

Consumer and Investor Advisory Council Position on OBSI "Stuck Cases"

The OBSI Consumer and Investor Advisory Council is aware that there are approximately 21 investor-Financial Service Provider (FSP) disputes where a final determination of the FSPs' responsibility has been made, but where OBSI staff anticipates the affected FSPs will formally refuse to compensate the complainants. The Council understands that OBSI is reluctant to put its differences with the FSPs on legal and technical issues to the test in the context of specific consumer disputes. Accordingly, to date all these disputes remain formally in process and unresolved. Many of the complainants have waited for years for a result and for compensation for losses to which OBSI staff believes they are entitled. In November, 2011 OBSI released a letter received from the Canadian Securities Administrators, the Investment Industry Regulatory Organization of Canada, and the Mutual Fund Dealers Association of Canada urging OBSI to identify a method of finalizing these "small number of complaints considered to be 'stuck'". OBSI proposes to address this impasse by referring the files to a third party for independent assessment of staff's recommendations.

While the Council understands the need to move forward with these files, the Council does not think it is in the interest of consumer/investors nor is it consistent with OBSI's mandate to submit these cases to a third party for a "second opinion" as a response to anticipated FSP objections. We do not think that this process well serves either the general OBSI regime or the individual complainants. The OBSI terms of reference provide for only two outcomes where OBSI has made a determination: either the recommendations will be acted upon by the FSP or OBSI will make public the FSP's refusal to act on its finding of fault. We believe that to deviate from this process by interposing an independent review step merely because a FSP signals opposition implies an unwarranted lack of confidence on OBSI's part in its own processes and in its own decision-making. The independent review step weakens the integrity and transparency of the dispute resolution process. It will not help the complainants recover compensation and it undermines the force and purpose of OBSI's "name and shame" tool in compelling compliance with OBSI recommendations.

We strongly recommend that OBSI dispense with third party review, move ahead with these cases in accordance with its terms of reference and address each FSP's formal response, whatever it may be, on a case by case basis.