

Response Brief:
Khoury Report

Executive Summary

The OBSI Consumer and Investor Advisory Council (the Council) urges the OBSI Board and Management to take clear and deliberate steps towards moving forward in addressing the 2011 Khoury Report recommendations, with particular priority on the governance matters. It is the unanimous position of the Council that adequate resources must be allocated to addressing these underlying structural issues in order to ensure that OBSI is able to best help everyday Canadian consumers and investors.

It is the position of the Council that when the schisms outlined in the Khoury Report exist within the broader stakeholder landscape, the consumer / investor is the most vulnerable and has the most to lose. The Council urges OBSI to take steps to support, and where possible, rebuild relationships amongst the various stakeholders. Clear movement towards a single-source, binding authority is strongly desired by the Council.

In these uncertain economic times, the need for a single-access point, easy-to-understand and neutral process is more important than ever. The Council is committed to working with consumer advocates, the financial sector and government to support a transition to a binding judgment process that works for Canadians. Changes will have to be made in the governance of OBSI to allow this to happen. The Council notes that this point was emphasized in the 2011 Khoury Report which, while giving OBSI high marks, noted the severe limitations on the OBSI as an organization. In short, OBSI must be given the powers and resources it needs to work on the scale this challenging economy will require.

The Council also urges that appropriate resources be made available to help lead the implementation of the changes suggested in the external reviewer's report. Without leadership and resources to smooth these troubled waters, all parties will continue to be negatively affected.

The Council further urges that the financial regulators act quickly to reform OBSI's governance, to designate OBSI as the single provider of consumer dispute resolution services in the banking and investment sectors, and to make its recommendations binding. The Council supports working with all parties to create solutions to overcome the current impasse. When OBSI does not have the power and resources it needs to work effectively, the consumer / investor is negatively impacted. Canadians want a system that works, that all stakeholders including the financial industry can feel comfortable with. The Council is committed to working to achieve these solutions together.

In conclusion, the Council stands ready to support these initiatives as its mandate permits, and continues to serve at the pleasure of the Board in its advisory capacity.

Introduction

Council Formation

As required by OBSI's framework for collaboration with federal and provincial regulators, a third party evaluation of OBSI's effectiveness was undertaken in 2007 by Phil Khoury of The Navigator Company. Among other issues, his 2007 report noted that the OBSI Board met annually with groups of industry stakeholders and financial sector regulators but that there was no such formal channel for investor and consumer input. In response, the OBSI Board authorized the formation of the Council in September, 2010 to provide more balanced stakeholder input to the OBSI Board.

Members were chosen from across Canada to represent a broad spectrum of experience with consumer and investor issues and a variety of consumer advocacy connections. They were invited to participate on a voluntary basis by the first Council Chair, Professor James Savary, a former OBSI Board member. Some of the members had previously participated in a series of informal consumer stakeholder meetings organised by OBSI staff.

OBSI issued a press release in December 15, 2010 announcing the Council's formation.

Council Membership

James Savary served as Council Chair during the start-up. Laura Watts assumed the role of Chair in March 2011. The current Council members are Julia Dublin, Jim Emmerton, Robert Goldin, John Lawford, Ermanno Pascutto, James Savary, Laura Small, Glorianne Stromberg, Nidhi Tandon and Laura Watts. Members serve in their individual capacities as independent consumer and investor advocate experts and do not directly represent organizations.

Mandate

The Council's initial mandate was to meet once a year with the OBSI Board to provide the Board with the perspective of individual consumers of financial services on OBSI performance. It was initially contemplated that the Council would meet quarterly to exchange ideas and prepare to brief the Board. OBSI staff provided secretariat services and meeting facilities. The initial mandate was for an 18 month period.

Council Meetings and Priorities

The first Council meeting was held November 25, 2010. OBSI staff gave an overview of OBSI operations, OBSI's proposed new terms of reference, progress on implementation of the 2007 Khoury report and of other current issues and challenges.

Since its inception, the Council has met *in camera* or with OBSI staff at least monthly on 12 occasions. The Council met with OBSI's 2010 external reviewer, Phil Khoury on February 16, 2011 and attended an OBSI staff briefing on June 13, 2011 on the controversial subject of OBSI's suitability standards and loss calculation methodology. The Council also met with the Board on September 18, 2011 during OBSI's annual meeting in British Columbia.

The Council has been actively engaged in critical consideration of the processes, policies and calculations performed by OBSI. It has adopted a philosophy of providing high-value community connections and bridge-building wherever possible. While the Council views all its considerations through the lens of what is best for the consumer / investor, it has taken a tone of respectful enquiry and active engagement. Various "Listening Sessions" with industry and consumer / investor advocates were held on a preliminary basis in its first year of meeting, with promising results.

Council members have been very concerned about the challenging external environment in which OBSI operates, taking the view that this conflict negatively affects consumer / investors. To this end, the Council remains actively engaged and interested in learning all party perspectives in order to provide the best advice and input to the Board of OBSI.

Process - Independent Review

Council members have had the opportunity to meet as a group and in person with the independent reviewer Phil Khoury, in connection with the preparation of his 2011 Report. The Council is satisfied that it has had an appropriate amount of input and contact with Mr. Khoury during both the input processes, and for briefing sessions. The Council welcomed an independent review of OBSI.

Council Responses- Summary

1) Acceptance of the basic framework for OBSI investment loss-calculation

The Council accepts the OBSI loss calculation methodology. After significant enquiry and consideration, it is the view of the Council that this methodology is both fair and logical. It satisfactorily meets the needs and expectations of Canadian consumers and investors.

2) A joint industry/regulator, independently chaired advisory panel for dealing with technical aspects of complaints-handling

The Council believes that mechanisms which enhance consumer and investor fairness are to be promoted. The Council emphasizes that active engagement of the regulators is an important aspect to the success of OBSI. Technical aspects of complaint handling should be an area of continuous learning and bridging amongst OBSI, industry and regulators. There should be entrenched mechanisms to allow norms to be established horizontally and in an effective and appropriate fashion amongst the parties for technical aspects of complaints handling.

3) Establishment of a limited appeals mechanism for OBSI decisions

The Council rejects the notion of a limited appeals mechanism for OBSI decisions. Limited appeals from the existing model does not appear to address

the foundational question of the lack of firm current ability or mandate of OBSI to enforce its decisions due to fundamental governance issues.

The Council endorses OBSI's authority to make its determinations and to use its 'powers to publish'. The Council strongly believes that Canadian consumers and investors would be best served by an OBSI with statutory authority as a single-source fairness-based dispute resolution process.

4) Agreement to make membership of all relevant firms compulsory

It is the opinion of the Council that OBSI's purview should be compulsory for all firms.

5) Agreement to provide OBSI with binding powers over participating firms

The Council believes that OBSI must have binding statutory powers as a single-provider independent dispute resolution body based on fairness principles, in order to ensure consumer and investor confidence in the banking and investment dispute resolution systems. Further, it is the opinion of the Council that a multiple-provider system will actively erode consumer and investor confidence, and is a marked conflict of interest for industry to be seen as "hiring their own judge".

The Council is very concerned that using multiple providers is not only confusing for consumers, it also could lead to the perception of a severe conflict of interest. Research performed by Mr. Khoury, and reviewed by the Council, strongly indicate that in countries where multiple-provider systems have been attempted, they have been a marked failure. In the opinion of the Council, an

independent OBSI with statutory binding powers provides a better way for consumers and investors.

Financial service providers dissatisfied with OBSI results should not be able to undermine it financially by withdrawing from membership. Participation in SROs IIROC and MFDA is now mandatory; OBSI should be no different. While there is no SRO for banks, participation in OBSI should be mandated by Department of Finance. Investment sector registrants should be required to use OBSI as a dispute resolution services provider as a condition of their registration.

6) A restructuring of the OBSI Board to include the consumer voice and to involve industry-appointed directors in all decisions

OBSI's Board should be neutral, non-partisan and a strong fiduciary to the organization. The Council is interested in ensuring a strong understanding of the needs of the consumer / investor but is interested in exploring a number of options on how to ensure this balance is achieved, including, but not limited to, a strong nominating committee process.

OBSI Board needs to be structured and to operate in a neutral manner. It must both be neutral in operation and in external perception among the users of its services. All Board members should act in the best interests of OBSI as an effective dispute resolution service, not of any stakeholder. Above all, the Council wishes to ensure that Board members act as OBSI fiduciaries to the organization.

Issues of OBSI Board composition, succession and real or perceived conflict of interests among members need to be addressed.

OBSI needs a formal reporting relationship to regulators or government.

7) Establishment of annual regulatory oversight of funding/budget decisions

OBSI should not be viewed as a complaint resolution service to industry or as an industry cost centre, but rather an independent dispute resolution mechanism for the benefit of consumers / investors. OBSI should have secure funding, a direct line of reporting to federal and provincial government sponsors and the authority to enforce compliance with its decisions, converting OBSI into a single, mandatory ombudsman. Again, OBSI needs a formal reporting relationship to regulators or government and secure annual funding, appropriate to the needs of the organization now and the appropriate projected growth needs in future.

8) Continuation of OBSI work on efficiency and cost-reduction.

OBSI assessment of suitability standards and loss calculations as published are reasonable and defensible and they should be supported by regulators and government. The lack of agreement and resistance by industry has cost OBSI significantly in terms of both resources and staff time. This should desist.

The 21 OBSI files on hold due to unwillingness of FSPs to accept OBSI's recommendations should be brought to a conclusion with the FSPs accepting OBSI's recommendations. Their current status, and the conflicts which underline the lack of binding authority of OBSI, has also cost OBSI significantly in resources and staff time. This should also desist.

More study is needed of the frequency of frivolous or opportunistic consumer complaints and how to deal with these.

Communication with stakeholders can be improved, communication and efficiency fostered possibly with joint industry/OBSI investigation training and the joint industry/OBSI working groups established to identify and resolve emerging issues.

There should be greater understanding and effectiveness around the systemic effect of industry practices around complaints, especially on how investor

compensation is funded internally, the role of liability insurance, practice of recapturing costs from the responsible employee(s) and the impact this has on dispute resolution need to be better understood.

OBSI should commence or continue initiatives to engage with specific high-risk or high-complaint communities to ensure efficiency and effectiveness (i.e. seniors, new Canadians etc).

OBSI's funding should be predictable, stable and assured in order to conduct its work effectively and efficiently.

A stable and efficient OBSI is, in the view of the Council, the best option for Canadian consumers / investors, to assist in resolving disputes with financial institutions.
