

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS **ANNUAL REPORT 2003**



CONTENTS

- 1 Ombudsman for Banking Services and Investments: Key Events
- 2 Message from the Chair of the Board of Directors
- 3 Message from the Ombudsman
- 4 How the Ombudsman process works
- 6 Case Studies
- 12 Comments on the Statistical Summary for 2003
- 14 Governance of the Ombudsman for Banking Services and Investments



OMBUDSMAN
for Banking Services
and Investments

The Ombudsman for Banking Services and Investments (OBSI) is an organization independent of government and the financial services industry that investigates unresolved complaints from customers about banks and other deposit-taking organizations, investment dealers, mutual fund dealers and mutual fund companies.

First established in 1996, we have worked to provide prompt and impartial resolution of complaints that clients have been unable to resolve satisfactorily with their financial services provider. We deal with complaints from individuals as well as from small business.

There is no cost to the customer for our services.

The Ombudsman is independent of the financial services industry and the final decision on the fair resolution of complaints rests solely with the Ombudsman.

We base our assessment of a customer complaint on four basic criteria:

- *Overall fairness*
- *Good business practices*
- *Accepted industry standards and practices*
- *Standards established by industry regulatory bodies, professional associations or the individual financial services provider*

Please visit our website at www.obsi.ca.

OUR PRINCIPLES AND VALUES

All of our activities and work are guided by our principles and values, which include:

An overriding commitment to excellence,

Providing responsive service based on fairness, integrity, equity and respect,

Maintaining our independence from member financial services providers,

Upholding the highest standards of excellence in both our decision-making process and in the timely delivery of our recommendations,

Communicating our recommendations thoughtfully, thereby promoting greater understanding, and

Nurturing career growth and professionalism among our staff.

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS: KEY EVENTS

July 1996

Canadian Banking Ombudsman (CBO) begins operations as an independent organization to investigate unresolved complaints from small business customers of nine banks.

1997

Membership grows to 12 banks and the CBO mandate is extended to include bank retail customers, including the clients of bank investment dealers, mutual fund and insurance subsidiaries.

Independence of the Ombudsman strengthened with Bylaw changes that require a majority of the Board of Directors to be independent of the industry and the Chair of the Board to be an independent director.

1998

The federal Task Force on the Future of the Canadian Financial Services Sector (MacKay Task Force) endorses the concept of a single financial services Ombudsman independent of government and the financial services industry.

2000

Membership increases to 13 banks.

2002

CBO merges with the ombudsman services under development by the associations representing 450 investment dealers, mutual fund dealers and investment fund companies.

These additions bring total membership to approximately 500 financial services providers, including the foreign-owned banks and most trust and loan companies.

The name is changed to Ombudsman for Banking Services and Investments to reflect the wider mandate.

2003

A year of change and growth to integrate the 450 new members into the ombudsman process and to respond to a 50% increase in contacts and 76% increase in complaints for investigation. The Centre for the Financial Services OmbudsNetwork and the life and health and general insurance ombudservices began operations.

MESSAGE FROM THE CHAIR OF THE BOARD OF DIRECTORS



Peggy-Anne Brown
President
Brown Crawshaw Inc.
Vancouver

In last year's message we announced that, with the expansion of our mandate, the Ombudsman for Banking Services and Investments (OBSI) had added responsibility for complaint resolution on behalf of the approximately 450 member firms of the Investment Dealers Association of Canada (IDA), the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Funds Institute of Canada (IFIC). As a result of this large increase in membership, 2003 has been a year of rapid growth and adjustment for OBSI.

The increase in OBSI membership was a good news story with many more consumers gaining access to a free and independent dispute resolution service. The expansion of our mandate resulted in a rapid increase in the number of consumers seeking an independent investigation of their unresolved complaints with our members. This increase in volume resulted in delays in resolving customer complaints despite the addition of significant staff. The Board and the Ombudsman regret that this compromised our standard of 80% resolution within 90 days as the office's resources chased the curve. The Board has provided the additional financial resources to regain this service standard.

The principal role of the Board of Directors has been to provide oversight to the office of the Ombudsman ensuring that the office has the resources necessary to do its job while remaining independent of influence from its members or others. For this reason, a majority of the Board members are independent directors appointed from outside of the financial services industry. As a committee of the Board, the Independent Directors initially review the budget and recommend it to the Board as a whole.

The expansion of OBSI's membership involved the Board of Directors in a number of special projects. Among them, a committee of the Board undertook a review and redraft of the Terms of Reference to reflect our expanded mandate and to incorporate the lessons learned through seven years of experience. The review has been completed and the Terms of Reference are available on our website (www.obsi.ca).

At the beginning of 2003, Canadian Life and Health Insurance OmbudService (CLHIO) and the General Insurance OmbudService (GIO) began operations. These ombudservices and OBSI are linked through the Centre for the Financial Service OmbudsNetwork (CFSON), which operates a consumer assistance and referral service. Recently, the Chairs of the Boards of the four organizations formed a committee to enhance communications within the network at the Board level and to ensure consumer access to the appropriate recourse.

I would like to thank the members of the Board of OBSI for their leadership during this period of rapid growth and adjustment. I would also like to extend the Board's appreciation to Michael Lauber, our Chief Executive Officer, and his staff for their efforts and commitment to expanding the office to serve the clients of a significantly larger membership.

2003 has been a successful year: a greater number of consumers have been helped; our new members have been integrated; and OBSI is well positioned to meet future consumer needs.

Dr. Peggy-Anne Brown
Chair of the Board of Directors

MESSAGE FROM THE OMBUDSMAN



Michael Lauber
Ombudsman

2003 was a year of change and growth for the Ombudsman's office; centered largely around the challenge of integrating our original 13 member banks with nearly 450 investment firms that became members late in 2002.

For the Ombudsman process to succeed, our members need to understand and embrace it. To achieve this goal, an outreach program was initiated to speak and make presentations to industry complaint handlers, compliance officers and executives across Canada. We appreciate the assistance received from the member associations and the member firms. We also met frequently with industry regulators to explain the role of OBSI and, as a result, have developed a mutual understanding of our respective mandates and how they interrelate for the benefit of investors and the financial services industry.

Clients of banks, trust and loan companies, and investment and mutual fund dealers have access to the services of OBSI if they have an unresolved dispute with their financial services provider (FSP). This year, over 3,000 individuals and small businesses contacted OBSI for assistance with complaints or concerns involving their FSP - double the number in 2001. Most wanted advice on how to resolve a problem or had not completed the dispute resolution process at their FSP and were referred back to their FSP. Another 45,000 people visited our web site.

Formal investigations were launched in 321 cases, an increase of 76% (from 182 cases) over the previous year. Complaints about banking services and investments from the bank financial groups made up 40% of the increase with the balance coming from the independent investment firms.

The number of investment complaints increased as the year progressed and accounted for over half of all new files in the last half of the year. The investment complaints resulted in large part because of the 'tech bubble' and the depressed stock markets that followed. Many investors saw the value of their portfolios decline significantly in that period and felt that they had not been appropriately advised.

This increase in activity created more challenges for OBSI. Obviously, we expected an increase in the number of complaints, but not to the extent realized.

Despite doubling our investigative staff in the year, we could not keep up to the increase in complaints. Good customer service and promptness are a major

focus of OBSI and we apologize to the customers who have had to wait. In the last fifteen months we have increased our investigative staff by 250% and will continue to do what is needed to restore service to appropriate levels.

The Chair's report discusses the formation of the ombudsnetwork. Banks, insurance companies and other financial services firms continue to expand and market their products and services across sector lines. However, the ombudservices have successfully cooperated to ensure that customer complaints involving cross-sector transactions are handled by the most appropriate organization and that no customers 'fall through the cracks'.

OBSI members are not bound to accept our recommendations that they compensate clients. However, we are required to make public any case where a member has failed to accept our recommendation in favour of the customer. In our seven years of operations, all of our recommendations have been accepted by our members, a sign of confidence and respect for the Ombudsman process. We appreciate the support of our new member firms who, so far, have accepted all recommendations made in cases involving their firms.

We had visits from the banking ombudsman from Trinidad and Tobago and from Peru, who both lead newly-formed banking ombudsman schemes in their countries. They came to study OBSI and the internal bank ombudsman system that still remains uniquely Canadian. The internal customer advocate from ANZ Bank in Australia also visited our office to study the Canadian system. I appreciate the assistance of the bank ombudsmen in meeting with our visitors.

I wish to express my thanks to Dr. Peggy-Anne Brown, Chair of the Board of Directors and to the other members of the Board for their time, counsel and support in a demanding year. I would also like to thank the OBSI staff for their diligent and professional work this year under the pressures of a changing and growing organization.

Michael Lauber
Ombudsman

HOW THE OMBUDSMAN PROCESS WORKS

Individual or small business customers not satisfied with a financial product or service have a right to make a complaint and to seek resolution of the problem.

The process starts with the local branch or office of the financial services provider where the transaction occurred. Most problems can be resolved at that level. If a complaint is not settled at the point of sale, all members of the Ombudsman for Banking Services and Investments (OBSI) have an additional dispute resolution process to help resolve the matter.

Member firms have client brochures describing the process. OBSI has approximately 500 members, including banks, trust and loan companies and other deposit-taking institutions, investment dealers, mutual fund dealers and mutual fund firms. A complete list of member firms is on our website at www.obsi.ca.

Larger organizations often have customer satisfaction groups responsible for complaint-handling as well as a full-time internal Ombudsman who reports to the CEO. All financial services firms have a compliance officer, or compliance group, with responsibility for handling client complaints. Some firms also have a designated senior executive responsible for dispute resolution.

If a customer has not been successful in resolving a complaint using the internal process of their financial services provider, the customer can request the assistance of OBSI.

There is no charge for our service and our mandate enables us to investigate a wide range of issues relating to products and services. Although we have the ability to make recommendations to members on the resolution of a complaint, we also use mediation to find a solution acceptable to both parties.

However, there are some complaints we do not investigate because they are competitive issues best resolved in the marketplace:

- complaints about the general pricing of products and services, including the pricing of fees, commissions and other charges applicable to clients;
- complaints about the level of interest rates;
- issues related to general industry policies or procedures; and,
- credit-granting policies or other risk management policies or procedures of members.

OBSI also does not handle matters that are currently before a court or an arbitration body or other dis-

pute resolution process.

Clients retain their legal rights and, if dissatisfied with OBSI's decision, are free to pursue those rights in court, subject to limitation periods, or through any other available dispute resolution processes.

However, if a customer decides to go to court or arbitration first, the option of bringing the matter to OBSI is not available since both of those processes are final and binding.

THE COMPLAINT PROCESS

Customers who have a complaint should first talk with their account manager or the person they originally dealt with to explain the problem.

If the issue is complicated, it's usually best to communicate a complaint in writing, and some organizations may require it. Customers should ensure they have all the appropriate documents, including brochures, mailed statements and copies of contracts.

If a complaint is not resolved at this stage, customers should be provided with information on their financial services provider's complaint escalation process and they should follow it.

Once all avenues of appeal have been exhausted within the firm, customers who have not received satisfaction can take their case to OBSI.

BRINGING A COMPLAINT TO OBSI

We ask the client to set out the complaint in a letter. The letter should summarize the nature of the complaint and indicate a proposed resolution. We also ask for copies of all previous correspondence concerning the complaint between the client and the financial services provider as well as copies of related documents and notes of conversations.

OBSI has a general guideline that customers must bring complaints to us within six months of completing the process at their financial services provider.

Clients are required to sign a plain language agreement between the client, the financial services provider, the Ombudsman and any other parties involved in the dispute. It describes the process and authorizes the financial services provider to send us files related to the complaint. If the client is disabled or requires the assistance of a family member, friend or other person, we ask the client to sign a form allowing us to discuss confidential matters with a third party.

To encourage cooperation and openness, we ask all

parties to agree that our files and our work product and anything generated as part of the dispute resolution process may not be used in any subsequent legal or regulatory proceedings.

The parties must also agree that the Ombudsman and staff and advisors will not be called to testify.

Most cases involve a formal investigation and the customer receives a detailed written response that includes our findings and any recommendations we make. Our service standard is to complete more than 80 per cent of files within 90 days. Very complex cases can take longer to resolve.

We make our findings about a case based on overall fairness and good business practices. We also take into account accepted industry standards and practices as well as any standards established by industry regulatory bodies, professional associations or the individual financial services provider where the client does business.

The ceiling on the amount of compensation the Ombudsman can recommend is \$350,000.

In recent years, the Ombudsman has made a recommendation in favour of the client in about 13-20 per cent of the cases investigated. In another 5-10 per cent of cases, there has been a minor recommendation for compensation or a small adjustment to the resolution proposed by the financial services provider.

This percentage is relatively low and has been declining in recent years. We regard this as an indication that complaint handling processes in the industry, which include the internal Ombudsman, are working well. It's important to remember that by the time the complaint is investigated by OBSI, it has already been reviewed at several stages within the member organization. In the banks and some other large firms, the existence of the Ombudsman process puts pressure on business units and complaint-handling specialists to be more responsive to customer concerns and to resolve them so they don't end up in our office.

The result is that a smaller proportion of complaints escalate to OBSI. And those that do are the most complex, often involving unusual situations or disputes over facts.

The process is not binding upon the customer or the financial services provider. However, member companies who do not agree to a recommendation by the

Ombudsman will be publicly reported. To date no member has failed to follow the Ombudsman's recommendation.

FINANCIAL SERVICES OMBUDSNETWORK

OBSI is one of three independent, industry-specific complaint-handling services that make up the Financial Services OmbudsNetwork. The OmbudsNetwork also includes the Canadian Life and Health Insurance OmbudService, which provides services to clients with complaints related to life and health insurance companies, and the General Insurance OmbudService, which handles complaints from customers of property and casualty insurance companies, including home, auto and business insurance.

The three industry Ombudservices are linked by the Centre for the Financial Services OmbudsNetwork (CFSON) which operates a customer assistance centre. CFSON can provide assistance to customers uncertain about where or how to resolve a dispute with their financial services provider.

OUR PRIVACY POLICY: HOW WE PROTECT YOUR PERSONAL INFORMATION

OBSI is committed to ensuring that personal information in our possession remains confidential, secure and accurate.

With the consent of the customer, we collect personal information from the financial services provider, the customer and other sources to facilitate the investigation and resolution of the complaint. We will only use the information for the purposes intended.

We regard our communication to clients as confidential. As a matter of policy, the Ombudsman will not make any public comment about any case that has been brought to our office.

We will destroy personal information in our possession when it is no longer necessary for our investigation and it is no longer legally necessary for us to have the information to respond to issues that may arise later.

Our detailed privacy policy is available on our website at www.obsi.ca

CASE STUDIES

In the following cases, names have been altered to protect the privacy of the individuals and organizations involved.

CASE 1

This case, involving two customers and two banks, illustrates that OBSI will consider the substance of a transaction over its form when assessing fairness.

CASE:

Martin arranged for his business partner, Smith, to have a supplementary card on his credit card account.

Smith wrote a cheque directly to Martin's credit card account to pay for \$11,200 of his own charges. The cheque cleared on May 7th and Smith showed Martin the cancelled cheque. Although the cheque cleared, Smith's account lacked sufficient funds and the cheque was not covered. Six weeks later, at the request of Smith's bank, the credit card company reversed the \$11,200 payment.

Martin complained that the time between the presentation and return of the cheque was too long and that Smith's bank had effectively granted credit to Smith by allowing the cheque to clear without sufficient funds in his account. In his view, the problem was really a credit-granting and collection dispute between Smith and his bank and Martin, a third party, was being unfairly penalized.

Although Smith's bank sympathized with Martin's frustration over Smith's non-payment of his obligations, it pointed out that Martin's position was the same as it would have been if the cheque had been dishonored immediately. Since the delay in the return of the cheque did not cause or add to Martin's unpaid account, Smith's bank concluded that it would not compensate Martin.

According to Martin's bank's Credit Card Agreement, Martin waived any protest for cheques that he or his representative sent to Martin's bank. Also, the policies of Martin's bank allow it up to one year to reverse a payment in the event of insufficient funds. Martin's bank concluded that its adjustment to Martin's credit card account was appropriate given that Smith's cheque was issued on an account with insufficient funds.

OBSI:

Martin could cite technicalities regarding Smith's payment and question the actions of the banks. However, \$11,200 was still owed for charges made by Smith on Martin's credit card account; and this amount ultimately was not taken from Smith's chequing account.

Since Martin acknowledged that he and Smith were still in business together, it was not clear why this matter could not be resolved between the partners directly, by having Smith write another cheque to pay the charges. It appeared to the Ombudsman that Martin was helping Smith circumvent the payment of an obligation. Martin was advised that OBSI would not be used in this manner and the investigation was closed.

CASE 2

This case illustrates why investment advisors need to develop an understanding of the essential elements of the current financial and personal circumstances and investment objectives of their clients to make informed recommendations.

CASE:

In the summer of 2000, a young couple sold their home and moved into an apartment in a nearby city. The husband expected his employer to ask him to relocate within the next two years, at which time they expected to buy a new home.

With \$14,000 from the house sale, the couple sought out a financial advisor to help invest the money until needed for a down payment. Based on the advisor's recommendation, the husband contributed the \$14,000 into his wife's Spousal RRSP account.

The account opening forms showed the wife as a homemaker and the husband as a skilled tradesperson, with an annual income of less than \$60,000. Both had limited investment knowledge and their investment objective was recorded as 100% long-term capital with a risk tolerance of 80% medium risk and 20% high risk.

All of the mutual funds the couple invested in were equity funds with a primary objective of long-term capital growth and were rated as either medium or higher risk. All were sold on a back end load or deferred sales charge (DSC) basis.

According to Canada Customs and Revenue rules, any amount the husband contributed to the Spousal RRSP that is withdrawn in the year in which he contributed or in the next two calendar years, will be taxed in his hands.

In July 2002, the couple relocated and bought a new home. On learning they faced investment losses, sales charge penalties, and a large tax liability, the couple chose not to de-register the Spousal RRSP for the down payment. Instead, they borrowed the required \$18,000 from family.

The advisor's firm refused to provide compensation, maintaining the investments were consistent with the wife's investment objectives and risk tolerance.

OBSI:

There was general agreement that the couple always intended to use the proceeds of the Spousal RRSP for a house down payment. The question at issue was when this planned withdrawal was expected to happen.

OBSI concluded that the investment recommendations made with respect to the Spousal RRSP were not in keeping with the investment objectives, risk tolerance, or anticipated timing of the planned withdrawal. Further, knowing the couple's short investment time horizon, it was found to be inappropriate to sell mutual funds on a DSC basis given the substantial deferred sales charges that would apply.

By the time the investments were sold and the funds withdrawn from the RRSP, the time requirement had passed and the funds were not taxed in the husband's hands.

The firm accepted OBSI's recommendation to pay the couple \$2,025 for their accrued investment losses and DSC charges.

CASE 3

Banks have a responsibility to ensure that staff members giving financial advice are up-to-date on the various options available to clients facing financial hardship.

CASE:

For a number of years, a customer did all of his banking and investing with the same financial advisor at the same bank branch.

In late 2000, facing financial difficulty, the customer asked his financial advisor for guidance. The advisor was aware that the customer was unemployed, his wife worked part-time, and that he had outstanding debts and significant on-going medical expenses for his daughter. The customer also was having difficulty meeting his monthly financial obligations, including his mortgage payments.

Despite his difficult financial situation, the customer had \$20,000 in a locked-in RRSP account. In some provinces, an individual has the option of applying to the pension regulator to have locked-in funds released under a financial hardship exemption.

The customer was not told of this option in late 2000. Instead, after discussing the situation with his advisor, the customer decided to take another loan from the bank to cover his immediate financial obligations and to sell his home to eliminate his monthly mortgage payments.

Eighteen months after the customer sold his home, he again contacted his financial advisor and threatened to withdraw the locked-in funds regardless of the consequences. The financial advisor made inquiries and only then learned that the customer could have applied to have the funds in his locked-in RRSP released under a hardship exemption.

The advisor explained this to the customer who applied for the release of his funds. The regulator approved the application, giving the customer access to this money.

OBSI:

OBSI decided that the advisor, given his role and responsibilities as a financial advisor, should have known of and told the customer about the financial hardship exemption in late 2000.

OBSI recommended that the bank compensate the customer for his costs, including accrued interest on outstanding loans that the customer could have avoided if he had been told about the hardship exemption in the fall of 2000. In order to manage all of his obligations, the customer would have had to sell his house in any event, and no loss resulted from the sale of the house.

On its own accord, the bank issued a general circular to staff, reminding them of the customers' option to apply to the regulator if they face financial hardship.

CASE 4

This case highlights the importance of merchants conducting due diligence on new customers ordering goods on-line before shipping the product.

CASE:

A merchant received an on-line order from an overseas customer for 40 digital cameras at a total purchase price of \$US 20,000.

The merchant contacted the bank and made a general enquiry to determine the most secure way to receive payment from overseas customers. Since the bank advised that wire transfer was the most secure method, the merchant instructed his customer to wire the payment to his account.

The customer did not wire payment, but instead sent a bank draft directly to the merchant's bank. Once the bank draft was deposited into the merchant's account the merchant shipped the goods. Unfortunately, the bank draft was fraudulent.

The merchant complained that the bank was negligent in accepting the bank draft, claiming it should have been rejected because the funds were not sent by wire transfer.

OBSI:

OBSI did not make a recommendation to the bank.

The merchant accepted a large order from an overseas customer who was not known to the merchant without checking the validity of the order or the identity of the customer.

The customer claimed that the bank was negligent in accepting the fraudulent bank draft. According to the terms of the merchant's account agreement, the merchant is responsible for all transactions unless the losses were caused by the bank's negligence.

There was no evidence that the bank was negligent. The merchant had not given the customer's name to the bank or provided instructions related to the transaction and, in any case, the bank draft contained no reference to the overseas customer. The fraudulent bank draft was undetectable on its face and only came to light when the bank draft was presented for clearing outside of Canada.

CASE 5

This case illustrates how investors have an obligation to communicate with their investment advisors on an ongoing basis, that problems should be brought to the attention of management as quickly as possible, and that complaints should be submitted in a timely manner.

CASE:

A client of a full service broker opened a trading account and commenced active trading in speculative stocks, including a stock that she had owned prior to opening this account. Over time, and particularly following a significant downturn in the stock market, most of the speculative investments declined in value.

Five years later, during which time her investment advisor had passed away and her account was assigned another advisor, the client filed a complaint. She alleged that her intention all along had been to invest in low-risk, long-term investments and that she had never agreed to the short-term trading and high-risk profile reflected in her account documentation. The client claimed that the firm and her former investment advisors were responsible for her losses.

OBSI:

The client had not indicated any dissatisfaction with her account for more than five years. Due to the circumstances of the case, significant limitations were imposed on our investigation; in particular the fact that the client's primary, but now deceased, investment advisor could not be interviewed.

While the client portrayed herself as a risk-averse, novice investor, we found her to be an eager participant in the purchase of speculative stocks, and willing and able to risk her financial resources to secure a line of credit in order to make these purchases.

We did not agree that the client's investment advisor should be held accountable for the client's own decisions relating to the purchase of speculative stocks. Further, we found no independent evidence to support either the client's assertion that she was a low-risk investor, or any of her other allegations regarding her investment advisors' conduct.

We concluded that the client's speculative investments were not unsuitable for her, and OBSI did not recommend compensation.

CASE 6

This case shows why insured persons need to verify the extent of their disability insurance coverage, as documented in their insurance certificate, if they are declined coverage by the insurer.

CASE:

A customer signed a mortgage with her bank and purchased mortgage disability insurance.

A few months later she was diagnosed with an inflammatory disorder of the peripheral nerves. She was disabled for many months as a result of this disorder and had to relearn to use her arms and legs. Furthermore, she could no longer tolerate any kind of stress,

which had been part of her former employment.

As part of her rehabilitation, the customer slowly resumed working a few hours a day, two days a week, but was unable to do everything she had done before. The insurance company then stopped paying her the disability benefits, on the basis that its policy did not provide coverage for partial disability.

OBSI:

The insurance certificate issued by the insurer defined "disability" as a state of incapacity preventing the insured from carrying out each and every normal duty of his or her occupation.

Since the evidence showed that the customer was unable to carry out 'each and every normal duty' of her job, by definition she was still "disabled". OBSI recommended that the insurance company continue paying the benefits the customer was entitled to.

CASE 7

Firms and advisors have a duty to ensure accounts are invested within agreed investment objectives and risk tolerances. When dealing with clients who are novice investors, signed account documents may not provide a full defence.

CASE:

A husband and wife opened RRSP accounts with a full-service investment dealer. The account opening documentation that they signed recorded that the clients were novice investors, within a decade of retirement, and without pensions. Their investment advisor recorded risk tolerances of 80% medium risk, 20% high risk.

The clients claimed the advisor should have recorded their risk tolerances as 100% low risk. They asserted that they had lost over \$70,000 because their accounts were invested disproportionately in high-risk investments.

OBSI:

OBSI investigated and was satisfied that the risk tolerances recorded by the advisor were arrived at after informed discussions with the clients, and accurately reflected their intentions at the time.

After reviewing the wife's accounts, we were satisfied that the investments held matched the risk tolerances recorded for her. However, this was not the case with the husband's account, which was the larger of the two.

We determined that roughly 50% of his account was in high-risk investments. We calculated his net loss on the high-risk investments, adjusted that figure to approximate the amount he would have lost had the account been invested in 20% high risk (with the balance invested in medium risk securities), and recommended that the firm pay him the difference, approximately \$19,000.

The firm agreed to pay the recommended amount. As the account in question was an RRSP, we recommended that this sum be deposited to the client's registered account.

CASE 8

This case underscores the importance of an investment advisor developing an investment strategy that considers the client's personal circumstances.

CASE:

A "thirty something", single, professional client inherited a substantial sum of money following the death of her parents in 2000. The estate was settled several months later and she deposited approximately \$500,000 into the non-registered account that she already had with a mutual fund dealer.

Within a month of the September 11, 2001 terrorist attacks in New York, virtually all the money was invested in a variety of equity mutual funds, sold to her on a back-end load or deferred sales charge basis.

By the following summer, the client had quit her job and moved to the UK to continue her professional development and eventually set herself up in business. She purchased a home for which she required all the money from her investments. Since the equity markets had continued their decline, the liquidation of her account resulted in capital losses of \$21,000. In addition, she was required to pay \$25,000 in deferred sales charges on the mutual fund redemptions.

The client complained that her advisor had invested her money outside her investment objectives of safety and flexibility. The advisor's firm declined to provide compensation, maintaining that when the investments were made, there was no clear indication that she would be relocating.

OBSI:

OBSI's investigation revealed that the client and the advisor had had discussions about the possibility of her leaving Canada or establishing her own business in another community. The advisor had also offered counsel on purchasing a home.

All the mutual funds that had been purchased were also available on a no-load basis and – because of the size of the portfolio - there was no economic advantage to the client in purchasing the funds on a back-end load basis.

OBSI concluded that sufficient information was available to the advisor to question the client's ability to tolerate her entire portfolio being invested for the long term. It also found that investing all the money in equity mutual funds so close to "911", was too aggressive.

OBSI recommended that the firm refund all the DSC fees and provide compensation for one third of the client's capital losses, all of which totaled \$32,000.

CASE 9

This case shows how important it is for mutual fund advisors to recommend securities that fit the investment objectives and risk tolerances of clients. In addition, clients' must take steps to mitigate their losses once they become aware that their investments may not be suitable.

CASE:

In September 1998, a husband and wife nearing retirement opened investment accounts at a mutual fund company with the objective that their portfolios provide income for their retirement. They were

looking for “capital preservation” for 35% of their funds and a “balanced portfolio of conservative mutual funds” for the remaining funds.

The clients also told their mutual fund advisor that neither of them had experience with mutual funds and did not want any high risk or aggressive funds in their accounts. Prior to this, most of their money had been invested in term deposits.

The wife invested \$105,000 in her account and the husband invested \$440,000 in his. The accounts were conservatively invested for the first year, after which substantial changes were made, which increased the risk.

The clients complained to their mutual fund advisor about losing \$50,000 in March 2001. Not long after, their accountant pointed out that their portfolios contained some high risk investments. The clients met with their advisor in May 2001 and, although he offered to restructure their portfolios, they decided not to make changes.

The clients later complained to the mutual fund company that by October 2002, they had lost over \$100,000 due to the risk associated with their investments, and wished to be compensated for those losses.

The mutual fund company would not compensate the clients, maintaining that within a year of opening their accounts, the clients had changed their objectives and risk tolerances and were no longer interested in capital preservation and conservative growth. The company believed the clients’ investments had been changed to reflect their intentions and their losses were due to the market decline.

OBSI:

OBSI concluded that the clients’ investments were not in keeping with their investment objectives and risk tolerances. The firm did not have evidence to show that their objectives or risk tolerances had changed.

However, from March 2001 the advisor had given the clients numerous opportunities to reduce the risk in their portfolios. Since the clients were aware of the risks associated with their investments after March 2001, they had a responsibility to mitigate their losses but chose not to make changes.

OBSI recommended that the clients be reimbursed for their losses up to March 31, 2001, which amounted to \$15,200 for the wife and \$34,600 for the husband.

COMPLAINTS RESULTING IN INVESTIGATIONS IN THE PERIOD WERE FROM THE FOLLOWING BANKS AND FINANCIAL SERVICES PROVIDERS

BANKS AND OTHER DEPOSIT TAKING ORGANIZATIONS:

BANKS	
AMEX BANK OF CANADA	7
BMO BANK OF MONTREAL	22
CAPITAL ONE BANK	1
CIBC	36
CITIBANK CANADA	3
CANADIAN WESTERN BANK	1
HSBC BANK CANADA	6
ING DIRECT	1
LAURENTIAN BANK OF CANADA	8
MBNA CANADA BANK	1
NATIONAL BANK OF CANADA	26
RBC ROYAL BANK	16
SCOTIABANK	18
THE TORONTO-DOMINION BANK	36
TOTAL	182

TRUST/LOAN COMPANIES

M.R.S. TRUST	1
TOTAL	183

INVESTMENT DEALERS

(IDA MEMBERS):

ALTAMIRA SECURITIES	1
ASSANTE CAPITAL MANAGEMENT LTD.	3
BERKSHIRE SECURITIES INC.	2
BMO INVESTORLINE INC.	1
BMO NESBITT BURNS INC.	4
CANACCORD CAPITAL CORPORATION	1
CARTIER PARTNERS SECURITIES INC.	2
CIBC FINANCIAL PLANNING INC.	1
CIBC INVESTOR SERVICES INC.	2
CIBC WORLD MARKETS INC.	13
DUNDEE SECURITIES CORPORATION	7
EDWARD JONES	4
FOSTER & ASSOCIATES FINANCIAL SERVICES INC.	1
FRIEDBERG MERCANTILE GROUP	1
GROUPE OPTION RETRAITE INC.	1
HSBC SECURITIES (CANADA) INC.	1
JONES, GABLE & COMPANY LIMITED	1
MERRILL LYNCH CANADA INC.	12
ODLUM BROWN LIMITED	1
ORION SECURITIES INC.	1
RBC DOMINION SECURITIES INC.	6
RESEARCH CAPITAL CORPORATION	1
SCOTIA CAPITAL INC.	8
TD SECURITIES INC.	1
TD WATERHOUSE CANADA INC.	13
TRADEFREEDOM SECURITIES INC.	1
UNION SECURITIES LTD.	2
TOTAL	92

MUTUAL FUND DEALERS

(MFDA MEMBERS):

AEGON DEALER SERVICES CANADA INC.	1
ASSANTE FINANCIAL MANAGEMENT LTD.	3
BERKSHIRE INVESTMENT GROUP INC.	1
BMO INVESTMENTS INC.	1
CANFIN MAGELLAN INVESTMENTS INC.	1
CARTIER PARTNERS FINANCIAL SERVICES INC.	5
CIBC SECURITIES INC.	5
COAST CAPITAL INVESTMENTS	1
DUNDEE PRIVATE INVESTORS INC.	1
INVESTORS GROUP FINANCIAL SERVICES INC.	16
IPC INVESTMENT CORPORATION	2
MANULIFE SECURITIES INTERNATIONAL LTD.	4
PARTNERS IN PLANNING FINANCIAL SERVICES LTD.	2
PFSI INVESTMENTS CANADA LTD.	1
STERLING MUTUALS INC.	1
TD INVESTMENT SERVICES INC.	1
TOTAL	46
TOTAL	321

COMMENTS ON THE STATISTICAL SUMMARY FOR THE YEAR

CONTACTS - INQUIRIES AND COMPLAINTS

In the year ended October 31, 2003, 3,020 individuals and small/medium sized businesses (SMEs) contacted OBSI requiring assistance with complaints or concerns with their financial services provider (FSP). The number of contacts increased almost 50% over 2002 and has been doubling every two years since the year 2000, partly a reflection of our higher public profile.

We estimate that half of all inquiries come to us by telephone with the balance coming by e-mail, fax and letter. Many customers simply want to discuss their case with someone knowledgeable and impartial, to get advice on whether to pursue a complaint and to seek information on how to go about it. We do not provide any advice to the customer on the merits of their complaint, unless perhaps, if we regard it as frivolous.

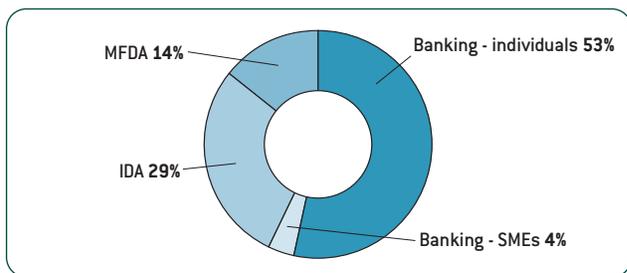
If a customer has not completed the complaint review process at their FSP (in the case of the banks, this is an investigation by the internal bank ombudsman), they are directed back to the appropriate person within that firm. Where appropriate, we will express our initial view to the FSP which may lead to a settlement. However, our view is simply an informed comment without the benefit of an investigation and the "other side of the story" – which there always is.

COMPLAINTS RESULTING IN INVESTIGATIONS

In 2003, we initiated 321 investigations; a 76% increase over the 182 investigations launched in 2002, and the 170 to 180 complaints initiated in each of the years 1998 to 2001. 222 investigations were completed in the year and final reports issued to the customer; 131 files were still under investigation at the end of the year. We recommended that the FSP take substantial action in favour of the client in 13% of the investigations completed in the year compared with 18% in 2002. In another 4% of cases (5% in 2002), we suggested a modest adjustment to compensate the customer for poor service and minor issues.

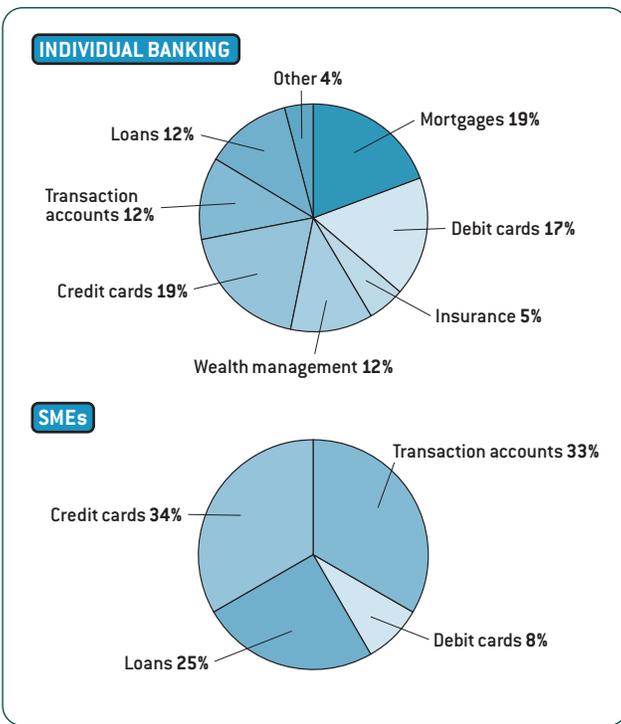
The investigations initiated by industry sectors, products and issues are summarized in the accompanying charts.

INVESTIGATIONS BY INDUSTRY SECTORS

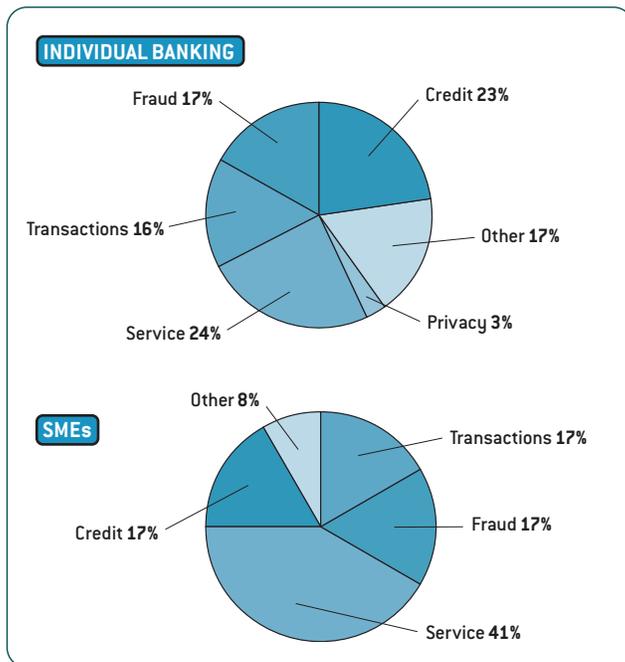


BANKING SERVICES

Investigations regarding banking products and services are as follows:



The major issues giving rise to the customer complaints are as follows:

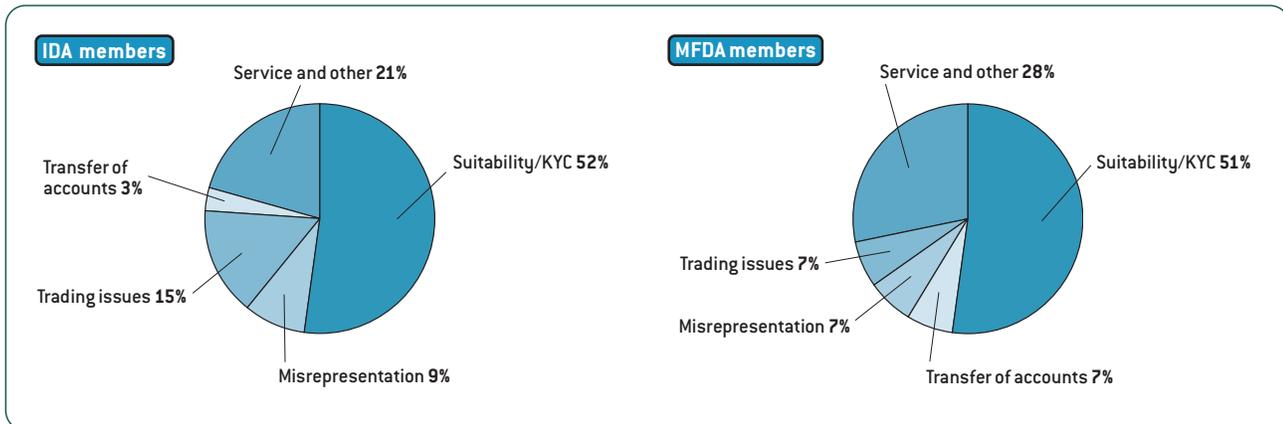


Collection activity and credit ratings gave rise to 42% of the complaints for credit cards with fraud being another 15%. By contrast, fraud gave rise to over 80% of the complaints about debit cards. Various service issues made up the balance of complaints.

INVESTMENTS

Complaints regarding retail investments essentially involve the advice and operation of the investment account. OBSI segregates complaint data between sectors based on the regulator having oversight over the firm or account. Investment dealers (stock brokers) are regulated by the Investment Dealers Association (IDA), and client accounts may include both securities (stocks and bonds) and mutual funds. However, mutual fund dealers are limited to dealing in mutual funds and exempt products and are regulated by the Mutual Fund Dealers Association (MFDA). Members of the Investment Funds Institute (IFIC) are the companies that create, manage and market mutual funds and are also members of OBSI, but there were no complaints resulting in investigations related to the mutual fund companies this year. The banks and some investment firms may have businesses in all sectors.

The issues giving rise to investment complaints are as follows:



The Ombudsman for Banking Services and Investments is a not-for-profit corporation funded by its members, which now total about 500 financial services providers.

To protect the office's independence, the Ombudsman is responsible to a 14-member Board of Directors which includes a majority of eight independent directors who are not affiliated with the financial services industry. To reflect the new expanded mandate, the Board was restructured in 2002 to replace some representatives of the banks with representatives from the investment industry and add two additional independent directors.

Directors normally are elected for three-year terms and can be re-elected. Terms are staggered to ensure Board continuity and gradual turnover.

The eight independent directors act as a committee of the Board and have special powers to safeguard the independence of the Ombudsman. They review and recommend candidates for Ombudsman, act as the nominating committee putting forward names for independent directors, review and recommend the budget to the Board, and must form the majority of committees of the Board.

THE OMBUDSMAN'S OFFICE

The Ombudsman is appointed by the Board of Directors, on the recommendation of the Independent Directors' Committee, for a term of up to five years, and may be reappointed. The Ombudsman cannot have been a government employee or have worked for or been closely associated with a participating financial services provider for five years prior to appointment.

The Ombudsman can be removed for cause by vote of 75% of the Board, provided the vote includes a majority of the independent directors.

While responsible to the Board, the Ombudsman does not solicit the advice of directors on specific complaints. The final decision concerning complaints rests with the Ombudsman. There is no appeal to the Board on Ombudsman decisions, nor can the Board influence the decisions of the Ombudsman.

However, the Board does establish and moni-

tor OBSI standards for complaint handling. The Board also deals with complaints customers might have about the process of complaint handling within OBSI.

MEMBERSHIP

The directors of the Corporation are its voting members. Non-voting membership is available to all financial services providers that are regulated by a recognized federal or provincial regulator as well as to industry associations representing these firms. The Board of Directors may also accept a non-regulated financial services provider as a member.

Current participating members include:

- Domestic and foreign-owned banks
- Investment Dealers Association (IDA) and member firms
- Mutual Fund Dealers Association (MFDA) and member firms
- Investment Funds Institute of Canada (IFIC) and member companies
- Most independent trust and loan companies and other deposit-taking organizations

Some OBSI members may be members of more than one of the above organizations.

COMPOSITION OF THE BOARD

The eight independent directors are chosen to reflect Canada's geographic and demographic diversity and are selected as individuals who are known and respected on a regional or national basis.

The other six members of the Board come from the financial services industry and are appointed by OBSI member associations. The Canadian Bankers Association and the Investment Dealers Association each name two directors to the Board. The Mutual Fund Dealers Association and the Investment Funds Institute of Canada each name one.

BOARD OF DIRECTORS*

INDEPENDENT DIRECTORS

Peggy-Anne Brown (Chair)

*President & Co-owner
Brown Crawshaw Inc.
Vancouver*

Brown Crawshaw, a Vancouver based company, specializes in employee & family assistance programming, critical incident response and wellness training. Dr. Brown, a psychologist, is also an active major shareholder in two other human resources consulting firms.

The Hon. Lincoln Alexander

*Chancellor of the
University of Guelph
Hamilton*

A former Lieutenant Governor of Ontario and former Chairman of the Canadian Race Relations Foundation of Canada, the Honourable Lincoln Alexander is currently Chancellor, University of Guelph.

Beverley A. Brennan

*Corporate Director
and Consultant
Edmonton*

Ms. Brennan consults in the areas of governance and strategic planning. She is a former Chair of the Canadian Institute of Chartered Accountants, and a former Vice-President Finance of Philom Bios Inc., an agbiotech company in Saskatoon.

Gilles G. Cloutier

*Consultant
Montreal*

Dr. Cloutier is a consultant in the field of science and technology. He has been a member of many distinguished scientific bodies and on the board of several scientific and corporate organizations. He is a former Rector of the Université de Montréal and is a Companion of the Order of Canada.

Len G. Flett

*Vice-President,
Store Development
& Public Affairs
The North West Company
Winnipeg*

Mr. Flett is an executive with The North West Company, the leading retailer in northern markets. He is past-chair and currently an executive board member of the National Aboriginal Achievement Foundation, past-chair of Aboriginal Business Development Corporation (Winnipeg) and past director of Winnipeg 2000 (City of Winnipeg Development Corporation).

Daniel F. Gallivan

*Managing Partner
Cox Hanson O'Reilly Matheson
Halifax*

The Managing Partner with Cox Hanson O'Reilly Matheson, Barristers and Solicitors, Mr. Gallivan specializes in corporate commercial, energy, and securities law. He serves as a director of the Bank of Canada and is a former Vice-Chair of the Nova Scotia Securities Commission.

James R. Savary

*Associate Professor of Economics
York University
Toronto*

Professor Savary is Chair of the Technical Committee on Privacy of the Canadian Standards Association, Chair of the Board of Directors of the Canadian Motor Vehicle Arbitration Plan, and member and past Chair of the Stakeholder Advisory Council of the Canadian Payments Association.

J. M. Toulouse

*Director
HEC Montreal
Montreal*

Dr. Toulouse is the Director of this graduate business school. A full professor, he teaches courses in entrepreneurship, business strategy, organizational dynamics and strategic decision-making. He sits on several boards such as: HEC Montreal, INO (Institut National d'Optique), Cercle des Présidents du Québec, Vice-Chair of IFM2 (Institut de finance mathématique). He is the Past Chair of Canarie.

INDUSTRY DIRECTORS

Thomas S. Caldwell

*Chairman
Caldwell Securities Ltd.
Toronto*

Member of the Board of Directors of the Investment Dealers Association of Canada (IDA)

Timothy D. Hockey

*Executive Vice-President
Retail Distribution
TD Bank Financial Group
Toronto*

Donald S. Panchuk

*Vice-President,
Administration, Regulatory
Matters and Secretary
Phillips, Hager & North
Investment Management Ltd.
Vancouver*

Member of the Board of Directors of the Investment Funds Institute of Canada (IFIC)

John C. Pattison

*Senior Vice-President,
Treasury, Balance Sheet
and Risk Management
CIBC
Toronto*

Gary Reamey

*Principal
Edward Jones
Mississauga*
Member of the Board of Directors and Executive Committee of the Investment Dealers Association of Canada (IDA) and member of the Board of Directors of the Centre for Financial Services OmbudsNetwork (CFSON).

W. (Terry) Wright

*Senior Vice-President,
General Counsel & Secretary
Investors Group Inc.
Winnipeg*
Chair of the Board of Directors of the Mutual Fund Dealers Association of Canada (MFDA) and the Investment Funds Institute of Canada (IFIC)

* Effective January 31, 2004



OMBUDSMAN
for Banking Services
and Investments

Ombudsman for Banking Services and Investments

P.O. Box 896
Station Adelaide
Toronto, ON M5C 2K3

Courier:

33 Victoria Street, Suite 710
Toronto, ON M5C 2A1

For further information:

Toll free telephone: 1-888-451-4519

Toll free fax: 1-888-422-2865

Toronto area telephone: (416) 287-2877

Toronto area fax: (416) 225-4722

E-mail: ombudsman@obsi.ca

Web site: www.obsi.ca

Ombudsman

Michael Lauber

Deputy Ombudsmen and Investigators

Brigitte Boutin
Rick Bright
Julie Eisenstat
Harsha Gupta
Louise Hamel
Stan Iwanski
Howard Maker
Karen McKenzie
Jo Anne Olafson
Michael O'Neil
Robert Paddick
Marie-Claude Roy
Doug Weber

Customer service and administration

Diane Pilon, Manager
Sarah Lapointe
Elizabeth Sithamparampillai

Our OmbudsNetwork Partners

The Centre for the Financial Services

OmbudsNetwork (CFSON)

Tel: 1-866-538-3766

Fax: (416) 777-9716

E-mail: info@cfson-crcsf.ca

Web site: www.cfson-crcsf.ca

General Insurance OmbudService (GIO)

Tel: (416) 921-9316

Fax: (416) 967-6320

E-mail: mgraham@gio-scad.org

Web site: www.gio-scad.org

Canadian Life and Health Insurance

OmbudService (CLHIO)

Tel: 1-888-295-8112

Fax: (416) 777-9750

E-mail: information@clhio.ca

Web site: www.clhio.ca

Design: Jacques Pilon Design Communications



Printed on recyclable paper