

OPEN LETTER

November 15, 2011

The Hon. James Flaherty
Minister of Finance
Department of Finance Canada
140 O'Connor Street
Ottawa, Ontario K1A 0G5

Dear Minister:

Re: FAIR Canada Urges Mandatory Participation in OBSI by the Banking Industry

FAIR Canada supports OBSI as the single dispute resolution provider for clients both of the banking and investment industries. A single independent dispute resolution service provider is essential to ensure the protection of Canadian consumers. One single dispute resolution service provider is necessary in order to avoid fragmentation, inconsistencies, serious potential conflicts of interest, complainant (client) confusion and enable the detection of systemic or widespread issues.

FAIR Canada urges the Minister of Finance, pursuant to the *Bank Act*¹ and its related regulations, to designate OBSI as the approved, sole body that all financial institutions must participate in order to deal with client complaints that have not been resolved through internal complaint mechanisms² and to make the recommendations of OBSI binding. OBSI remains an essential, simple, inexpensive service for consumers, even though it is a system in which member firms hold a great deal of power, expertise and knowledge. Permitting banks and other member firms to opt out and choose their own external dispute resolution ("EDR") provider, as both the Royal Bank of Canada and, more recently, TD Bank have done in electing to use the for-profit service, ADR Chambers, threatens the existence of OBSI and jeopardizes the fairness and independence enshrined in the current system. It is not in the public interest to permit multiple EDR providers, particularly where the financial institutions choose and compensate private, for-profit providers.

It is important to remember that OBSI is a creation of the banking industry, developed to pre-empt the imposition of a statutory ombudservice. The banking and investment industry is now attacking the entity it created and supported for the level of independence it has achieved and for not being subservient to the industry's interests. OBSI's approach to assessing complaints and its loss calculation methodology is competent, highly consistent and has even been found to be superior (more fair and more accurate) to similar financial ombudservices that are used in comparable jurisdictions³.

The financial industry has no real basis for its complaints about OBSI and has refused to enter into a reasonable discussion in order to resolve the impasse. In fact, industry wins 70 percent of all complaints filed by consumers and total compensation paid to customers of some 600 banks and investment firms and mutual fund dealers amounted to only \$3.78 million for 2010, with the average amount of

¹ *Bank Act*, S.C. 1991, c. 46, subss. 455.1(1) and (2).

² *Bank Act*, S.C. 1991, c. 46, s. 455(1)(a).

³ The Navigator Company, "Ombudsman for Banking Services and Investments Report – 2011 Independent Review", online: obsi.ca <http://www.obsi.ca/images/document/Independent_Review_of_OBSI_2011_2.pdf> at 16 [Khoury Report].

compensation being \$7,158 per complaint⁴. The dollar amounts are completely insignificant to the banking and investment industries but they are significant for consumers of financial services.

The financial industry benefits from a fair EDR provider (particularly where customers perceive the process to be fair) that is independent of industry. The "Occupy" protests reflect a growing distrust of the current financial system and industry's campaign against OBSI reinforces the negative perception of the financial industry, to which the financial industry should be mindful.

While OBSI has the power to "name and shame" if the firm refuses to accept the complaint resolution recommended by OBSI, OBSI's ability to effectively use this power is reduced substantially when the financial industry bands together and decides to play hard ball. The problem of the "stuck" cases demonstrates the need to put OBSI on a stronger footing.

In a time when Canadians are shouldering more of the responsibility of saving for their own retirement, and during a period of economic uncertainty, it is essential that Canadians have access to a simple, inexpensive, neutral dispute resolution service to resolve their banking and investment complaints. The Expert Panel on Securities Regulation noted the inadequacy of complaint handling and redress mechanisms in Canada. The Chair of the Ontario Securities Commission, Howard Wetston, Q.C., speaking on behalf of the Canadian Securities Administrators (the "CSA") at the OSC Dialogue on November 1, 2011, publically endorsed a single system of external dispute resolution; "The CSA strongly supports the existence of a single system of informal dispute-resolution to which investors can have recourse as an alternative to litigation or binding arbitration."⁵

As the Minister responsible for banking and the champion of a National Securities Regulator, we urge you to act now to prevent industry from retaining multiple providers of EDR services. Put OBSI on a stronger footing through permanent legislative authority on a national level. When a national securities regulator comes into being, a single EDR service should also be mandatory.

Even TD Bank, upon opting out of OBSI, agrees that a reformed OBSI is the answer: "We agree with the regulators that one single, independent dispute service is preferable and that should be OBSI"⁶.

FAIR Canada thus urges you to act now to require mandatory bank participation in OBSI and work to implement the other changes necessary to ensure that OBSI has the ability and resources it needs to continue its work of finding resolutions that are fair and reasonable to both consumers and the financial institutions.

Sincerely,



Ermanno Pascutto
Canadian Foundation for Advancement of Investor Rights

⁴ Khoury Report at 19.

⁵ Howard Wetston, 'Regulating in the New Financial Reality' (Speech delivered at OSC Dialogue 2011, Toronto November 1, 2011).

⁶ TD's internal ombudsman Paul Huyer, quoted in the Financial Post on October 26, 2011.