

Request for Proposals

Experienced Reviewer to Conduct an Independent Evaluation of the Securities Mandate of the Ombudsman for Banking Services and Investments

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Background

Canada's Ombudsman for Banking Services and Investments (OBSI) is a national, independent and not-for-profit organization that helps resolve and reduce disputes between consumers and financial services firms in both official languages. OBSI responds to consumer inquiries, conducts fair and accessible investigations of unresolved disputes, and shares its knowledge and expertise with stakeholders and the public. OBSI's services are free to consumers.

OBSI's Terms of Reference require OBSI to submit to knowledgeable, independent third-party evaluations of its operations conducted according to timelines set out by its regulators. Since 2014, the banking and investment mandates of OBSI have been overseen by separate regulators with distinct independent review requirements.

The evaluation that is the subject of this Request for Proposals will concern the investment side of OBSI's mandate only.

Pursuant to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"), all registered investment dealers and advisers in Canada outside of Québec whose clients include individuals are required to make available OBSI as their provider of dispute-resolution services. This includes all members of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada ("MFDA"), portfolio managers, exempt market dealers and scholarship plan dealers.

In 2014, OBSI signed a Memorandum of Understanding ("MOU") with certain CSA members (the "Participating CSA Members") entitled 'Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments ("OBSI")'. The MOU provides for securities regulatory oversight of OBSI to ensure OBSI continues to meet standards set by the CSA as well as a framework for cooperation and communication via the OBSI Joint Regulators Committee ("JRC") which includes representatives from the Participating CSA Members, IIROC and the MFDA.

The MOU provides that OBSI will commence an independent evaluation of its operations within two years of its signing, and every five years thereafter. Previous independent reviews of OBSI were conducted in 2007 and 2011 in relation to both banking and investments mandates and, pursuant to the MOU, in 2016 in relation to OBSI's securities mandate.

The independent evaluation that is the subject of this request for proposals will be conducted in accordance with the terms of reference appended below, which has been established in consultation with the Participating CSA Members.

OBSI will cooperate with the evaluator to facilitate the completion of the evaluator's report within a reasonable time from the commencement of the evaluation. OBSI will provide the Participating CSA Members with an action plan respecting the proposed implementation of any recommendations made in the independent evaluator's report.

The scope and details of the independent review described in this Request for Proposals reflect the decision of OBSI's Board of Directors made in consultation with the Participating CSA Members.

This independent review will be conducted simultaneously or concurrently with an independent review of OBSI's banking mandate and an independent review of the banking mandate of the other Canadian ECB, ADR Chambers Banking Ombuds Office (ADRBO). It is OBSI's preference that the same independent reviewer will conduct OBSI's banking and securities reviews, and it is a requirement of FCAC that the same independent evaluator conduct both ECB reviews. Each of these three reviews is the subject of a separate Request for Proposals.

- The Request for proposals for our banking mandate review can be accessed here: <https://www.obsi.ca/en/about-us/independent-evaluations.aspx>
- ADRBO's Request for Proposals can be accessed here: https://bankingombuds.ca/?page_id=2013

Purpose

OBSI is requesting proposals from qualified candidates to provide an independent third-party evaluation (Evaluation), to be selected through an open and competitive process. The successful candidate will be designated the independent evaluator (Evaluator) for the purposes of the Evaluation. The Evaluator's responsibilities will include information collection, analysis and reporting. OBSI Staff will assist the Evaluator in identifying and accessing information.

The Board of Directors of OBSI is the primary stakeholder of this project and the JRC is an interested stakeholder. The purpose of the Evaluation is to ensure that OBSI continues to meet the standards and expectations set out in the MOU and that it operates in a manner that is reflective of recognized best practices for financial services ombudsmen.

The Evaluator will submit a report to OBSI as outlined in the attached Independent Evaluation Terms of Reference, which have been established in consultation with the Participating CSA Members. The final report will include the Evaluator's findings, review methodology, and recommendations for improvement, if any. OBSI will provide the JRC with a copy of the final report and make it available to the public on its website.

Proposal Elements

All submitted proposals must contain, at a minimum, the following components:

A. Suitability and Technical Skills.

The candidate must demonstrate that he, she or they possess the necessary skills, expertise, and experience to perform the work described herein and must demonstrate that he, she or they have sufficient resources and staff to complete the project in the timeframe set out in the Terms of Reference. The candidate, as part of the project, is expected to analyze complex information and arrive at valid, concise conclusions. Candidates should describe in some detail their past projects, consultancies, publications, reports, or other relevant information to demonstrate their suitability for this project.

The candidate should outline the extent of his, her or their knowledge with respect to dispute resolution in the context of an “Ombudsman scheme” or equivalent with a fairness mandate, comparable financial ombudsman schemes in other international jurisdictions, the Canadian securities regulatory landscape, and the Canadian financial sector.

B. Declarations of Conflicts

Any conflicts of interest, whether real or that have the potential to be perceived as such, must be declared in the proposal. This includes potential conflicts such as where a firm has other individuals working on other investment sector work, even if the respondent to this RFP is not involved.

C. Work Approach and Professionalism

The candidate must, in general terms, describe how he, she or they intend to conduct the Evaluation including identifying key milestone dates, resources, meetings, and deliverables. Additionally, the candidate must describe how he, she or they propose to measure and evaluate each of the standards set out in Article 2 of the MOU as required by the Terms of Reference below.

Given the current circumstances of the global pandemic, it is expected that the Evaluation will be conducted entirely through the use of remote technologies. OBSI will provide the Evaluator with suitably secure digital access to all relevant documentation and personnel.

The candidate must express a commitment to being unbiased and neutral throughout the Evaluation process and undertake not express any opinion or take any action (or inaction) that would cause any reasonable stakeholder to question its fairness or independence. In addition, the Evaluator must undertake to maintain the utmost professionalism in all situations.

D. Curriculum Vitae

The candidate must include curriculum vitae for each member of the team that will work on the project and demonstrate that the team, as a whole, has the necessary skills, expertise, and experience to complete the project.

E. Confidentiality

The candidate must provide a statement agreeing to operate under a non-disclosure agreement.

F. References

The candidate must provide at least three (3) references. One or more references may be contacted.

G. Interview Availability

The candidate must provide at least three (3) 2-hour time periods when they will make themselves available for a videoconference interview on weekdays between August 2, 2021 and August 13, 2021, between the hours of 9:00am and 5:00pm Eastern Standard Time.

H. Costs

The proposal must contain an estimate of costs. The budget for this project will be less than \$80,000 CAD, exclusive of travel costs, if any. A separate estimate of travel-related costs must be included with the proposal, if applicable.

The candidate should provide as much information as possible in the proposal. If possible, costs should be itemized with an appropriate description or explanation, as necessary. Assumptions may be included if appropriate. A fixed-cost quotation is strongly preferred.

Selection Process

A team consisting of OBSI Senior Management members will first review submitted proposals and may schedule interviews with candidates during one of the available times outlined in each proposal.

Candidates will be evaluated based on a number of criteria including:

- suitability
- technical expertise
- understanding of the applicable regulatory structures
- understanding of financial services ombudsman (or equivalent) schemes
- reputation
- proposal presentation
- the ability and capacity to publish a clear, independent, and public report on their findings
- the ability and capacity to conduct a separate and independent five-year review of OBSI's banking mandate concurrently or sequentially with the Evaluation

- the ability and capacity to conduct a separate and independent five-year review of the other Canadian ECB concurrently or sequentially with the Evaluation
- value-for-money

All submissions along with the evaluations and recommendations of Senior Management will be provided to OBSI’s Board of Directors for a final decision. In accordance with the MOU, the Evaluator must be acceptable to the Participating CSA Members in consultation with the JRC.

Submission Requirements and Deadlines

Interested candidates must direct any questions to Sarah P. Bradley, Ombudsman & Chief Executive Officer, by email to governance@obsi.ca before July 9, 2021 at 5:00 pm Eastern Standard Time. Answers will be provided to all candidates and answers to all questions received will be posted on OBSI’s website by July 16, 2021.

Interested candidates must submit proposals by email to governance@obsi.ca. An email confirmation will be provided. Proposals will be accepted until July 30, 2021 at 5:00pm Eastern Standard Time. All proposals must be submitted as a single PDF file.

Candidates will be notified whether their proposal is selected by September 24, 2021.

Contract terms and conditions will be negotiated upon selection of the successful candidate. All contracts are subject to review by OBSI legal counsel.

OBSI reserves the right to amend this RFP and attached Terms of Reference at any time prior to July 16, 2021. OBSI reserves the right to reject any and all parts of the RFP at its discretion. A final version of this RFP, highlighting any changes, will be posted on OBSI’s website by July 16, 2021.

A summary of these timelines is provided in the chart below:

Item	Date
RFP Distributed	June 25
Questions submitted by	July 9
Responses to questions provided by	July 16
Changes to RFP possible until	July 16
Proposals received by	July 30
Interview period	August 2-13
Selection communicated to candidates by	September 24
Final presentation of finished report	December

All timelines are subject to revision as necessary and agreed between the Evaluator, OBSI and the Participating CSA Members.

Attachments to this Document

- Independent Evaluation Terms of Reference established in consultation with the Participating CSA Members

Additional Relevant Materials

- Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments (“OBSI”) – can be found here: https://www.obsi.ca/en/about-us/resources/Documents/mou_20151202_AODA.pdf
- OBSI Terms of Reference – can be found here: https://www.obsi.ca/en/about-us/resources/Documents/EN_OBSI_ToR_-December_6_2018.pdf

Independent Evaluation Terms of Reference

The Evaluator will report on:

- A. Whether OBSI is fulfilling its obligations as outlined in the MOU between the Participating CSA Members and OBSI; and,
- B. Whether any operational, budget and/or procedural changes in OBSI would be desirable in order to improve OBSI's effectiveness in fulfilling the provisions of the MOU and/or recognized best practices for financial services ombudsmen.

The Evaluator will evaluate OBSI's operations and procedures applicable to the handling of investment complaints involving participating firms whose relevant regulator is a Participating CSA Member, IIROC and/or the MFDA, including the effectiveness of complaint resolution.

The Evaluator will consider and evaluate:

- investment complaint case files completed between November 1, 2018 and October 31, 2020 (the "Review Period").
- current operating policies and procedures, including any changes made between November 1, 2015 and October 31, 2020 (the "Five Year Period")
- third party evaluations, financial audits and internal self-assessments completed during the Five Year Period.

The Evaluator will ensure that the complaint files included in their review sample are selected at random and include files with the following outcomes: out of mandate following investigation, compensation recommended, no compensation recommended, settlement below recommended amount, and refusal of recommendation resulting in publication.

In addition to examining case files, the Evaluator will undertake interviews with key stakeholders including participating firms, complainants, consumer/investor groups, securities regulators and OBSI staff. Interviews may be conducted personally, in writing, by telephone, or by electronic means and may include the use of surveys.

The Evaluator will be given full access to information, meetings, communications, and OBSI staff for the purposes of the Evaluation. OBSI will use its best efforts to facilitate and coordinate access to former staff members and other stakeholders. Access to any materials or staff must pertain to the Review Period.

A. Obligations under the MOU

With respect to requirement (A) set out above, the Evaluator's report must include analyses and conclusions on OBSI's performance with respect to the following standards set out in Article 2 of the MOU:

- a) Governance – OBSI’s governance structure should provide for fair and meaningful representation on its Board of Directors and board committees of different stakeholders, promote accountability of the Ombudsman, and allow OBSI to manage conflicts of interest.
- b) Independence and Standard of Fairness – OBSI should provide impartial and objective dispute resolution services that are independent from the investment industry, and that are based on a standard that is fair to both Registered Firms and investors in the circumstances of each individual complaint. When determining what is fair, OBSI should take into account general principles of good financial services and business practice, and any relevant laws, regulatory policies, guidance, professional standards and codes of practice or conduct.
- c) Processes to perform functions on a timely and fair basis – OBSI should maintain its ability to perform its dispute resolution on a timely basis and deal with complaints without undue delay and should establish processes that are demonstrably fair to both parties.
- d) Fees and costs – OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership.
- e) Resources – OBSI should have the appropriate resources to carry out its functions and to deal with each complaint thoroughly and competently.
- f) Accessibility – OBSI should promote knowledge of its services, ensure that investors have convenient, well-identified means of access to its services, and provide its services at no cost to investors who have complaints.
- g) Systems and controls – OBSI should have effective and adequate internal controls to ensure the confidentiality, integrity and competence of its investigative and dispute resolution processes.
- h) Core Methodologies – OBSI should have appropriate and transparent processes for developing its core methodologies for dispute resolution.
- i) Information sharing – OBSI should share information and cooperate with the Participating CSA Members through the CSA Designates in order to facilitate effective oversight under this MOU.
- j) Transparency – OBSI should undertake public consultations in respect of material changes to its operations or services, including material changes to its Terms of Reference or By-Laws..

B. Operational Effectiveness

With respect to requirement (B) set out above, the Evaluator’s report must set out analyses and conclusions including:

- a) A report on progress towards the recommendations from the previous independent reviews.
- b) A high-level evaluation of OBSI’s operations with reference to its terms of reference, internal policies and procedures, fairness statement, and loss calculation methodologies. A detailed assessment of loss calculation methodologies employed by OBSI is not required.
- c) A high-level benchmarking exercise that compares OBSI to other financial services ombudsman schemes or equivalent in comparable international jurisdictions both operationally and with

respect to OBSI's general organizational approaches to matters such as accessibility and transparency.

- d) An analysis of OBSI governance, including particular reference to stakeholder representation on OBSI's board of directors.
- e) An analysis of the reasons for settlements below amounts recommended by OBSI.

Deliverable(s)

The Evaluator will present a final report in English to OBSI and make separate presentations to OBSI Senior Management, OBSI's Board of Directors, and a joint meeting of the OBSI Board of Directors and the JRC. OBSI will facilitate a professional translation of the final report into French.

Timeline

The Evaluator will regularly update OBSI on its progress and immediately disclose any material issues that could hinder its ability to carry out an effective independent evaluation. A full project timeline will be presented by the Evaluator to OBSI for consideration and approval.

The final presentation to the OBSI Board of Directors and JRC will take place in December 2021. Work on the review should begin in October 2021.
