Panel #7: Recovery for Investors through Ombudservices

This panel discussed the role of the Ombudsman for Banking Services and Investment's (OBSI) in facilitating investor recovery. The panel also compared the OBSI's mandate, legislative and operating framework with other ombudsman's offices internationally, and discussed how OBSI could be made more effective.

Panellists:

Sarah P. Bradley, Ombudsman and Chief Executive Officer of OBSI,
Mercer E. Bullard, Professor of Law at the University of Mississippi School of Law and Distinguished Lecturer at the Mississippi Defence Lawyers Association,
Sujatha Sekhar Naik, Chief Executive Officer at Securities Industry Dispute Resolution Centre (SIDREC) for the Malaysia Securities Commission, and
Shane Tregillis, Chief Ombudsman at Financial Ombudsman Service (Australia).

Moderator:

Janis Sarra, UBC Presidential Distinguished Professor at University of British Columbia Peter A. Allard School of Law

OBSI is a not-for-profit organization that hears complaints regarding investments and banking services. Ms. Bradley provided a broad overview of the current challenges faced by OBSI. It includes 1500 member firms, and opens approximately 600 investigations per year. The organization has returned $20M in compensation to consumers over the last five years. Ms. Bradley outlined four major issues that face OBSI. First, the organization cannot make binding decisions. As a last resort, OBSI can "name to shame" non-compliant firms. There has also been some concern that the non-existence of binding authority leads to lower settlement values. Second, there are multiple external complaint bodies in the banking sector, which may diminish consumer trust in OBSI overall. Third, since 2014, OBSI has lost mandate over systemic issues. Fourth, there is no mandate for insurance products.

Professor Bullard provided insight into Financial Industry Regulatory Authority (FINRA) arbitration. FINRA is an American private corporation that acts as a self-regulatory organization. Broker dealers are required mandatory arbitration when there is a dispute. Professor Bullard argued that although appeals of arbitrations are allowed, very few decisions are overturned. It draws on FINRA rules or securities rules but these are not dispositive as its decisions are equitable. The most common allegation in arbitration is a breach of the fiduciary duty and the second most common is suitability claims. Professor Bullard advised that there are two issues raised: (1) that outcomes are unfair as 60 to 70% of arbitration decisions find in favour of industry (these numbers do not include those cases that settled or those dismissed); (2) there are no published decisions which leads to uncertainty as you cannot properly check the risk associated with a broker-dealer as a result.

Mr. Tregillis and Ms. Naik provided international perspectives of other ombudsman's offices. Mr. Tregillis noted that the Australian Financial Ombudsman decisions are binding on the financial services provider (10% go to a binding decision for resolution). Moreover, he noted that while decisions are published, the names of the financial service providers or individuals are not published. IF do not comply with decision, regulator can take action (licensing impacted). Ms. Naik noted that participation in SIDRC is compulsory upon members as mandated by regulation. She noted that the enforcement mechanism of SIDREC is the enforcement commission (breach of registration and licensing conditions). Ms. Nail stated that the option of name and shame rather than binding decision making was deliberately not chosen when the entity was set up. Also a single body was created to prevent arbitrage and make it easy for investors as there would be one place for investors to come to. Moreover, Ms. Naik mentioned that funding for SIDRC is a challenge, and the securities commission has grandfathered SIDREC so far.