

OBSI Governance Review – request for public comment

November 1, 2022

Part 1 - Executive summary

The Ombudsman for Banking Services and Investments (OBSI) is seeking input from stakeholders and the public in relation to its organizational governance. This consultation is focussed on understanding how OBSI's board can best ensure that it has the opportunity to consider the perspectives of stakeholders with financial service industry expertise and consumer advocacy expertise in its decision making. OBSI is committed to ensuring a deep knowledge of these perspectives at the board level because they are crucial to ensuring that the organization is able to continue to fulfil its mission of helping to ensure a fair, effective and trusted financial services sector. [OBSI's last public consultation on governance reform](#) took place in 2012.

In this document, we describe the recommendations of our most recent independent evaluation, our current approach to industry and consumer engagement in our governance and operations, relevant considerations for the design of potential stakeholder input models, and future governance options we are considering. We pose five questions for stakeholder feedback throughout the document. For ease of reference, they are:

Summary of governance consultation questions

1. Should OBSI's board continue to have designated board positions for current industry participants and/or consumer advocates, or transition to a system without such designated positions?
2. If designated industry and consumer board positions are continued, what is the appropriate composition of OBSI's board with respect to the proportion of positions designated for those with specific industry or consumer expertise or who are independent?
3. If designated industry and consumer board positions are continued, should Industry Director positions continue to be nominated by specific industry organizations, or should OBSI transition to a system of more general nomination of current industry participants?
4. If designated industry and consumer board positions are continued, how should Consumer Interest Director nominees be identified?
5. Beyond designated board representation, how should OBSI ensure that the interests and expertise of industry and consumer stakeholders are incorporated into the organization's decision-making process?

The public comment period for this consultation closes on January 31, 2023. Stakeholders are encouraged to participate in this consultation through a variety of communication channels. For

information on how to share your views on this consultation, please see Part 4 – How to Provide Comments, below.

2021 independent review recommendations

OBSI's recent [2021 Independent Evaluations](#) of its banking and securities mandates (the "2021 Review") made a number of governance-related recommendations, including that OBSI's board should undertake a strategic review of its governance structure to determine how best to ensure that key stakeholder interests are most effectively considered in board oversight and decision-making.

Specific governance-related recommendations of the 2021 Review were that OBSI's board should:

- a) add other metrics to the Governance & Human Resources Committee's diversity deliberations for recruitment purposes, including indigenous ancestry, membership in a visible minority community and disability;
- b) transition towards having a board with no specific categorical requirements regarding the number of Industry and Community Directors and amend its bylaws to remove the requirement that industry directors be nominated by the Canadian Bankers Association (CBA), the Investment Industry Regulatory Organization of Canada (IIROC), and the Mutual Fund Dealers' Association (MFDA), respectively;
- c) amend and update its skills matrix and use it as the basis for recruitment to ensure that directors have the skills and competencies needed to effectively oversee OBSI. The skills matrix should include experience in the range of relevant industry sectors discussed in this section, as well as important consumer and investor perspectives; geographic and linguistic diversity; and a diversity of backgrounds should also be explicitly accounted for;
- d) establish roundtables with industry and consumers, including advocacy groups for both, to receive their perspectives and opinions on key issues of importance to OBSI and current developments and trends; and
- e) in light of the above, carefully consider whether it is necessary or desirable to continue having a Consumer and Investor Advisory Council (CIAC), given that the recommended governance structure described above would see an OBSI board that has balance in industry and investor backgrounds and where the OBSI board would receive input from industry and consumer stakeholders through other means.

As a result of this review and other changes in OBSI's operating environment, OBSI's Board of Directors has decided to seek input from stakeholders and the public in relation to these important recommendations through this consultation process.

Part 2 - Board composition and nominations

Board composition – size

OBSI's board currently has ten members. The organization's Articles of Continuance provide that the board may have a minimum of 7 and a maximum of 11 members.

The [2016 Independent External Evaluation of OBSI](#) (the “2016 Review”) noted that, at ten directors, “[t]he governance structure appears large.” The 2021 Review observed that, while relatively large, the board functioned well and that a reduction of its size was unnecessary. The reviewers noted that the work allocation among the committees is appropriate and that the size of the board helped to facilitate diversity.

Board composition - diversity

OBSI’s Director Recruitment Policy sets out the Board’s view of the importance of diversity in director recruitment for the organization. The policy stipulates that:

The Board of Directors recognizes and values the benefits of having a diverse Board of Directors and considers diversity a key driver of OBSI’s success and governance strength. The Board believes it important for the organization to be governed by a mix of highly qualified directors from diverse backgrounds that contribute a broad range of perspectives and experiences to its discussions and decisions, ultimately promoting the best possible corporate governance. While competency and expertise are of paramount importance in all Directors and will not be compromised, and the Board is required to be composed of the appropriate mix of Industry and Community Directors, diversity on all fronts is viewed as a prime consideration and cornerstone of success. The key aspects of diversity for the success of the OBSI board are skills/experience needed to achieve our strategic objectives; geographic - to ensure we represent all parts of Canada; gender; and community, consumer and social engagement.

The 2021 Review recommended that the board consider adding other metrics in its diversity deliberations, including indigenous ancestry, membership in a visible minority community and disability, to better align with emerging best practices and the standards established for federally incorporated businesses under the Canada Business Corporations Act. OBSI’s board agrees with this recommendation and will be considering implementation internally.

Importance of independence in OBSI governance

Independence is a cornerstone of financial ombudsmanship. To retain legitimacy as a fair decisionmaker, OBSI must provide impartial and objective dispute resolution services that are independent from the investment industry, consumer advocates, and regulatory agencies. All organizational decisions relating to cases, policies, procedures, and organizational priorities, strategies and actions must be undertaken in a manner that is fair to both industry participants and consumers in the circumstances and reflective of the organization’s broader public service mandate.

To ensure this independence at the board level, [OBSI's Corporate Bylaw](#) provides that a majority of the members of the board of directors must be Community Directors without recent industry affiliation. OBSI’s unaffiliated Community Directors come from a range of personal and professional backgrounds and bring an important diversity of views to the governance of the organization.

Board composition – stakeholder representation

Importance of stakeholder engagement in OBSI governance

The importance of stakeholder engagement in OBSI's governance is universally acknowledged, and stakeholder engagement has been continuously prioritized by the organization throughout its 26-year history. The 2021 Review observed that: "it is crucial for OBSI's board to have clear lines of sight into issues and perspectives relevant to all of its stakeholders. Although industry and consumer stakeholders often have very different perspectives, they all have the same interest in efficient dispute resolution and an effective and trusted financial services sector."

Current approach to formal stakeholder representation and recruitment

OBSI's Corporate Bylaw provides that three members of the board will be Industry Directors, with one being nominated by each of the CBA, IIROC and MFDA. The Bylaw provides that the other members of the board must be unaffiliated Community Directors and that Community Directors must at all times outnumber Industry Directors.

The 2016 Review recommended that OBSI add a consumer representative on the board. In 2020, the Bylaw was amended to provide that at least one of the Community Directors would be specifically selected on the basis of having "particular interest in, access to, and competencies with the interests and perspectives of the types of consumers which the OBSI serves," and would be designated a Consumer Interest Director. The Bylaws also provide that the board must ensure that policies and procedures are in place to support the appropriate selection process for the Consumer Interest Directors.

Notably, even prior to the formal creation of the Consumer Interest Director role, OBSI's board had generally included directors with consumer advocacy experience and experience serving on the CIAC.

2021 Review recommendations

The 2021 Review recommended that OBSI transition towards having a board with no specific requirements for industry and community directors, stating, "we believe that OBSI should transition towards having a board with no specific categorical requirements regarding the number of industry and community directors, and that appointments should be made solely on the basis of the amended board skills matrix. OBSI should consider whether appointing board members solely on the basis of the amended skills matrix could provide for fair and meaningful representation on its board and committees of different stakeholders."

Governance at other financial ombudservices

Internationally, no singular approach to board governance of ombudservices has emerged as a best practice.

Australia

The Australian Financial Complaints Authority (AFCA) is governed by an independent Board of Directors, made up of an independent chair and an equal number of non-executive directors with consumer and industry expertise. The AFCA Constitution requires that the AFCA Board must have between three and five industry and consumer directors, and no more than 11

directors in total. There are currently nine directors (independent chair, plus four industry and four consumer directors).

AFCA's industry directors are selected for their experience and knowledge in one or more of the financial services industries that AFCA members operate in, and AFCA's consumer directors for their experience in representing consumer and small business interests in the financial industry and other community sectors. AFCA reports that both industry directors and consumer directors consult regularly with others in their field of expertise to ensure they continue to understand current issues, but they do not advocate for, or represent, industry or consumers, respectively, and must act in the best interests of AFCA.

United Kingdom

The UK Financial Ombudsman Service (FOS UK) directors are appointed by the Financial Conduct Authority, and all serve as independent members of the board and do not represent any particular group or sector. FOS UK's board currently consists of seven directors, each of whom has had a high-profile executive career, only two of whom have experience in the financial service industry.

Question 1:

Should OBSI's board continue to have designated board positions for current industry participants and/or consumer advocates, or transition to a system without such designated positions?

Question 2:

If designated industry and consumer board positions are continued, what is the appropriate composition of OBSI's board with respect to the proportion of positions designated for those with specific industry or consumer expertise or who are independent?

Board nominations – Industry Directors

OBSI director recruitment is led by the board's Governance & Human Resources Committee. When a vacancy of an Industry Director position occurs or is expected, the general approach of the committee is to solicit new industry nominations through outreach to the relevant industry body, which responds with the names of candidates for consideration.

Historically, when OBSI has requested nominees, IIROC and MFDA have issued a notice to their membership for expressions of interest. From the responses received, the SROs have then put forward two or three nominees for OBSI's consideration.

The CBA has typically discussed the ideal candidate profile with OBSI, solicited interest directly from one or more potential candidates fitting that profile, then presented a nominee to OBSI.

Unrepresented industry constituencies

OBSI's membership consists of over 1,500 participating firms, including federally regulated banks, firms from a diverse range of investment registration categories, and provincially regulated deposit taking institutions.

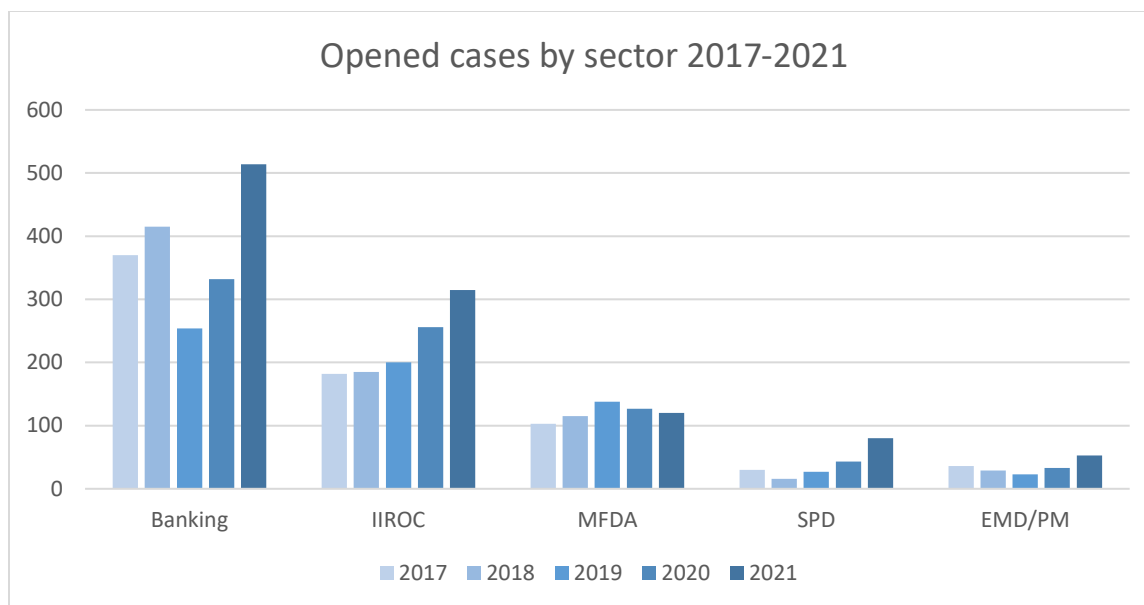
Since OBSI's mandate expanded in 2014 to include all categories of securities registrants in addition to IIROC and MFDA members, representatives of other registration categories, including exempt market dealers (EMDs), portfolio managers (PMs), and scholarship trust plan dealers (SPDs), have voiced dissatisfaction, including in their submissions in relation to the 2021 Review, with what they see as their exclusion from OBSI's governance.

With OBSI's recent growth in credit union participation, a similar dynamic may evolve with respect to deposit taking firms, though we are aware of no expression of such dissatisfaction to date.

Below is an illustration of OBSI's 2022 participating firms by industry affiliation:



As illustrated above, a significant majority of OBSI participating firms are not IIROC, MFDA or CBA members. Most participating firms are EMDs or PMs or are registered in both categories. Importantly, however, firms represented by CBA, IIROC, and MFDA are by far the largest participating firms by size and complaint volume – for example, IIROC and MFDA firms have over 100,000 registrants, while there are approximately 5,500 EMD and PM registrants. Collectively, CBA, IIROC, and MFDA members contribute approximately 88% of OBSI's fee revenues. Of OBSI's investment complaints in 2021, 77% involved IIROC and MFDA member firms, while 99% of deposit-taking compliant volume involved CBA member banks. Below is a table illustrating cases opened by sector for the past five years.



SRO Merger

At the end of 2022, IIROC and MFDA will be merged into a single new self-regulatory organization. Without further action, this merger will lead to the new SRO having the right to nominate candidates for two Industry Director positions on OBSI's board. This circumstance presents the opportunity for consideration and recalibration of the Industry Director nomination process for OBSI.

2021 Review recommendations

As an alternative to the elimination of specific industry and consumer positions on OBSI's board, or perhaps as a preliminary measure, the 2021 Review recommended that OBSI consider:

- (1) amending its skills matrix to include relevant experience in one or more of the industry sectors; and
- (2) amending its bylaws to remove the requirement that the three Industry Directors be nominated by CBA, IIROC, and MFDA, respectively, and instead seeking nominations for the Industry Directors from industry stakeholders and through public advertisements. The Industry Directors should be selected on the basis of their skills and experience in one or more of the industry sectors that OBSI serves.

The reviewers commented that, "we believe this would be preferable to the current approach, as it would leave open the idea of rotation of board participation among all the different sectors. We also think this recommendation makes sense in light of the upcoming combination of IIROC and MFDA into one SRO responsible for overseeing both investment and mutual fund dealers, among others. Finally, this focus on appointing individuals with the skills necessary to properly fulfill their role as directors, rather than "representatives" to voice the concerns of a particular group, is in line with governance best practices."

The reviewers observed that, “this type of system would emphasize the importance of OBSI’s impartiality and independence (and its perceived impartiality and independence among stakeholders), and would remove any inference that directors might use their position to represent a particular stakeholder group. This type of system would also have the benefit of allowing for more flexibility in appointments, depending on OBSI’s needs at a given time.”

Question 3:

If designated industry and consumer board positions are continued, should Industry Director positions continue to be nominated by specific industry organizations, or should OBSI transition to a system of more general nomination of current industry participants?

Board nominations – Consumer Interest Directors

When seeking to fill an unaffiliated Community Director vacancy or expected vacancy, the Governance & Human Resources Committee will generally consult and update the board skills matrix to identify any areas of expertise to be targeted in the search and then solicit nominations through public advertisement and referral from current board members.

Where the vacancy pertains to a Consumer Interest Director, the Director Recruitment Policy provides that Consumer Interest Director candidates will be identified through consultation with consumer advocacy groups and CIAC to create a short-list.

It is notable that there are only a small number of consumer advocacy organizations focussed specifically in the financial services sector, though there are also consumer and community organizations that engage in financial services issues on an ad-hoc basis. This poses a challenge when considering how a nomination process for OBSI Consumer Interest Directors might be formalized.

Question 4:

If designated industry and consumer board positions are continued, how should Consumer Interest Director nominees be identified?

Part 3 - Stakeholder engagement

Industry engagement challenges and opportunities

OBSI current practice: industry stakeholder roundtables

OBSI’s senior management team holds roundtable meetings twice a year (typically in late November and June) with a group of industry associations representing the sectors that use OBSI’s service. The group includes:

- the Canadian Bankers Association (CBA)
- the Canadian Credit Union Association (CCUA)
- the Canadian ETF Association (CETFA)
- the Federation of Mutual Fund Dealers (FMFD)
- the Investment Funds Institute of Canada (IFIC)
- the Investment Industry Association of Canada (IIAC)
- the Portfolio Managers Association of Canada (PMAC)
- the Private Capital Markets Association of Canada (PCMA)
- the Registered Retirement Educations Savings Plan Association of Canada (RESPDAC).

Each association may also invite two to three participating firms that they represent to join the meeting, which they generally do.

These meetings are typically one hour long and include presentations by OBSI's CEO and other senior management team members on a broad range of topics, including organizational updates and recent case statistics, with questions taken from the participants throughout the meeting and at the end. Prior to the pandemic, the industry meetings were held at the offices of OBSI's law firm, with some participants joining in person and others by phone. For the past two years, these meetings have been by video conference. Summary notes from the meeting are provided to participants after the meetings. Participation in the roundtables to date has been good and feedback positive.

Consumer engagement challenges and opportunities

OBSI current practice: Consumer advocate outreach

OBSI management engages with consumer advocates and advocacy organizations on an individual basis to provide updates and discuss issues of current interest. Some individuals and groups, such as FAIR Canada, we meet with on a regular basis, while others we reach out to and correspond with on an ad hoc basis. Some of the consumer groups we are in contact with include:

- Canadian Association of Retired Persons
- CanAge
- Consumers Council of Canada
- FAIR Canada
- Kenmar Associates
- Option consommateurs
- Prosper Canada
- Public Interest Advocacy Centre
- Union des consommateurs

CIAC

CIAC is OBSI's consumer advisory council, consisting of between five and nine members, established in 2010 to advise the board on issues and challenges faced by consumers and investors in dealing with OBSI to address and resolve complaints with financial service providers, complementing the input OBSI regularly receives from industry stakeholders and regulatory and government officials.

CIAC may also provide information and expert advice to the OBSI board on issues related to the financial services sector, client experience, social policy, ombudsman operational activities, social conditions, equality and disability issues, outreach activities and other issues as requested by the board. Members are appointed from across Canada. The role and responsibilities of the CIAC are described in the [CIAC Statement of Expectations](#).

The 2021 Review described the work of the CIAC and some of the operational and philosophical challenges the council has experienced in recent years. The reviewers observed:

We believe that CIAC could provide more value to OBSI's board if the parties' respective roles and responsibilities were clarified in the Statement of Expectations. Specifically, the Statement of Expectations should more clearly set out CIAC's role as an advisory committee and expressly state that OBSI's board is not required to accept a recommendation made by CIAC. OBSI's board and CIAC could also work together to define the role CIAC will play at OBSI's board meetings, and should consider formalizing the arrangement. For example, CIAC could present to the OBSI board on a particular consumer issue at every other board meeting. Setting out this level of detail in the Statement of Expectations may allow both OBSI's board and CIAC to have a common understanding about their respective roles and responsibilities, and may improve the communications between the parties and the value that CIAC ultimately provides to OBSI.

However, it is ultimately up to OBSI's board to determine whether CIAC is serving its purpose in assisting the board, and whether its continued existence is required for the OBSI board to adequately and effectively understand the views of consumers and investors, particularly if OBSI chooses to implement the updated governance structure recommended below.

Consumer engagement in general can be challenging for financial sector participants because there are relatively few individuals who are directly and deeply knowledgeable about consumer and investor issues in the sector. Similarly, there are very few organizations dedicated to such issues and those that exist are typically under-resourced and have many key priorities, which makes engaging over a sustained period of time difficult.

Nevertheless, [recent consumer engagement in the federal government's review of the ECB system](#) in Canada has demonstrated that there are numerous citizens and groups that will engage meaningfully on OBSI-related issues of specific relevance to the mandate of their organizations.

Alternative mechanisms for stakeholder engagement in governance

Round tables

The 2021 Review recommended that "OBSI's board should consider engaging in annual industry roundtables with EMDs, PMs and others to help provide for a detailed and meaningful dialogue between OBSI and its participating firms. OBSI can use these roundtables as opportunities to get qualitative feedback from participating firms that is specific to their business. For example, a roundtable with EMDs may elicit different feedback than one with MFDA members."

As described above, OBSI has utilized a roundtable approach to communicate directly with industry associations on a semi-annual basis for a number of years with positive results. This approach could be broadened for industry extended to consumer advocacy organizations.

The roundtable approach to receiving stakeholder input has been used extensively by securities regulators and other organizations for many years. Depending on the subject matter and audience, such roundtables can take the form of “town hall” style events, or “hollow-square” discussion forums.

To enhance the opportunities for participation and dialog, these roundtables could be expanded to a 90-minute format (or longer if needed), include board members and other participants with relevant expertise, and could include more formal opportunities for comments from participants depending on the agenda put forward. A regular schedule of twice-yearly meetings for consumer advocates and industry advocates could be implemented, and round tables could also be held on an ad-hoc basis when specific consultations would be best supported by the approach. Participation could also easily be adjusted to accommodate both industry and consumer groups at the same time should the topic warrant it.

While we would expect to continue to hold informal meetings with both industry and consumer groups, establishing formal separate industry- and consumer-oriented semi-annual meetings offers the opportunity for an additional foundation for such engagement.

Focus groups

Another complementary tool for engagement could be the use of focus groups. A focus group would allow for engaging a limited number of stakeholders in a collaborative environment that may allow for open dialogue on issues of specific interest.

Task forces

Where an opportunity for engagement with a stakeholder group is likely to require more sustained focus, work effort over multiple meetings, or expertise in a specific area, a task force could be struck to accomplish a specified objective. Such task forces could be appointed and resourced appropriately, with the expectation that the group would make its contribution and then disband when the objective was completed.

Stakeholder engagement at other financial ombudservices

Internationally, no singular approach to stakeholder engagement for financial ombudservices has emerged as a best practice, though stakeholder outreach occurs regularly.

Australia

AFCA’s board does not report engaging formally in stakeholder outreach, but in 2019, AFCA ran an extensive series of roadshows and public forums for member firms, small businesses, and consumer advocates at a range of locations across Australia.

AFCA also reports that they meet regularly with government, members, advocates, industry associations, small business and consumer groups, to discuss emerging issues and to consider process and service improvements.

United Kingdom

FOS UK reports undertaking formal consultations with the Financial Conduct Authority, HM Treasury, financial businesses and their trade associations, consumers and their representative bodies, and FOS staff on specific issues such as budget, long term strategy, the impacts of COVID-19, their new quality assurance framework, and terms of reference for their next periodic review.

FOS UK describes their consultation on annual plans and budget as, “Throughout the year and during the consultation process the Financial Ombudsman engaged with a range of stakeholders to share its emerging plan and budget and to get their views. This included chair-to-chair meetings with large businesses and Industry Steering Groups for banks, insurance companies and trade bodies. The Board also received regular updates from senior level external and internal engagement.”

Question 5:

Beyond designated board representation, how should OBSI ensure that the interests and expertise of industry and consumer stakeholders are incorporated into the organization’s decision-making process?

Part 4 - How to provide comments

In writing

Please submit your written comments on or before January 31, 2023. If you are sending your comments by email, please send us an electronic file containing the submissions in Microsoft Word Format.

Address your submission to:

Mark Wright, Director, Communications and Stakeholder Relations
20 Queen Street West, Suite 2400, P.O. Box 8
Toronto, ON M5H 3R3

Fax: 1-888-422-2865

Email: publicaffairs@obsi.ca

By electronic survey

Stakeholders can also provide their responses to this consultation by electronic survey, here: <https://www.surveymonkey.com/r/H3NXR36>. This survey is not anonymous, and all commenters will be asked to identify themselves.

In person

OBSI will host a virtual roundtable event on January 19, 2023 to hear directly from stakeholders on these consultation questions. To register for the roundtable event, please send an email expressing your interest to publicaffairs@obsi.ca. Stakeholders unable to attend the roundtable can also contact OBSI directly at publicaffairs@obsi.ca to arrange a virtual meeting to share their views.

Next steps

All written responses received will be published, and comments received in person or through the roundtable event will be summarized and published.

OBSI will carefully consider all submissions received as we work towards updating our organizational governance structure and we will consult with our regulators on any proposed changes. We expect to announce the results of this process, any changes to our constating documents, and any plans for future consultation later in 2023.