



*The Financial Loss Litigation Expert**

Joint Submission
Sotos Investor Protection Group and
H. Geller Professional Corporation
OBSI Independent Review Consultation

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Submitted to: CRK Team
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I. INTRODUCTION

This submission is provided jointly by the Sotos Investor Protection Group and H. Geller Professional Corporation, each of which has extensive experience advocating for investors and consumers affected by failures in the distribution of financial products.

Both law firms regularly represent investors who have suffered losses due to unsuitable advice, misrepresentation, conflicted sales practices, and other breaches of applicable standards of care. That work necessarily involves sustained engagement with Canada’s complaint-handling and dispute-resolution framework, including Ombudsman for Banking Services and Investments (“**OBSI**”), Canadian Investment Regulatory Organization (“**CIRO**”) member firms, and securities regulators.

Our comments are informed by that experience. While individual interactions with OBSI personnel have generally reflected professionalism and good faith, our concern is that structural and regulatory constraints limit OBSI’s ability to function as an effective, independent, and accessible dispute-resolution body.

The purpose of this submission is therefore not to assess OBSI staff performance, but to address whether the surrounding regulatory architecture supports the public-interest objectives that OBSI is intended to serve—namely, fair investor outcomes, accountability, and confidence in Canada’s capital markets.

This consultation addresses issues of central importance to the effectiveness of investor protection in Canada. The outcome of the Independent Review will materially influence whether OBSI is able to function as a credible, independent, and accessible dispute-resolution mechanism for retail investors.

From the perspective of investor protection, the central question raised by our submission is whether the current framework effectively prioritizes independent dispute resolution or whether, in practice, it continues to rely primarily on firm-controlled processes that are ill-suited to addressing power and information imbalances between registrants and retail investors.

That question has implications not only for individual complainants, but also for the identification of systemic issues, regulatory oversight, and public confidence in market integrity.

II. MANDATORY DEALER COMPLAINT HANDLING AS A STRUCTURAL IMPEDIMENT

The OBSI framework is weakened at the outset by the requirement that most complaints first proceed through dealer-controlled complaint processes (“DCCP”). The requirements that complaints first proceed through DCCP lend those processes a veneer of independence and objectivity that does not exist.

In practice, the DCCP are adversarial and frequently characterized by delays and diversions. Investors commonly experience procedural fatigue, extended timelines and active misdirection by responding dealers. Complainants are also often passed between different administrative levels within the DCCP, which frustrates the effectiveness of these processes, causes confusion, and results in a lack of accountability.

The impact of delay has been studied by OBSI and the Financial Consumer Agency of Canada (“FCAC”) in the banking context. It is foreseeable that delays and diversions will result in the loss of substantive rights of the investor through the expiration of limitation periods and the complainant's attrition. These outcomes are not incidental; they are predictable features of a system in which one party controls both the process and the information. The absence of a limitations tolling component to DCCP incentives firms to deny, delay and confuse investors. Where complainants are diverted and resolved directly with dealers, settlements are often conditioned on non-disclosure agreements. The diversion of complaints restricts financial market transparency for investors and limits regulators' ability to identify patterns of misconduct. While CIRO rules provide that non-disclosure agreements with terms restricting complaints to regulators are non-enforceable, the vast majority of complaints proceeding through DCCP are doing so on an unrepresented basis.

If sunlight is a great disinfectant, then diversion and the resulting loss of transparency and systemic problems identification lead to the festering of patterns of systemic misconduct.

From an investor-protection perspective, the routine diversion of complaints away from independent dispute resolution raises significant concerns about fairness, accountability, and systemic oversight.

III. CSA-RELATED CONSTRAINTS ON OBSI'S EFFECTIVENESS

A. Jurisdictional Limitations Inconsistent with Investor Experience

The core obstacle to investor protection under the OBSI framework is OBSI's mandate, as interpreted by OBSI. The mandate excludes the interwoven nature of investment advice, which commonly extends beyond the limited perspective of a securities product, only, approach. The result is a consumer/investor protection system that systematically fails Canadians' needs. Given the decades of recognition of the design failure, OBSI's mandate is tantamount to an admission by Governments and Regulators that the existing system is not fit-for-purpose. Current CSA policy rests on an assumption that is divorced from reality. Specifically, the assumption that investors

distinguish between securities-regulated advice and the other connected investment advice, including insurance-based investment products, when engaging advisors for wealth management or estate planning. In our experience, this assumption does not reflect market reality.

Advisors and dealers market, and routinely present to investors, integrated financial strategies, including, for example, segregated funds and universal life insurance policies as investment tools. Limiting OBSI's jurisdiction to only part of this advisory relationship creates an artificial distinction that disadvantages investors and narrows access to redress.

Greater coordination between securities and insurance regulators would better align OBSI's jurisdiction with how financial advice is delivered to and understood by consumers. As far as we can determine, it has been many decades since this gap and the resulting failure of investor/consumer protections in the sale of wealth management and estate planning services and products has been the subject of governmental and regulatory efforts to address the resulting undeniable and profound failure of policy and regulation.

B. Absence of a Robust Systemic Mandate

Since 2013, OBSI's role in identifying and addressing systemic issues has been substantially constrained. The consequences of this limitation are significant.

Without a meaningful systemic mandate:

- Patterns of misconduct may remain unexamined;
- Similarly situated investors may remain unaware of negligence, harm and their potential right to seek compensation; and
- Regulators will continue to be deprived of reliable, case-based insight into recurring market conduct issues, which prevents root-cause analysis.

Even if the current framework were sufficient to fairly resolve individual disputes, which it is not, this would not be enough. Effective investor protection requires mechanisms capable of identifying and responding to systemic risk.

C. Continued Absence of a Binding Mandate

For many years, a binding decision mandate for OBSI has been described as forthcoming. Despite repeated consultations and policy discussions, such authority has not been implemented.

The absence of a binding mandate reduces the practical effectiveness of OBSI recommendations, contributes to inconsistent outcomes, and weakens confidence in the dispute-resolution framework as a whole. It is widely understood that firms often disregard OBSI recommendations and offer complainants significantly less than OBSI suggests is appropriate. What little efficacy the current process offers is significantly undermined by this practice, as is confidence in Canada's capital markets.

IV. CIRO'S COMPLAINT-HANDLING FRAMEWORK

The CIRO complaint-handling framework shares some of the blame for the OBSI process's deficient state. CIRO rules and practices materially affect OBSI's operations and the broader complaint-handling environment.

A. Diversion to Internal Dispute Resolution Services

CIRO's framework permits extended DCCP and optional appeals to Internal Dispute Resolution Services ("IDRS"). The DCCP is described as 'independent' by dealers in communications to complainants, but it is not independent of the firms whose conduct is in question and is treated by dealers as if the DCCP investigations were not subject to securities-commission regulation. At a minimum, complainants deserve to know who they are dealing where the loyalties of the DCCP employees lie.

Independence is a core principle of effective dispute resolution, particularly in contexts involving power and information imbalances. Mechanisms that lack independence raise legitimate concerns regarding fairness, transparency, and investor confidence.

B. Limited Capacity to Address Systemic Issues

CIRO DCCP, like those of OBSI, are not structured to identify or address systemic misconduct. This limitation represents a central policy concern, as systemic issues are unlikely to be detected through fragmented, firm-level processes. At a macro-level, this results in a significant gap in the overall complaint handling landscape in Canada.

C. Risk of Confusion and Further Diversion

The parallel promotion of arbitration mechanisms may create confusion for complainants and further divert matters away from OBSI. Where such mechanisms are described as investor-friendly, they are not. A CIRO proposal, reached with the consensus of industry, investors, and arbitrators to revive the unused and moribund existing Alternative Dispute Resolution ("ADR") has been delayed and appears to have been terminated. It is important that complaint diversion from OBSI, including their governance, independence, and outcomes, be carefully examined.

V. INDUSTRY INFLUENCE AND STRUCTURAL RISK

Industry participants have, over time, taken positions that would limit OBSI's authority, scope, or resources. These positions include opposition to a binding mandate, support for expanded diversion to dealer-controlled processes, and resistance to systemic investigations. This is entirely predictable, as is its negative effect on investor protection.

While industry participation in policy development is appropriate, investor protection frameworks must be designed to address the industry's inherent conflicts of interest and power imbalances inherent in the relationship between clients and registrants. It is impossible to consider a fair and just process without recognizing and addressing the industry's profound conflicts of interest. Regulatory structures should therefore be assessed with particular attention to independence, transparency, and accountability.

VI. CORE POLICY PRINCIPLES

From an investor-protection perspective, several principles emerge clearly:

1. Truly independent dispute resolution is essential and cannot be replaced by firm-controlled alternatives.
2. Complainants ought to have immediate access to independent processes without needing to proceed through procedures administered by the very firms they complain of.
3. The use of non-disclosure agreements in complaint resolution warrants prohibition or strict limitation.
4. Jurisdictional scope should reflect the integrated nature of modern wealth management and the widespread practice of marketing certain insurance products as wealth management and savings tools.
5. Systemic investigation and reporting must be restored and strengthened, including by regulator CDCC sweeps and active CDCC monitoring.
6. OBSI requires a binding decision mandate to function effectively.
7. Industry influence must be viewed with an appropriate degree of scepticism, accounting for their inherent conflicts of interest in the complaint process.
8. Limitation-period tolling must be effective and meaningful at all stages of the complaint process.

VII. CONCLUSION

A credible and effective dispute-resolution system benefits both investors and firms operating in the capital markets. The financial impact of a binding OBSI mandate on large market participants is limited, while the potential benefit to harmed investors is significant.

The Independent Review presents an opportunity to strengthen OBSI's role, clarify its mandate, and address longstanding structural weaknesses. We encourage regulators to act decisively and in the public interest.

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