Standard 3. Appropriateness

The methods used and the remedies offered are intended to be appropriate to the circumstances and we strive to ensure that we achieve that goal.

Operational measures:

- Methods – facilitation and investigation when appropriate.
- Remedy recommended consistent with compensation for direct financial loss to make clients “whole” with occasional awards for inconvenience awards.

Our review found that this Standard was met, that OBSI has established an appropriate framework and processes for dealing with complaints about participating firms. We were impressed with the innovation that is continuing to occur and the considerable effort that has been put into revising and documenting OBSI’s practices and procedures.

7.1 Early closure of complaints without merit

Discussions with OBSI staff and our case file review highlighted the increased efforts over the last 12 months or so to identify and close at an early stage, complaints that were highly unlikely to result in a compensation recommendation, even if a full investigation were undertaken.

We think that this is entirely appropriate. This is as much the case for clients as for OBSI and the participating firms. It is disappointing enough for a client to see their complaint not upheld, without having to wait months for this result - months during which they put their time, energy and hopes into the matter. For OBSI, matters are cleared promptly and resources dedicated to matters that merit the effort. For participating firms, there are cost savings from closing matters and continuing uncertainty is avoided for sections of their business and/or the individuals involved.

7.1.1 Closing the right matters

As is recognized by OBSI, under this approach, great care must be taken to ensure that the right matters are closed early. It is for this reason that OBSI practice - and best practice in our view - is to always discuss the matter with the client, normally by phone, before a matter is closed. In

addition, early closure letters are currently reviewed by both a Senior Deputy Ombudsman ('SDO') and the Ombudsman.

In combination with the new (twelve months old at time of review) assessment process, these two steps – the telephone conversation and the closure letter - establish many of the key 'appropriateness settings' for the OBSI. These settings include the extent of assistance and explanation offered to consumers, the extent to which a consumer's complaint is explored, the extent to which a participating firm's assurances are accepted, the extent to which OBSI will explain its reasoning to both firm and client, the standard of documentation and file maintenance, and so forth.

Accordingly, we think that these early closure practices are very important to OBSI operations. To further strengthen these practices, we suggest that management review of each closure could be undertaken via a meeting – perhaps called an investigations or review committee. In our experience, group review (rather than individual review up the management ladder) can result in better identification of issues and more rapid spread of consistency of practice. This review process can be strengthened by including peers as well as managers.

This management review should generally include a review of the original complaint – not just the investigator's summary of the complaint in the proposed letter to the client. This would ensure that all of the issues raised in the complaint have been appropriately considered – our interviews with clients found that some clients considered that this was not the case. We found one example where the participating firm had chosen to focus on a few of the matters raised by the client, ignoring a couple of others. This omission was subsequently repeated in OBSI's review of the case - with the client feeling that OBSI had simply accepted the firm's side of the story.

We would also suggest that over time, structured criteria be developed to aid the identification of complaints that are appropriate to be closed early. We recognize that this approach is likely to require some modest resourcing adjustment, however believe that the benefits to quality are well worth the cost.

In our observation of case files from seven quite different independent ombudsman schemes – there are always differences of perception and opinion about facts or circumstances. We saw matters that we personally might not have closed as quickly – and others that we would have closed more quickly.

While those differences are entirely natural – the aim must always be to drive towards consistency of treatment. We think therefore that the duty of any ombudsman scheme is to establish processes that continually test and validate the judgments being made about cases.

We recognize that OBSI has a number of processes that increase the comparative amount of time that staff spend discussing the business of complaints. The review processes by SDOs and the Ombudsman; the use of a specialist financial analyst for analysis of transactions and calculation of compensation; and the revised assessment process all act to increase the degree of interaction and to drive consistency of treatment.

RECOMMENDATION 4.

That OBSI adopt a meeting approach to reviewing matters for early closure and progressively develop documented criteria for matters suitable for early closure.

7.1.2 Early closure letters

This is critical to maintaining consumer confidence in OBSI judgments. By its very nature, an early closure is not a full investigation and OBSI should be mindful that its language in closing off a matter is cognizant of that. We saw language in some of the early closure letters that implied a degree of certainty that we thought unjustifiable.

We understand that there is a fine judgment in the language of such a letter. If it is too neutral, it risks simply opening a fresh round of correspondence with the client – obviating the aimed-for efficiency gains. If too black and white, it risks signalling arrogance or inadequate attention.

We have suggested that the letters should also make it clear that the initial view is based on the facts as understood – and leave some opening for the client to raise additional information or issues. We think the consequential benefit to reputation gained outweighs any risk to efficiency posed by this change.

RECOMMENDATION 5.

That OBSI amend its early closure letters to clearly explain that early closure was determined on the basis "of the information available". Without falsely encouraging clients, the letters should allow for clients to respond with additional information.

7.2 Conciliation and mediation

Discussions with OBSI staff and our case file review showed that historically OBSI has largely focused on investigating complaints and reporting their conclusions to the parties - with rather less emphasis on attempting to find a basis for early resolution. Early settlements were facilitated only where the participating firm had previously made a settlement offer to the client (see 5.3 of OBSI's Practices and Procedures Manual). There has, however, been a recent focus upon looking for other opportunities to conciliate an early settlement between the parties. Also a mediation pilot with one of the banks is proposed.

We think that these approaches will broaden OBSI's services and may potentially increase client satisfaction – and perhaps even on occasions contribute to preserving a client's relationship with the participating firm. In the course of our file review and client interviews, we spoke to clients who were very happy to see their complaint settled and over comparatively quickly, even if they did not get all that they might have liked. Likewise some participating firms expressed to us their support for this approach.

Our experience of Australian complaints handling schemes that offer mediation is that in appropriate cases, mediation can achieve good results. The important thing for OBSI is to use the pilots to identify the characteristics of complaints that have potential for successful mediation. (We do have some experience of an industry ombudsman scheme which was widely criticized for wasting members' and consumers' time with attempts at mediation in circumstances where it was highly unlikely to succeed.)

Whilst these alternate approaches will no doubt continue to be the exception rather than the rule, we would encourage OBSI to continue on this path. In the first three quarters of this year, OBSI's iSight database records an average of 7% of complaints within OBSI's mandate resulted in a conciliated settlement after preliminary enquiries only, rather than a full investigation. It is worth noting

that this rate seems to be increasing significantly with the last quarter's figure being 18%.

As we have mentioned in the introduction, there are great risks in attempting comparisons with other ombudsman services. In particular we are cautious about comparing early resolution (and timeliness and win/loss ratios) with other financial sector ombudsman services.

That said, there is some value in noting that published figures indicate that other financial sector ombudsman services are also increasing the proportion of complaints resolved at early stages. The Australian BFSO reports figures in excess of 90% for the last three years and these are gradually increasing. The UK FOS - does not publish readily comparable figures but also reports increasing proportions of cases resolved at an earlier stage. The FSO in Ireland reports that about 25% of its matters are resolved by mediated settlement. We encourage OBSI to continue with its efforts in this area.

RECOMMENDATION 6.

That OBSI continue to look for opportunities to conciliate or mediate early settlements of complaints - and to develop and document a body of knowledge as to what circumstances are best suited to these alternate approaches. Relevant factors are likely to include the amount of money involved, the specificity of the matters in dispute, whether the customer is still open to an ongoing relationship with the firm and the extent of documented evidence readily available. The OBSI's Practices and Procedures Manual should progressively reflect this knowledge.

7.3 Consistency of recommendations

Our interviews with participating firms revealed some concerns about lack of consistency by OBSI - between matters with similar facts, between investigators and over time.

Examples were cited where the case turned on a determination of the extent of client responsibility (eg. where the financial services provider argues that the customer must accept some responsibility for any loss - perhaps that they should

have taken better security measures or they should have more actively checked that the product or service was in fact what they wanted or they should have monitored their investment account more closely). Another example of inconsistency given to us was OBSI's method of calculating compensation – in particular where the application of interest charges was involved.

We viewed this issue very seriously given that it is critically important that a complaints-handling scheme be as consistent as is possible – and be seen to be consistent. It is of course only rarely an issue for the consumer, and it is the participating firms that really need some predictability from OBSI's outcomes, so that this can be factored into their internal complaints-handling.

Our early examination of case files (mostly the older files) did give rise to some concerns about consistency. However, after more detailed examination of the material and enquiries of the staff we ultimately came to the view that most of the apparent inconsistency was more a function of the quality of the explanation in the letter, rather than a reflection of substantive differences in the merits of OBSI's recommendations.

Having explored this issue in some detail, our conclusion is that OBSI now has measures in place that should promote an appropriate level of actual and perceived consistency, namely:

- a) OBSI's Practices and Procedures Manual now provides detailed guidance to investigators, in particular about matters such as investment suitability and quantification of loss. Sensibly, OBSI has plans to test these kinds of propositions with participating firms in the near future.
- b) OBSI now has a Style Guide for written correspondence and a standard format for Reports.
- c) OBSI has put in place systems and resources – including employing a specialist analyst – and developed tools to assist its investigators with cases involving the complex quantification of loss.
- d) File review procedures within the Office have also been improved.

Clearly these initiatives are valuable and reflect good practice that we have seen elsewhere. Allegations of ombudsman inconsistency are very common - it seems to be the first place that frustrations from participating firms surface. These allegations are sometimes fair and other times not. The right approach for any ombudsman service is to treat all of them as if they might be fair and apply a

high degree of focus both to maintaining actual consistency and to stakeholder understanding of consistency.

RECOMMENDATION 7.

That OBSI continue to develop initiatives to detect and minimize inconsistencies in its approach to complaints-handling between matters with similar facts, between investigators and over time.

Consistency should be a specific focus of its on-going training program – case based training is likely to assist.

A program of file reviews – the full file, not just the Report - should be established. This could include regular peer reviews and/or periodic audits of files.

7.4 Clarification of key issues

We have mentioned in Section 7.1.1 that we saw some files where it seemed that there were aspects of the client's complaint that were not addressed by OBSI in its early resolution letter. Likewise we saw some files where it seemed that OBSI's Report post investigation did not fully encompass all aspects of the complaint.

This can be a matter of explanation – see next section. Alternatively the Report can actually reflect a gap in the investigation (and we did see a couple of examples of this in the older files we reviewed).

This is a critical aspect to the quality of the core processes of any ombudsman service. While we were satisfied that the current investigation processes are now delivering quality outcomes, these issues of clarification and completeness are of such importance that we think they should always be subject to a continuous improvement approach.

The key tests of clarity and completeness should be:

- a) The client, the participating firm and the ombudsman service should have a shared understanding of all of the issues under consideration in the complaint. This should include those matters

which are not meritorious and are to be set aside, the core matters for investigation and, to the extent possible, any aspects that *may* become an issue in the course of the investigation.

An example of this is where an ombudsman service provides a written description of the complaint - recasting it in appropriate language to draw out the issues that, if established, could give rise to compensation. This is provided to the client and to the participating firm at the outset, with the opportunity for the client to confirm that it fully captures the complaint.

- b) The client and the participating firm should have an understanding of how the ombudsman service is going to approach the decision-making, and to the extent possible, understand the key issues on which the ombudsman's recommendation is going to turn. This acts to minimize surprise and disappointment when the decision is made and helps the participants to accept the final decision.

An example of this is where the ombudsman service, following the main stages of the investigation - but before a recommendation is drafted - issues a written summary of the issues at play in the consideration of the matter that also sets out on which matters the decision will turn - again with the opportunity for both parties to comment

- c) Finally, the report or recommendation letter issued by the ombudsman service should be drafted in a way that clearly ties the findings back to all of the original aspects of the complaint and to the issues on which the finding or recommendation turned.

The intention is to promote fairness by permitting clients and participating firms to understand the reasons for requests for information and to have a clearer sense of the direction and likely outcome of an investigation and to reduce any expectation gap between OBSI and the parties to the dispute when the Report as to the investigation is issued.

We are not specifically recommending adoption of these example approaches. Development of these fundamental procedures for any ombudsman service is usually best done as a matter of evolution rather than major re-engineering. But we do think it would be useful if OBSI periodically reviews its procedures to ensure that the three tests mentioned above are being effectively met.

RECOMMENDATION 8.

That OBSI periodically review its processes against the following three tests for clarity and completeness:

- *The client, the participating firm and the OBSI should have a shared understanding of all of the issues under consideration in the complaint;*
- *The client and the participating firm should understand in advance, how the OBSI is going to approach the decision-making;*
- *The final letter issued by the OBSI should clearly tie the findings back to all of the original aspects of the complaint and to the issues on which the finding or recommendation turned.*

7.5 Explanation of reasons

In considering the appropriateness of OBSI's procedures and practices, we looked at whether OBSI provides sufficient explanation about its decisions whether or not to recommend compensation.

Sufficient explanation of these decisions is critical and will directly bear upon the extent of satisfaction with OBSI's recommendations, both by clients and participating firms.

We heard from some participating firms that OBSI's recommendations were at times inconsistent. Our experience is that insufficient explanation can make it difficult for a participating firm to differentiate seemingly similar complaints that result in different outcomes. A couple of the firms that we spoke with directly appealed for more comprehensive explanations of the reasoning for OBSI recommendations for exactly that reason.

We think there are two distinct issues here. The first is whether OBSI provides sufficient explanation about the key findings that underpin its decisions. The second is whether OBSI provides a sufficient explanation of its final recommendation for compensation.

In our own observations of the case files, we found an occasional rather than regular problem, where, in our view, insufficient explanation was provided of the reasons for OBSI's finding that the client should bear some responsibility for

his or her financial decisions (in the files that we reviewed we found that where OBSI reached the opposite conclusion - cogent reasons were given).

Also we saw some files – admittedly less so in recently considered complaints - where we thought that OBSI stated its conclusions too baldly. For example, the recommendation letter might state that “the participating firm’s representative failed to” (do something), where a more accurate and less inflammatory statement might have been - “there was no evidence that the participating firm’s representative had” (done something).

We also saw some files where there was careful analysis of the contractual context of the client’s transaction and of the relevant industry code, but then a bit of a leap of faith (logic) to the conclusion about compensation. Again, a more fulsome explanation of the conclusion that drew upon OBSI’s mandate to strive for fairness in all the circumstances would have helped.

Every letter of recommendation is an opportunity to educate the participating firm about how OBSI will view particular types of complaints.

From a client’s perspective, although consistency will rarely be an issue, this issue of sufficiency of explanation directly bears upon the extent to which the client feels heard.

We spoke with a number of clients who could not understand OBSI’s comments that their financial decisions were a matter of their own choice – this was particularly the case where, as they put it, they had paid commissions to advisers for advice because they felt ill-equipped themselves to choose investments. Typically, these clients responded to this situation by saying that OBSI had not listened to, or had not understood, their complaint.

Some clients also raised with us their view that OBSI had not pursued all aspects of their complaint – our perusal of their files suggested in some cases the problem was again one where the explanation of OBSI’s reasons failed to explain why this had occurred. Possibly telephone explanation was provided – but the written Report did not explain why some aspects of the complaint had not been pursued. In these cases also, the client felt as if they had not been heard.

Whilst the current Report review procedures should act to ensure that these problems do not happen, the issue is important enough for us to recommend some further focus.

RECOMMENDATION 9.

That OBSI review its Report writing practices to ensure that:

- *it provides sufficient explanation of key findings and references these findings to what written records establish - the aim should be that participating firms can understand the thinking sufficiently to be able to differentiate decisions, and a client should be able to see that their contentions have been considered and, where they have been discounted, what the basis is for this; and*
- *it explicitly references its decisions to its mandate to strive for fairness in all the circumstances and gives reasons why it considers that this decision is consistent with that mandate.*

7.6 Remedies

We have already referred to the work that OBSI has undertaken to develop and articulate its approach to the quantification of financial loss. In addition to this, OBSI has a new section in its Practices and Procedures Manual dealing with compensation for non-financial loss – when this is appropriate and how to calculate this type of compensation. As in other jurisdictions, there are strict limits around the availability and extent of this type of compensation, but a recognition that in special circumstances some compensation might be appropriate.

Of course, complaints remedies need not always be limited to financial compensation. Other ombudsman services do occasionally make other types of awards, for example, that a bank should extend temporary loan repayment relief to a client. It should also be remembered that some clients are actually looking more for an apology and less for money – one client with whom we spoke was offended that his compensation check arrived in the mail without so much as a covering letter. In practice, there are limits to what OBSI can achieve in non-monetary remedies - where the participating firm does not have a customer satisfaction orientation.

We concluded that OBSI has appropriate powers and practices in relation to remedies.

7.7 Systemic issues

Under OBSI's Terms of Reference, OBSI cannot investigate unrelated complaints based on different facts that raise similar issues with the object of making a 'class action' type of recommendation. Consistent with this, OBSI does not presently query a participating firm whether there are other clients who should be compensated eg. where a complaint highlights a process problem or where OBSI receives several complaints, for example, about the standards of advice provided by one advisor.

(Note however, that we saw a couple of instances where OBSI suggested to the participating firm that its processes should be reviewed and/or its staff should be reminded/retrained in relation to some failure of process.)

We think that this is a significant gap in Canada's consumer protection framework. In contrast, the Australian financial sector ombudsman schemes all have jurisdiction in relation to systemic issues and the UK FOS brings with its investigations, the UK FSA's regulatory obligation on firms to deal with any identified systemic issues.

If the value of an industry initiated scheme is to be realized - and the prospect of a regulator-driven scheme is to be avoided - then OBSI must play its full and natural role in the consumer protection framework and use its cases to help identify at-risk consumers. This weakness in the current regime, importantly for this review, also diminishes OBSI's reputation.

This gap is clearly of concern to clients. A number of interviewed complainants expressed concern and sympathy for the other customers who (they presumed) must have likewise suffered as a result of a flaw in a participating firm's system or product, or through the actions of a particular employee, and who had perhaps not found their way to OBSI. The matter was also raised by other stakeholders at interview. We think that OBSI cannot risk being seen to be doing nothing where a clear flaw in the consumer protection framework exists. We think it is obligated to work to correct the problem. We understand that OBSI is well aware of this and looking at ways of addressing the issue.

RECOMMENDATION 10.

That OBSI amend its Terms of Reference to allow it to take on systemic investigations and, in consultation with participating firms, develop policies and procedures for these types of investigations.

8. Fairness and Independence

Code of Practice - Standard 4. Fairness and Independence

Fairness is the fundamental principle on which our decisions are based. OBSI is impartial, free of bias and independent of both industry and government

Operational measures:

- Review of procedures manual – for procedures in place to ensure independence in carrying out investigations and recommendations.
- Review of closing letters for lack of bias and based on an impartial process of reviewing all relevant documentation, industry standards and practices, the circumstances of the parties, and the facts of a dispute.
- Review of Terms of Reference and Bylaws - for independence from funding industries; governance led by independent directors not affiliated with any stakeholder group in financial services; insulation of board from the decision making or appeal of decisions.

Probably the most important in many ways, we were satisfied that OBSI meets this standard. As discussed also in Section 7, the Practices and Procedures Manual comprehensively sets out the ways in which fairness and independence is practically achieved. We reviewed a significant sample of closing letters and with a few remarks, found them to be thorough, professionally written and imparting a sense of impartiality and fairness.

We were also satisfied that the Terms of Reference and rules; the OBSI governance and its operational decision-making processes were free from inappropriate influence and more than satisfactory to provide a truly independent ombudsman service. We discuss the features of Fairness and Independence below.

8.1 Governance structure

The current governance structure provides for industry and independent directors and for all critical decisions to be made by a majority of independent Directors.

Unlike other schemes, there are not specifically dedicated director positions for ‘consumer representatives’ - however the clear impression we gained from our interviews is that the independent directors are bringing the consumer perspective to the table (and are seen by the industry as doing so). This sounds reasonable to us, given what we understand is a comparatively inactive consumer movement in Canada (at least in the financial sector).

By all accounts, the Board is functioning well. We understand that the Board, through the Chair has conducted performance evaluations of Directors and has reviewed its own operations as a whole.

That said, we were surprised at the degree of focus on the question of independence of the Board in comments received from some stakeholders. There was a strong sense that the 'optics' were not good for consumers and that the presence of industry-appointed Directors without formal consumer representation implied undue influence and diminished the perception of actual independence.

Whilst we understand that view, our review found no evidence that the OBSI is subject to undue influence from industry through its governance, its sources of funding or through personal connections of staff or Directors. .

We found that the main influence by industry on OBSI policy and operations comes through operational channels and through structured consulting - both of which are entirely transparent and appropriate.

To the extent that consumer stakeholders raised the issue of OBSI's independence, it seemed to us that this was driven by disappointment with the outcomes of OBSI's activity rather than its governance per se. As is often the case, consumers expect the ombudsman to act as a regulator and 'punish' the firm(s) or be seen as campaigning for the consumer and against the firms, etc. In this, OBSI's experience is no different from that of the Australian schemes we have reviewed.

In fact, in other settings, we have found that the active participation of the industry is an important part of the governance and sense of ownership by the industry – and an important element in legitimizing and promoting those decisions that might be seen by some as not necessarily in the industry's interests. In particular, decisions to increase expenditure are best made including those who will ultimately pay the bill.

Again in those other settings, we have been consistently and pleasantly surprised at industry's willingness to extend the reach of their ombudsman services and to drive improvements in industry practice for consumer protection. We think this is in no small measure a function of the presence of senior industry leaders on the Boards of those ombudsman services.

We think that if the current OBSI directions are to continue (not to mention the adoption of some of our recommendations) then industry is going to be asked to accept an increased role for OBSI. On the basis of our interviews with

stakeholders, this will not necessarily be welcomed by all. We would be concerned if at the very same time, industry had cause to feel disenfranchised.

We would also be concerned if OBSI were, in part, pressured into changes to its governance by the current trend of emphasis on independence. Speaking as ex-regulators and as experienced governance advisors, there has been, in our view, a global over-focus on the notion of independence in governance by financial system regulators and legislators. This is in part reactive and in part because independence is one of the few (notional) measurables in the intangible area of governance performance.

This is of course a matter for the OBSI Board. We will leave the issue by making the point that if industry participation at a governance level is to be lessened; our experience suggests that other significant consultative measures (such as the senior-level industry advisory group that we understand is being considered) will be required to maintain constructive, healthy relationships with industry.

8.2 Stakeholder liaison

Aside from its governance mechanism, OBSI also invests effort in a number of other forms of liaison with stakeholders. It conducts meetings with participating firms that are regular users, it attends regular meetings of the firms' internal ombudsman networks, and it meets with the industry associations and with regulators.

From our interviews, we concluded that industry generally recognizes OBSI's need for actual and perceived independence but has its concerns about OBSI moving too far away from industry. Pressed for examples, those who were concerned nominated recent rule changes - which they felt had been 'imposed' rather than 'suggested'.

It is difficult to judge from a distance whether there is genuine substance to the concerns or whether these are the inevitable growing pains and adjustments as OBSI matures and its membership and stakeholder base broadens. It certainly appeared to us that reasonable steps to consult were being taken by OBSI. However this is clearly an issue for industry and OBSI should continue to test the expectations of its stakeholders.

From our perspective, it is inevitable that OBSI will need, from time to time, to make decisions that may be unpopular with one section or other of the participating firms. A genuinely independent ombudsman service should of course be consulting with its stakeholders - but all parties must recognize that ultimately its management and governors must be able to make the right

decision for the organization, after taking into account the wishes of all of its stakeholders.

We did observe that much of the stakeholder liaison is driven by industry's own networks and OBSI staff are invited as guests to these meetings. That is entirely appropriate and healthy, however we suggest that OBSI would do well to supplement these with a few more initiatives that are OBSI-driven and to which industry and participating firms are invited.

This would enable more OBSI staff to attend liaison activities and benefit from the exposure to their counterparts in industry. A maturing, independent OBSI should also be able to demonstrate to its stakeholders that it has an agenda for its liaison, with goals and objectives and a program for achieving these.

RECOMMENDATION 11.

That OBSI develop its own program of stakeholder liaison with participating firms - supplementing existing industry-driven forums. These forums would enable OBSI to have greater control over the agendas and to involve more of its own staff.

8.3 Criteria for decision making

Chapter 1 of OBSI's Practices and Procedures Manual sets out the principle that OBSI's decisions are based on "fairness in all the circumstances" which takes into account good financial services and business practices, accepted industry standards and practices, standards established by industry regulatory bodies, professional associations of the individual firms, and law and regulation. This broadly based criterion is consistent with the approach taken by schemes in other jurisdictions (UK, Australia, New Zealand and Ireland).

In their interviews with us, participating firms did not take issue with OBSI's mantra of fairness. Some concerns were, however, expressed about OBSI's application of industry standards and practice. There was a concern that OBSI fails to consider industry practices in a sufficiently broad context, the point being that firms have a web of supporting procedures and systems that together comprise their practices.

One participating firm suggested that there is a trade off between service and cost; that financial services providers determine where they want to pitch their

business; and clients choose their financial services providers accordingly. That firm's contention was that OBSI should only find deficiencies where a firm's own policies and procedures have not been complied with and OBSI should not objectively consider the adequacy of a firm's policies and procedures.

We cannot accept this proposition. OBSI's mandate requires it to take into account industry standards and practices. It would be inappropriate if a firm with very poor policies and procedures was to be judged by a much lesser standard than its competitors. As well as being unfair, this could even encourage a "race to the bottom" in the standard of practices.

A more widespread reported concern was that OBSI was reaching its decisions on the basis of best practice rather than standard practice and by doing this, there would be a non-too-subtle pressure on all firms to raise their practice to whatever OBSI chose to identify as 'best practice'.

To understand how OBSI determines what is industry practice, we looked at OBSI's Practices and Procedures Manual, we used our file review to see the implementation of those requirements and we canvassed this issue in our workshop with OBSI staff. We found that OBSI staff are well aware that standard practice is very different from best practice. This was supported by our file review – we did not identify any complaints where we felt OBSI expected a level of practice that clearly went beyond the bounds of reasonable standard industry practice.

Nor did we see any examples where OBSI micro-managed in its expectations of industry practice. To give an example, we reviewed a file where OBSI asked a bank about its monitoring of unusual transactions for the purposes of fraud detection – OBSI did not go into the specifics of at what point the bank would freeze an account where some unusual transactions had been detected. Clearly this is a sensitive issue where OBSI must take care how it proceeds.

This is another example of an area where the more fulsome explanation referred to in Section 7.5 above is needed - ie. what elements of industry practice are seen to be the minimum essential for fair dealing. We have seen this done well by other ombudsman services - expressed at a level of generality - leaving the detail of how a firm achieves that standard as much as is possible to its own discretion.

We are aware that this is not always possible. To use an obvious example, it is inescapable that a firm that video-records the whole process of handling cash deposits is at an advantage in proving its position on a matter of disputed deposits - by comparison with a firm that does not. In our view, that disadvantage is not the doing of the Ombudsman - who must consider what

evidence is available. That is entirely the business and risk choice of the firm - and it must live with the consequences.

(It should be remembered that in any event, an ombudsman service does not dictate how the firm's practices should work - only how the ombudsman service will treat complaints that come before it. The firm is free to choose that risk, as with any other business or credit risk. We have seen instances - in particular where financial services providers offer credit extensions with minimal checking - where the firms simply accept the risk that if a complaint arises, it will be upheld by the relevant ombudsman.)

8.4 Balance between participating firm and client

We encountered a disparate range of views on whether OBSI was striking the right balance in its approach between participating firms and consumers. A number of participating firms expressed the concern that OBSI had shifted the balance over the last year or so and was "leaning towards advocacy" (of the consumer's position).

The view was also expressed that there was pressure from the regulators on OBSI to be more sympathetic to consumers and that OBSI had no choice but to respond. Still others acknowledged that a 'level playing field' between firms and consumers must by definition be 'extra-level' for the consumer - these interviewees took a strategic perspective, saying that if the price of an independent industry ombudsman service (and the avoidance of a regulator-owned one) was a more consumer-friendly service, then that was well worth the comparatively minor cost.

We also encountered the criticism that OBSI had in the past been too ready to reach a 50/50 split of responsibility between the firm and the consumer - and that this was a 'soft' option.

In our review of case files, we saw one or two older cases where we shared that concern. However, we felt that recent cases were being handled appropriately - and the reasoning for any split recommendations were well set out.

Our conclusion on this difficult issue of balance is that OBSI presently supports clients in a way that takes account of their relative lack of knowledge and resources as compared with participating firms - whilst still being strictly neutral in its decision making.

9. Competence

Code of Practice - Standard 5. Competence

Our staff are recruited for aptitude, skills, and training.

Professional development is ongoing.

Operational measures:

- Hiring criteria and procedures.
- Position descriptions.
- Professional designations and CE requirements.
- Staff development activities as listed in performance plans.
- Group development activities.

This standard is met. We were impressed with the effort that has been put into supporting the competence of the organization through investment in its staff. We saw comprehensive position descriptions, recruitment done in a professional way and a development framework in place which is appropriate to the size and role of the organization.

9.1 Professionalism and industry knowledge of staff

Our review found that OBSI staff are well regarded by the people with whom they deal. Participating firms spoke of their professionalism and courtesy, for example, unfailingly turning up for meetings and coming well prepared. The sense was that their level of industry knowledge had improved, although some participating firms noted OBSI's dependence upon a couple of key staff for this knowledge and one firm mentioned some lack of knowledge about newer products.

Clients invariably spoke very highly of OBSI staff with whom they dealt – they were described as personable and knowledgeable. There was just the occasional criticism of an overly matter of fact approach, and a lack of rapport. Report writing was generally praised by industry and clients - with most participating firms acknowledging a continuing improvement.

We likewise were impressed with the professionalism and level of knowledge of OBSI staff. The staff are well qualified and come from an appropriate range of disciplines including law and accounting. Collectively they have prior experience that includes banking, investment advice, compliance, complaints-

handling and customer service. Importantly Customer Service Representatives (the staff who answer telephone enquiries) and the investigators alike expressed enthusiasm for and commitment to their work.

We were not, however, able to fully observe staff's telephone interactions because the OBSI does not have the capability to allow monitoring of telephone calls. This is not a pressing priority, however in time it is a capacity that any organization with a volume of consumer calls should acquire.

RECOMMENDATION 12.

That in due course, OBSI acquire the technology to enable supervisory monitoring of telephone calls.

9.2 Induction and continuing development of staff

Until recently, it is probably fair to say that OBSI's staff induction procedures were weak. Considerable effort has been put into documentation generally in recent times and induction in particular. The most recent employee was provided with a comprehensive folder of material, has a mentor as well as a supervisor and, like all staff, can access through the e-library a wide range of precedents, tools and other materials.

For ongoing training, the emphasis is upon courses that have been identified by staff in their personal development plans, which are part of the performance management system. We understand that there are also occasional external speakers, particularly when all staff get together for their regular off-site development days.

This could, we think, be usefully supplemented by other group learning initiatives, including best practice complaints-handling techniques such as negotiation and interview skills and financial investigation skills.

We would also encourage expansion of initiatives to build knowledge of financial products and financial services provider practices by regularly inviting guest speakers from participating firms to discuss practices within their firm and industry. This will also help to build relationships with industry.

RECOMMENDATION 13.

That OBSI develop a program of ongoing systematic group-delivered training for staff - to supplement the existing individual needs-driven training. This should include specific skills appropriate to complaint-handling and investigation, and current industry practice.

9.3 File maintenance

Our file review brought to light quite variable standards in file management. Whilst some files were clearly organized into sections depending on the source of documents, and within a section in chronological order, some files we encountered were a loose leaf pile of documents that were generally in chronological order, but without clarity about attachments to correspondence, identification of the final version of documents or the source of the documents.

For the most part, a file is only handled in any depth by one investigator. We understand the desire to allow for personal working styles and accept that some flexibility should be allowed – however, any organization whose main activity involves revisiting and often implicitly critiquing participating firms’ files should - as a matter of policy - itself maintain a high standard of file management. We felt this could be improved.

As reviewers, we found that files structured into sections (client correspondence, member correspondence, working files/analysis) worked well – this structure would, we think, promote ease of peer or management review (see our recommendations elsewhere concerning this) and is consistent with the guidance in OBSI’s Practices and Procedures Manual. But whilst this structure works well for reviewing completed files, it requires more filing and housekeeping discipline during the life of the file, than does a strictly chronological approach. These factors should be considered in the course of developing file management protocols that are more specific and prescriptive than presently set out in the Practices and Procedures Manual.

RECOMMENDATION 14.

That OBSI develop tighter office protocols for file management. These protocols should ensure the security of documents throughout the life of the file and facilitate later file review.

10. Timeliness

Code of Practice - Standard 6. Timeliness

Cases are dealt with promptly: calls and emails are responded to within one business day; complaints are assessed within four weeks; and a decision is reached on complaints within 180 days of receiving the file, 80 per cent of the time.

Operational measures:

- One business day telephone and email return (recorded in case management system).
- Assessed within 4 weeks (recorded in case management system).
- Time of decision (quarterly and annual statistics).

OBSI has significantly improved the timeliness of its response over the last year or so and we concluded that this standard is now being met. Nevertheless, timeliness is a continuing issue - OBSI's Strategic Plan notes this as a key area of focus - and it is a source of some dissatisfaction amongst participating firms and clients.

10.1 Stakeholder comments

Both participating firms and clients alike commented on the length of time that OBSI investigations take. The participating firms we interviewed had noted recent improvements – but almost universally they thought more improvement was needed. Their concerns encompassed efficiency and file storage issues and unfairness of delay for the businesses implicated by the complaint. Clients were at best resigned to the length of time the process took, but those who were unhappy with the outcome of their complaint almost invariably found the time taken to be an irritant that greatly magnified their dissatisfaction and adversely affected OBSI's standing in their view.

10.2 Trade-offs between consultation and time

An issue for all industry ombudsman services is balancing the trade-off between thorough consultation with the parties and the pressure for speedier outcomes. A good example is the OBSI practice of giving the participating firm 30 days to comment on a Draft Recommendation - before sending it to the client for their opportunity to comment - before it is finalized. This initiative is widely welcomed by the firms and the sequence minimizes the risk of upsetting the client as a result of any errors of fact or miscalculation of loss/recompense.

The downside is of course that in most cases, an already long process is extended by 30 or more days. The challenge for the industry ombudsman scheme is to find offsetting time savings to bring the overall elapsed time back into the target range.

10.3 Causes of delay

We undertook detailed analysis of a sample of files to identify where time had been lost during the file. We found that in some cases, there were periods of weeks of no action at various points during an investigation right up until and including the period of Management review. In others, any identifiable delays could only be sourced to the accumulation of many short delays (eg. a file awaiting action for 2-3 days at various points in the course of its life). There were one or two examples of delays awaiting information from either participating firms or clients.

We were disappointed that due to a combination of the characteristics of the sample files and some limitations of the iSight case management system, we were unable to provide a more definitive analysis of the causes of delay. Our analysis did suggest that no one strategy alone will be sufficient to produce a noticeable and sustained reduction in the average time taken.

When it comes to rapid movement of paper-based work, an ombudsman's office is - in many respects - no different to any other office. Each hand-off between staff members may add a brief delay - perhaps a half a day or a day each time documents move through out-trays and in-trays. As well, staff take leave; attend training, travel for business - just as in any office.

There are some specific characteristics of an ombudsman's office that introduce particular delays. Typically only one staff member is familiar with the facts of a particular case - therefore only that person can return a call, draft a letter, check the content of a response and so forth. That can introduce additional waiting time.

Also typically, an investigator will have multiple files running concurrently - most of which will have some complexity. There is a time overhead in putting down one matter and re-familiarizing oneself with the next matter. Some detailed research or analysis tasks require uninterrupted periods of concentration - times when other files must wait.

And of course, there are delays that come from requests for additional information - from a firm, the client, an internal adviser or specialist, an external expert, an industry body, etc.

We are loathe to be too specific in our recommendations - on the basis of a single week's examination. Management of OBSI are in a much better position to devise a workable strategy for improvement in this area. The suggestions made below should be taken as prompts rather than prescriptive recommendations.

We think that it is precisely these types of processes that lend themselves to staff-driven continuous improvement techniques and that a range of actions will be required including probably:

- a) ensuring that the culture and procedures of the Office encourage a rapid response to correspondence coming into the office - so as to build momentum on a file and in particular set a standard for prompt response by participating firms;
- b) a more collaborative investigation process that includes earlier peer review so that later reviews of draft Reports do not result in changes of direction that delay the process;
- c) addressing what look like possible blockage points in stages such as the management review;
- d) more obvious monitoring and follow up of timeframes;
- e) developing a few more mid-stage milestones for the case management system that keep the focus on the stage of completion throughout the life of the file;
- f) we have also seen quite useful time tracking reports in case management systems that, at each entry of some action in the system, set a simple flag that indicates which party in the process is now responsible for action. (One of these simply showed which party the file was 'marked to' - eg a manager, the firm, the client, an internal resource, etc.) That information makes it easier to track where days can be shaved from the process.

Now that the OBSI has developed a suite of tools and put in place improved resources to support investigators – see comments above as to this –we think there should be a real opportunity for OBSI to achieve significant improvements in its investigation timeframes. There will need to be some additional resources applied to this continuous improvement activity - although some of the now complete project resourcing demands must have eased.

Although as we have noted before, direct comparisons between schemes can be misleading, we note that the Australian BFO and the UK FOS have managed year-on-year improvements in timeliness therein the three year period from 2004 - 2006. In both cases they now complete more than 90% of their matters in under 180 days. OBSI has improved its closure times in 2005 and 2006 - although the nature of its files are a factor in longer overall investigations.

RECOMMENDATION 15.

That OBSI develop a program of staff-driven continuous improvement activity aimed at improving its time performance generally and ensuring that its target investigation timeframes are met. Amongst other things, there should include:

- *regular reporting of timeframes to Management;*
- *modification of iSight to provide more detailed time usage information;*
- *prompt action where an investigation timeframe starts to slip; and*
- *looking for opportunities for any parallel processes that may save elapsed time.*

10.4 Keeping parties informed

Related to the issue of timeliness is the need to keep the parties informed. For clients, this begins with acknowledgement of receipt of their complaint. OBSI's Practices and Procedures Manual states that it is expected that an acknowledgement will be provided within 1 business day. The practice is for that acknowledgement to be in writing.

To assess whether written acknowledgements are in fact being provided within 1 business day, we took a sample of 22 complaint files. Of these, there were 3 files where the acknowledgement was either 10 or more days late or not on the file, there were 3 files where the acknowledgement was a few days late and the balance of files met the 1 business day target. Whilst an admittedly small sample, and the more recent performance was better, this exercise suggests to us that acknowledgement performance could remain on the watchlist.

RECOMMENDATION 16.

That OBSI periodically monitor complaints acknowledgement timeframes so as to ensure continuing focus on achieving OBSI's 1 business day service standard.

There is also the issue of keeping the parties informed where delay occurs. Our file review suggested that the OBSI is generally quite good at this – although we saw a few exceptions.

This effort is well worth making as a number of the interviewed clients indicated that lengthy intervals in the process were more tolerable where the OBSI investigator contacted them periodically to keep them informed and to reassure them that they had not been forgotten.

Some participating firms commented that they were sometimes left wondering the status of matters – mostly where they had been asked for some preliminary information to help OBSI decide whether to undertake a full investigation. Given that OBSI does not ask a participating firm for information that bears upon a client without obtaining the client's consent to the release of confidential information, we see no legal barrier to OBSI letting participating firms know the status of these matters - ie. whether the complaint is still being assessed or alternatively whether the file has been closed.

RECOMMENDATION 17.

That OBSI develop system prompts to ensure that clients and participating firms are kept informed of the progress of matters, consistent of course with confidentiality constraints.

10.5 Participating firm tardiness

In our file review, we looked to see if there was evidence of delays on the part of participating firms and, if so, whether the OBSI had been diligent in following up the issue with the participating firm. We found some evidence of delays - mostly fairly minor – but certainly not evidence of endemic recalcitrance on the part of participating firms. Where delays did occur, we found evidence that this has been identified by the OBSI and follow up contact had occurred.

As mentioned, we did see improvement in attention to timeliness in the more recent files that we examined. We saw documented evidence of follow up of late responses from the participating firms – including letters, telephone calls and emails. We thought these communications struck the appropriate tone - neither too gentle nor too strident.

Our assessment of this situation was, however, hampered by a lack of data – OBSI’s iSight database does not conveniently record when requests are made of participating firms and when these requests are met. We think it would be worthwhile for the OBSI to have better data as to participating firm response times, in order to assess trends and enable a sound basis for raising any issues with participating firms as to their tardiness should this prove to be necessary.

RECOMMENDATION 18.

That OBSI revisit its iSight record keeping with a view to enabling ready extraction of data as to participating firms’ timeframes for response to requests for information or other assistance.

The most effective way we have seen of managing timeframe delays by participating firms and by consumers is, is an “after the deadline, we will act” approach. Rather than simply setting a period for response, which must then be followed up and extensions granted or threats made, under this approach, the first letter of request for comment or information clearly states what the ombudsman service will do at the expiry of the time period - eg “after 30 days, we will proceed to a formal investigation” or “after 30 days we will close the file” or “after 30 days – ie. September xx – we will forward a draft of our recommendation to the consumer for their comment”. The circumstances do not always allow for this, but where it does it tends to be most effective.

RECOMMENDATION 19.

That OBSI review its procedures and standard letters for setting timeframes for response from external parties - with a view to adopting an “after the deadline, we will act” approach.

A more significant problem for consumers generally is the absence of any formal obligation on participating firms to complete the original internal handling of the complaint in a reasonable time. We understand that internal timeframes are in place in some firms and that these vary considerably.

We saw a number of complaints that were very old by the time they arrived at OBSI, giving us little faith that the internal deadlines were effective. There is no substitute for a widely accepted standard timeframe, which would give consumers some expectation of resolution, reduce problems with statute time limitations and generally improve the ability of OBSI to deal with any complaints that are referred.

We understand that proposals are now before some of the self-regulatory bodies to introduce some complaint-handling time limits. We fully support this initiative and think that it is important for OBSI to be active in its support and encouragement of this by industry.

RECOMMENDATION 20.

That OBSI actively support initiatives for industry to apply time limits to the internal handling of complaints.

10.6 Publishing of timeliness statistics in Annual Report

Presently OBSI's Annual Report does not include statistics in relation to timeframes. This can be contrasted with the practices of the Australian BFSO and the UK FOS. We think that it is good practice for any organization and in particular for an organization whose main purpose is seen as holding other organizations accountable. The extra public accountability can only assist in driving an internal focus on timeliness.

Note that in our view, that the reported statistics should be the timeframes from receipt of an in-mandate complaint (ie. after finalization by the participating firm's internal complaints-handling scheme) until finalization by the OBSI. We would suggest that this is done both for early resolution files and for full investigations. We understand that this approach would include some external dependencies which are out of OBSI's control however this would be far more reflective of the client's experience than a reporting of the internal investigation timeframes - and a more transparent measure.

RECOMMENDATION 21.

That OBSI publish in its Annual Reports statistics showing the length of time to resolve complaints – both early resolution matters and investigations, starting the clock from the point of acceptance of an in-mandate complaint.

11. Confidentiality

Code of Practice - Standard 7. Confidentiality

We are committed to the privacy principles of CSA-Q830 which are, in turn, embodied in federal legislation (PIPEDA). In particular, collection, use and disclosure of client data will only be done with client consent and only to the extent required to conduct the investigation.

Operational measures:

- Feature of Release Letter
- Review of internal privacy controls embedded in the Policy and Procedures Manual

This standard is clearly met.

While we are not experts in Canadian privacy legislation, OBSI's processes and documents met our understanding of those requirements. The Practices and Procedures Manual includes an express commitment to ensuring client personal information is kept confidential, secure and accurate. Fulfilling this, OBSI maintains a secure office environment, its computer network is restricted to authorized users via a system of registered usernames and passwords and offices are locked at the end of each day.

OBSI also has a Privacy Statement that explains to clients why OBSI collects personal information and what it does with that information. And as mentioned earlier, OBSI has established processes to obtain consent to the release of information.

Our OBSI staff workshop and interviews suggested that staff have a good level of awareness and understanding of confidentiality issues and practices. Our file review did not detect any cases of non-compliance with those practices.

The only relevant issue – the variable standards in file maintenance - has been dealt with earlier in this report. Clearly a file that does not have documents securely fastened risks documents – potentially confidential documents - going astray. Our Recommendation in Section 9.3 above addresses this issue.

12. Transparency

Code of Practice - Standard 8. Transparency

Procedures and documents are in plain language where possible and are explained in plain language to all parties.

Decisions and recommendations are explained to both parties in writing and orally if requested.

Operational measures:

- Review of OBSI public materials (especially website that explains total complaint handling process) available to clients in accordance with Plain Language Standards
- Statistics released annually to the public detailing the number and nature of investigations undertaken by OBSI, and the outcomes.
- Results of Client Service Survey are published in Annual Report.

This standard is met with evidence sighted of each of the indicators. We are conscious from our interviews with stakeholders that their expectation of transparency is drawn more broadly than the expression of the standard. In response to that feedback, we offer a few supplementary remarks below.

12.1 Public materials

OBSI provides a bilingual website which is professional and clear in design and easy to navigate. Resource materials on the site are of a professional standard and offer useful information for participating firms - although not in great depth. We saw a selection of brochures - again bilingual and professional in standard.

We reviewed the four most recent Annual Reports - which were attractively presented, written in plain language and were of a standard that matched most of the ombudsman services we have seen. The essential statistics were presented including the Client Service Survey.

As mentioned above, we concluded that the standard was met, however we felt that there were probably opportunities to take greater advantage from the Annual Report. We discuss a few of those below.

12.2 Reporting of trends/ views about practices

Our interviews with participating firms demonstrated that firms would like a flow of information from OBSI: both statistical information and information about complaint subject matter trends and industry practice.

At the moment, OBSI provides limited statistical reporting in its Annual Report – complaint types and complaint numbers by participating firm are provided. Complaint-related issues can be raised orally during the year when OBSI staff meet with bank complaints-handling staff. As discussed under Awareness, OBSI is planning a regular newsletter to supplement these information sources. As we understand it, this might include segments about how OBSI goes about its work or the kind of practices that OBSI is observing.

Recently, OBSI ceased the practice of sharing firm-specific quarterly complaint statistics with the few participating firms that it meets with regularly. This is a source of some complaint from those firms who found it useful. We understand that these statistics can be problematic - particularly if they are being inappropriately used by the firms or if they provide perverse incentives to limit the number of complaints that come to OBSI.

This is a familiar subject of debate in ombudsman schemes. Higher numbers of OBSI referrals could be a function of a more open and transparent disclosure practice in that firm and therefore a good thing - or higher numbers may be an indicator of greater customer problems with the firm and therefore a bad thing. Lower numbers could mean the reverse. Unfair comparisons might be made between quite dissimilar firms. The statistics may be a product of some historical quirk and unrepresentative. An ethical firm may have purchased another, less ethical firm and the process of merger and cleaning up has produced more complaints in the name of the new owner - and so on.

We understand the limitations, but think that an important part of an Ombudsman scheme's work is the general provision to participating firms of information with the aim of improving the way the firms' processes and systems work - and how they handle their internal complaints.

Information about the good and bad of industry practices plays a part in this, as does information about how the scheme goes about its work. By way of example of what we mean, we refer to the Australian BFSO Bulletins and the UK FOS Technical Notes. In addition, we have found that ombudsman services can obtain significant good will from providing basic feedback to participating firms on numbers of referred complaints held, their state of progress, target dates for conclusion, etc. Some industry ombudsman services have dedicated sections of

their website where participating firms maintain limited access to the ombudsman's case management reporting system, in order to obtain this data.

In general, we find that qualitative information is usually more helpful than quantitative - however that does not completely diminish the value that might be gained from the numbers. In every example that we have seen with a healthy relationship between firms and the industry ombudsman service - exchange of information has been a prominent feature. We would urge OBSI to understand what participating firms would like to receive in the way of more information and to do its best to meet reasonable demand.

As an aside, we have observed previously that the customer service/enquiry function of ombudsman services is a resource of considerable potential that is often underused. In short, time-limited projects, telephone staff can be used for specific research by asking targeted questions or collecting targeted statistics. For example, this might be about the point of referral or to obtain better understanding of the demographics of callers, etc. This information can be used for improvement of OBSI's service - but also to inform OBSI's communication to industry.

RECOMMENDATION 22.

That OBSI periodically consult with participating firms about the types of information that they would like OBSI to share with them and within reason, to make every effort to meet that need.

12.3 Transparency of Procedures

For the most part, both clients and participating firms were very clear about the main steps in OBSI processes and complimentary about the communication received from OBSI. We saw procedural support for this and a checklist used by OBSI Investigators to ensure that clients have all the necessary information explained to them. The one area where this was less so, was in the firms' understanding of the investigation steps and reasoning that underlies the OBSI recommendations.

The Practices and Procedures Manual is not published on the website and we understand some of the reasons for this. Amongst other things, it can encourage protracted and detailed disputes over procedures with either clients or participating firms. We are not convinced; however, that there is not a case for sharing rather more information with participating firms than is presently done.

The current Guide for Participating Firms on the website is an excellent introduction to OBSI for the first-time user firm. However, it does not provide enough detail to be of much assistance to the more frequent or familiar user.

We have elsewhere suggested increased activity in publishing technical guidance for participating firms (as per the BFSO). In our experience these are much appreciated by participating firms and well worth the effort.

The published case studies are also very good, but again do not provide sufficient detail to be of much assistance to the participating firm. Some industry ombudsman services that we are aware of, publish all of their determinations. A more selective solution is for the industry ombudsman service to select an investigation report of general or wide application and - after a small amount of editing and the removal of personal information - reduce it to a publishable example detailed case study, for the use of all stakeholders.

We think this would be welcomed by participating firms and go a long way to improving the transparency of the OBSI's processes and reasoning.

We also encourage industry ombudsman services to use more one-to-one dialogue between particular participating firms and themselves. Group liaison activity with multiple firms is also important, but is always conducted at a level of generality which does not help to develop an understanding of the detail.

We are aware of industry ombudsman services that schedule annual half-day workshops with some of their counterparts from participating firms - in which one or two actual case files from the recent past are reviewed in detail, with each side being able to ask questions of the other about their processes and discuss ways in which the matter may have been handled better. We understand that these meetings can generate excellent results.

RECOMMENDATION 23.

That OBSI progressively publish on its website a collection of de-personalized investigation Reports to be used as a resource by stakeholders.

RECOMMENDATION 24.

That OBSI continue with and expand its one-to-one liaison activity with participating firms, with a view to continuously improving cooperation and complaint-handling between the two parties.

13. Legality

Code of Practice - Standard 9. Legality

OBSI is governed by both federal and provincial law. The agreement of all parties to the dispute is required before OBSI can act.

Operational measures:

- Review of Governing Acts - Corporation Act, Privacy Act and Terms of Reference
- Written agreement of all parties in Release Letter

This standard is clearly met.

Again we need to state that we are not experts in Canadian law. However, our review of policies, procedures and practices demonstrated that OBSI has shaped its approach carefully within the framework provided by legislation and its Terms of Reference.

Our interviews with participating firms uncovered one complaint raised that OBSI had exceeded its Terms of Reference. The complaint was that OBSI had taken on a matter that bore upon a previous Court case. Without a detailed review of the OBSI file and the Court records of the case, which was out of our scope and expertise, it is not of course possible to comment on that particular allegation.

Suffice to say that it was the only indication we received of any problem and in any event, OBSI does have a very broadly expressed mandate. In particular, the Terms of Reference give the Ombudsman the discretion to decide that, rather than OBSI, a court of law (or indeed any other dispute resolution process) is a more appropriate place for a matter to be dealt with.

14. Capacity

Code of Practice - Standard 10. Capacity

Sufficient resources to carry out our responsibilities effectively and efficiently is ensured by the dominance of Independent Directors on the Board

The Ombudsman is responsible to the Board for the prudent and efficient management of both financial and physical resources, and his/her performance is reviewed annually.

Operational measures:

- Budget approval and minutes regarding budgeting and strategic planning
- Review of Performance Objectives for Ombudsman.

This standard is met. From our observations, staffing levels seemed satisfactory for the current level of activity – and within the constraints of a comparatively small organization, seemed to allow sufficient flexibility to handle normal peaks and troughs in workload. We observed an impressive degree of effort put into projects to improve processes and to document procedures - indicating sufficient management resource. We are conscious however that some of our recommendations will require some additional resourcing.

We observed the documents used to generate and gain approval for an annual plan and budget and saw that the issues had been discussed thoroughly at the Board.

We sighted a performance agreement for the Ombudsman and evidence of performance monitoring by the Board. We also saw a framework for performance feedback between OBSI managers and the staff.

The OBSI office is well equipped and furnished to a modest, modern standard. The technology support seemed appropriate to the size of the organization - although, the case management database has some limitations in its current configuration and will need some development to meet the OBSI's future needs - as will the telephone system.

The Ombudsman discussed with us some areas for future strengthening which included staff mentoring and training, a stronger research capacity, additional legal skills, a policy capacity, and broader investigation capacity – all of which we support.

15. Continual Improvement

Code of Practice - Standard 11. Continual Improvement

We are committed to continual improvement of our dispute resolution process.

Operational measures:

- Participation in periodic ADR and industry conferences and colloquia.
- Membership in national and international groups
- Process Audit/Review (Asset Risk)

As has been observed in a number of other sections, we were impressed with the development work that has been achieved at OBSI over the last year or two. This standard is met.

We are aware that OBSI staff have been active in participating in national and international ombudsman networks and conferences. This review itself is evidence of attention to continuous improvement.

Throughout the report and in our recommendations we have suggested additional initiatives that have a continuous improvement flavour. As a general observation, we would see continuous improvement activity in the future in each of the areas in which we have summarized our recommendations:

- a) Scope, with its focus on systemic investigations and increased use of mediation
- b) Awareness, and strategies to ensure OBSI is building a higher profile;
- c) Stakeholder relations, working more closely with participating firms and key referral points;
- d) Operational improvements, including evolving review and investigative processes, file management and consistency; and
- e) Timeliness issues, including both OBSI and participating firms timeliness.

The recommendations are summarized under these five headings in the section that follows.

16. Summary of Recommendations

In this Report we have reviewed OBSI against its eleven standards and where appropriate, included in each section recommendations relating to that particular standard. In this Summary of Recommendations, the recommendations are organized into five key themes - which provide a view of how the recommendations fit together as a package.

The 24 recommendations, of course, vary in importance and difficulty of implementation. We have tried to sequence them within each key theme in order of priority. They retain their original numbering for ease of reference to the relevant discussion in the body of the report.

16.1 Scope of operations

RECOMMENDATION 10.

That OBSI amend its Terms of Reference to allow it to take on systemic investigations and, in consultation with participating firms, develop policies and procedures for these types of investigations.

RECOMMENDATION 6.

That OBSI continue to look for opportunities to conciliate or mediate early settlements of complaints - and to develop and document a body of knowledge as to what circumstances are best suited to these alternate approaches. Relevant factors are likely to include the amount of money involved, the specificity of the matters in dispute, whether the customer is still open to an ongoing relationship with the firm and the extent of documented evidence readily available. The OBSI's Practices and Procedures Manual should progressively reflect this knowledge.

16.2 Awareness and accessibility

RECOMMENDATION 2.

That OBSI actively support industry initiatives to oblige participating firms to make consumers aware of their right to access to OBSI - at an early stage.

Further, that OBSI actively work for an obligation on participating firms to provide OBSI-generated materials to consumers when informing them of their right to access to OBSI

RECOMMENDATION 3.

That OBSI meet with participating firms that have an internal Ombudsman's Office function to discuss this naming problem and to suggest a re-naming/re-description of the internal function to reduce confusion by consumers between the firm's internal function and OBSI.

RECOMMENDATION 1.

That OBSI conduct periodic research to test the availability and accuracy of referral information. This research and the development of strategies to improve referral information might be conducted jointly with industry associations or regulators. Strategies might include joint awareness-raising activities, production of joint referral material or joint education initiatives.

16.3 Stakeholder relations

RECOMMENDATION 11.

That OBSI develop its own program of stakeholder liaison with participating firms - supplementing existing industry-driven forums. These forums would enable OBSI to have greater control over the agendas and to involve more of its own staff.

RECOMMENDATION 24.

That OBSI continue with and expand its one-to-one liaison activity with participating firms, with a view to continuously improving cooperation and complaint-handling between the two parties.

RECOMMENDATION 22.

That OBSI periodically consult with participating firms about the types of information that they would like OBSI to share with them and within reason, to make every effort to meet that need.

RECOMMENDATION 23.

That OBSI progressively publish on its website a collection of de-personalized investigation Reports to be used as a resource by stakeholders.

16.4 Operational improvements

RECOMMENDATION 4.

That OBSI adopt a meeting approach to reviewing matters for early closure and progressively develop documented criteria for matters suitable for early closure.

RECOMMENDATION 5.

That OBSI amend its early closure letters to clearly explain that early closure was determined on the basis "of the information available". Without falsely encouraging clients, the letters should allow for clients to respond with additional information.

RECOMMENDATION 7.

That OBSI continue to develop initiatives to detect and minimize inconsistencies in its approach to complaints-handling between matters with similar facts, between investigators and over time.

Consistency should be a specific focus of its on-going training program – case based training is likely to assist.

A program of file reviews – the full file, not just the Report - should be established. This could include regular peer reviews and/or periodic audits of files.

RECOMMENDATION 8.

That OBSI periodically review its processes against the following three tests for clarity and completeness:

- *The client, the participating firm and the OBSI should have a shared understanding of all of the issues under consideration in the complaint;*

- *The client and the participating firm should understand in advance, how the OBSI is going to approach the decision-making;*
- *The final letter issued by the OBSI should clearly tie the findings back to all of the original aspects of the complaint and to the issues on which the finding or recommendation turned.*

RECOMMENDATION 9.

That OBSI review its Report writing practices to ensure that:

- *it provides sufficient explanation of key findings and references these findings to what written records establish - the aim should be that participating firms can understand the thinking sufficiently to be able to differentiate decisions, and a client should be able to see that their contentions have been considered and, where they have been discounted, what the basis is for this; and*
- *it explicitly references its decisions to its mandate to strive for fairness in all the circumstances and gives reasons why it considers that this decision is consistent with that mandate.*

RECOMMENDATION 14.

That OBSI develop tighter office protocols for file management. These protocols should ensure the security of documents throughout the life of the file and facilitate later file review.

RECOMMENDATION 13.

That OBSI develop a program of ongoing systematic group-delivered training for staff - to supplement the existing individual needs-driven training. This should include specific skills appropriate to complaint-handling and investigation, and current industry practice.

RECOMMENDATION 12.

That in due course, OBSI acquire the technology to enable supervisory monitoring of telephone calls.

16.5 Timeliness Issues

RECOMMENDATION 15.

That OBSI develop a program of staff-driven continuous improvement activity aimed at improving its time performance generally and ensuring that its target investigation timeframes are met. Amongst other things, there should include:

- *regular reporting of timeframes to Management;*
- *modification of iSight to provide more detailed time usage information;*
- *prompt action where an investigation timeframe starts to slip; and*
- *looking for opportunities for any parallel processes that may save elapsed time.*

RECOMMENDATION 20.

That OBSI actively support initiatives for industry to apply time limits to the internal handling of complaints.

RECOMMENDATION 21.

That OBSI publish in its Annual Reports statistics showing the length of time to resolve complaints – both early resolution matters and investigations, starting the clock from the point of acceptance of an in-mandate complaint.

RECOMMENDATION 19.

That OBSI review its procedures and standard letters for setting timeframes for response from external parties - with a view to adopting an “after the deadline, we will act” approach.

RECOMMENDATION 17.

That OBSI develop system prompts to ensure that clients and participating firms are kept informed of the progress of matters, consistent of course with confidentiality constraints.

RECOMMENDATION 18.

That OBSI revisit its iSight record keeping with a view to enabling ready extraction of data as to participating firms' timeframes for response to requests for information or other assistance.

RECOMMENDATION 16.

That OBSI periodically monitor complaints acknowledgement timeframes so as to ensure continuing focus on achieving OBSI's 1 business day service standard.

Appendix - Consideration of the Joint Forum Guidelines

The Joint Forum of Financial Market Regulators and Finance Canada, in discussions with the Financial Services OmbudsNetwork, have agreed upon Guidelines that set out principles for third party dispute resolution systems for consumers in banking services, investments and insurance. These Guidelines are part of a larger Framework for Collaboration that sets out the relationship between the regulators and the Ombudservices, and their mutual roles in consumer protection in Canadian financial services.

In this Appendix, we briefly comment upon the extent to which our review of OBSI against its own standards gave us some insight into its likely performance against the matters set out in the Guidelines. We also note the steps that the OBSI might need to take in order to achieve full compliance with them.

We have offered a view as to OBSI's likely compliance with the guidelines, but this is at an overall level for each guideline - rather than point by point. In a normal independent assessment, the usual process is to first review the available documentation, to understand the intent and then by investigation, establish the actual practice. In this instance, the Guidelines were not the primary focus in our review, and we caution that there are both documentary and investigative gaps in our ability to comment at that level of detail. A more forensic operational review would be required to be able to comment authoritatively, particularly where there is not a strong overlap between OBSI's own standards and the Framework's Guidelines.

That said, our "high altitude" review indicates that OBSI would substantially meet the Guidelines and with the exception of a very few notable issues that we discuss below, could easily address most of the likely gaps in detail compliance. The very few gaps of significance would require the cooperation of stakeholders, including the regulators and participating firms. With that support, we believe that full compliance could be achieved quite readily.

In more detail, we observe the following:

16.6 Independence

Objective of the Guideline

"To assure financial sector consumers who refer complaints to the OmbudService of its independence".

Implementation Guidelines

The guideline defines independence as "the absence of relationships with the affected financial sector industry, or firms within it, that would cause a reasonable person to question whether the person can fairly and effectively resolve complaintsor provide objective and disinterested oversight". The guideline includes measures to ensure the robustness of the governance structure and appropriate funding of the service.

We found OBSI's governance structure to be robust and independent. Our expectation is that OBSI's governance structure would meet the guidelines or be very close to doing so.

Importantly, OBSI has an independent Chair. It has provision for a majority of independent Directors and for those independent Directors to make the most important decisions. Its independence is not compromised by industry's minority representation on the Board. Although there are no specifically designated 'Consumer Director' positions, there are provisions within the rules for the Independent Directors to be representative of relevant sectors of the Canadian community.

The By-Laws specify the means of appointing (and dismissing) Directors and set out in some detail the responsibilities and powers of the Board, its Directors and of its Committees.

These specific responsibilities include most of the requirements of the Guidelines, however, by way of illustration, there is not a document that specifically includes an obligation "to ensure sound relations with regulators and the accountability of the OmbudService". There is no doubt that the Board has the power to do this and in our observation, it in fact does it - however to comply with the letter of the Guidelines some amendment to the By-Laws or some supplementary document would be called for.

16.7 Accessibility

Objective of the Guideline

“To articulate a framework in which the OmbudService will (a) take active steps to promote knowledge of its services, (b) ensure that consumers have convenient, well identified means of access to its services, and (c) provide its services at no cost to consumers.”

Implementation Guidelines

The guideline specifies steps that an OmbudService should take to make its existence, processes and services well-known to financial services consumers. Also personal contact should be provided, the OmbudService should be at no cost to consumers and services should be available in both English and French. FSON should host single-window telephone and internet services that can direct complaints to the appropriate OmbudService.

We are supportive of OBSI’s recent initiatives to build awareness of its services. We found that OBSI rates well in terms of cost and physical accessibility – no charges for complainants, toll-free numbers, personal contact with front-line customer service staff, and so on – and ease of use for both English and French (and other language) consumers. Our assessment is that in all but one aspect, OBSI would already meet the expectations of this Guideline.

The Guidelines expect participating firms to be active in promoting the existence of OBSI - and we do not think that this expectation is currently met. OBSI is in the process of updating its information material for consumers – available in hard copy and on its website. So far as we are aware, the participating firms do not distribute OBSI information material. To address this, OBSI should build into its rules for participating firms, an obligation to disseminate OBSI material when informing consumers about their right of access to OBSI. We understand also that OBSI is supporting current consideration by self-regulatory bodies of new rules that that would set out the obligation on participating firms to make consumers aware of OBSI. These two initiatives would put OBSI in compliance with this aspect of the Guidelines.

We also note that we did not look at the other parts of the FSON referral network and so we are assuming that these referrals operate effectively.

16.8 Scope of Services

Objective of the Guideline

“To identify terms of reference to provide both participating firms and their consumers to provide both participating firms and their consumers with a clear understanding of the range of activities and nature of consumer complaints which will be taken up by the OmbudService.”

Implementation Guidelines

The guideline requires Terms of Reference that do not unnecessarily exclude complaints and specifically give the OmbudService authority in relation to systemic issues. The OmbudService should assist complainants to articulate their complaint and, where a complaint is outside the Terms of Reference, should clearly communicate this to the consumer and provide help to find other available services. Substantive change to the Terms of Reference should be approved by the Board of Directors after stakeholder consultation.

OBSI’s Terms of Reference are broadly expressed and as our review showed, broadly interpreted. With the exception of the capability to identify and investigate systemic or widespread issues which we strongly recommend, we expect that OBSI would meet the Guideline.

Clear communication with the parties to a complaint is of critical importance. In our review, we give examples such as recasting a complaint to draw out the key issues, then clarifying its understanding with the parties and providing clear explanation in its reports. The same principles would apply under this section of the Guidelines.

Our discussions with OBSI’s front-line customer service staff indicates that they are assisting consumers to find services or agencies that might help them where their issue is beyond the mandate of the OBSI.

Finally, we understand that OBSI’s Board of Directors approves changes to the Terms of Reference after consultation with stakeholders.

16.9 Fairness

Objective of the Guideline

“To ensure that (a) the OmbudService approaches its work in respect of consumer complaints and makes its recommendations by reference to the standard of what is fair to both the firm and the consumer in the circumstances, and (b) that the processes employed by the OmbudService are demonstrably fair to both parties.”

Implementation Guidelines

The guideline requires an OmbudService to guard against adopting an unduly legalistic approach and to use and publish a clear fairness standard (harmonised across participating OmbudServices) for assessing complaints.

There is strong consistency between this Guideline and the OBSI’s own standards and our investigations give us confidence that OBSI would meet the expectations of this Guideline.

The OBSI’s criteria for decision making in its Practices and Procedures Manual “fairness in all the circumstances” takes into account good financial services and business practices, accepted industry standards and practices, standards established by industry regulatory bodies, professional associations of the individual firms, and law and regulation. This is appropriately broadly based and non-legalistic and is consistent with the approach taken in other jurisdictions.

In the course of our review, we looked closely at OBSI’s written complaints-handling procedures and how they are implemented in practice. Our conclusions were that the OBSI does provide a fair and balanced opportunity for both the participating firm and the consumer to provide documents and other information in support of their positions and that OBSI achieves the right balance as between the participating firm and the consumer.

We paid particular attention to the issue of both the participating firm and the consumer experiencing a sense of being fully heard, understanding the reasons for requests for information and receiving a full explanation of reasons for a decision. We recommended that OBSI continue with its efforts in this area and believe that it would meet the Guideline in this respect.

16.10 Methods and Remedies

Objective of the Guideline

“To articulate (a) the nature of dispute resolution methods to be employed by the OmbudService, (b) the result to be expected by a consumer from complaint resolution work of the OmbudService, including the remedies which should be available to a consumer whose complaint is assessed by the OmbudService, and (c) the consequences which should follow from non-compliance by the firm with the remedy recommended or non-cooperation by the firm with the inquiries of the OmbudService.”

Implementation Guidelines

The guideline requires an OmbudService to have a range of complaint resolution approaches, both for individual complaints and for systemic issues, including:

- conciliation - reasonable steps should be taken to ensure the consumer understands and freely accepts a settlement,
- mediation, and
- investigation and non-binding adjudication – this should specify a proposed remedy which may include financial restitution for direct loss or compensation for non-financial loss,

and to have reasonable and practical timeframes for the dispute resolution process that are communicated to the parties.

If a firm fails to comply with a recommendation or to cooperate with the OmbudService, the OmbudService should publicly disclose this (whilst preserving the consumer’s confidentiality).

As an alternative to the legal process, there should be procedures to ensure that the OmbudService’s files are not admissible in legal proceedings and to the extent the law permits the parties should agree in writing to suspend statutory limitation periods.

The OmbudService staff should be competent.

This is a significant guideline which contains many of the aspects of an OmbudService’s key performance measures. We think that OBSI would substantially meet this Guideline, however there are two exceptions relating to the Statutory Limitation Period and the application of the Guideline to systemic investigations.

Consistent with the Guideline, we have found that the OBSI has well established procedures to explain orally and in writing to consumers the OBSI process and to protect confidential information.

We found that the OBSI is continuing to develop an appropriate range of approaches to its dispute resolution work and we support OBSI’s recent focus on looking for opportunities to facilitate a settlement and the OBSI’s planned mediation pilot.

Where an investigation is held and compensation is recommended, the OBSI quantifies the recommended compensation as required by the Guideline. The OBSI now has written procedures for the calculation of compensation for direct financial loss and indirect financial loss.

OBSI has published timeframes for its dispute resolution process and we discuss the issue of timeliness and recommend a continuous improvement-type focus on investigation timeframes.

As to the competence of OBSI's staff – like the participating firms and consumers we interviewed, we were impressed with the professionalism and level of knowledge of OBSI staff.

An issue that may require further investigation is the issue of suspension of statutory limitation periods. At the moment, the OBSI standard investigation release letter refers to the fact that the statutory limitation period may be continuing to run (although we have been told that in Ontario the law has recently changed as to this). We understand that it is possible in most provinces for the parties to a dispute to agree to suspend the limitations “clock” while attempting a resolution and OBSI is exploring this possibility as an addition to its standard release letter.

Finally, until OBSI has the remit to pursue systemic or widespread issue investigations, it would have to be noted that it did not meet that aspect of the Guideline.

16.11 Accountability and Transparency

Objective of the Guideline

“To provide an appropriate framework for accountability of the OmbudService in achieving its mission including (a) accountability to the public in respect of the public interest goals which the OmbudService is established to achieve, (b) accountability to regulators in meeting their reasonable information needs in respect of consumer complaint handling, and (c) transparency in provision of information regarding its operations and structures.”

Implementation Guidelines

The guideline requires an OmbudService to publish an annual report, its Terms of Reference and its governance practices and Standards. It should make periodic efforts to consult with stakeholders and should enter into an information-provision protocol with the regulators of member firms, having regard to consumer confidentiality. The Board of Directors should meet regularly with the Joint Forum and Finance Canada Dispute Resolution Committee.

We expect that OBSI would be very close to meeting this Guideline, and with the newly released Framework, will need to discuss the information sharing protocols with the relevant regulators to complete its compliance.

The OBSI publishes on its website, its annual report, its Terms of Reference, information about its governance practices and its Code of Practice. In the interests of greater transparency and accountability and to meet stakeholder needs, we have recommended the publication of additional information such as more information about OBSI’s practices and procedures and more statistical information (including on OBSI timeframes).

OBSI invests effort in a number of stakeholder liaison initiatives – both industry forums and investor forums. We have recommended that in addition to participating in industry forums the OBSI develop its own program of liaison with participating firms so as to have greater control over the agenda and to involve more of its own staff.

Whilst not a point of emphasis in our review, it was clear that consultation with regulators had and was continuing to occur in relation to particular initiatives. Now that the Guidelines are finalized, we assume that the more structured program envisaged under the Guidelines can be quite quickly put in place.

16.12 Third Party Evaluation

Objective of the Guideline

“To provide a framework in which the structure and operations of the OmbudService will be the subject of knowledgeable, independent third party evaluations on a regular basis to validate the effectiveness of the OmbudService in achieving its purpose and to identify opportunities for improvement.”

Implementation Guidelines

The guideline requires an OmbudService to have an independent review of its operations every 3 years – keeping the Dispute Resolution Committee informed of the process of selecting and engaging the evaluator. Governance practices and Standards should facilitate clear and meaningful assessments. The evaluator should have access to all materials and personnel and make recommendations for improvement in light of the OmbudService’s Standards and the Guidelines. The evaluator’s report and any response by the OmbudService should be published.

As the first independent reviewers of OBSI, we can confirm our expectation that OBSI will meet the requirements of this Guideline

Our review was the first independent review of the OBSI but we understand that the OBSI plans regular independent reviews in the future.

As reviewers, we can confirm that there has been no restriction on our access to materials or personnel. Furthermore we have found that the OBSI’s governance practices and standards appropriately structured our review and enabled a meaningful assessment. We understand that the OBSI’s intention is that our report will be made publicly available and that the suggested discussions with the regulators will be held.

To conclude, noting the caveats about adequate testing expressed at the outset, our expectation is that OBSI would readily meet most of the requirements of the Guidelines, and with a comparatively small effort could meet most of the likely gaps in detail compliance. There are however, requirements of the Guidelines which demand increased remit for OBSI - in particular the ability to investigate systemic issues; and changed behaviour on the part of participating firms - notably in promoting the existence of OBSI. These gaps in OBSI’s current capacity are important and rather more difficult to close, given that doing so involves the cooperation of externals.