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May 5, 2025

Dear Mr. Magidson and Mr. Vingoe:

Subject: Protect investors – Resist pressure to weaken complaint-handling reforms

The undersigned coalition of consumer advocates urges you to protect everyday investors by implementing the proposed binding framework for decisions of the Ombudsman for Banking Services and Investments (OBSI).

Published by the Canadian Securities Administrators (CSA) in November 2023, the framework is balanced, simple, and cost-effective. It will enable Canada to strengthen investment complaint handling and resolve disputes faster, more fairly, and more conclusively.

Our coalition represents millions of financial consumers across the country, many of whom are under growing financial stress from the economic after-effects of the pandemic and further volatility from U.S. trade actions. These everyday Canadians depend on the CSA to deliver a strong investor protection system to safeguard their hard-earned assets. They also expect and deserve a fair and efficient way to resolve their investment complaints.

The CSA's 2023 proposal carefully balances the interests of investors and investment firms. However, a vocal minority of firms is advocating to weaken this proposal and its promise of greater fairness and protection for average investors. Their pushback is premised on three primary claims that are manifestly unfounded:

- OBSI is biased in favour of investors, so solutions should be structured to offset this.
- The framework is unfair to industry and should include a right to judicial appeal.
- It is prejudicial and unjust to hold investment firms accountable for complaints involving higher dollar amounts, even when those complaints are within OBSI's mandate.

We would like to set the record straight. Here is why their claims are wrong and how they will harm investors if the CSA adopts them:

1. OBSI investor bias is a myth, so solutions should not be based on this premise.

Independent expert reviews have repeatedly dismissed claims that OBSI is biased in favour of investors. Despite this, some industry advocates continue to base their commentary on this premise.

Over the last five years, OBSI found in favour of investment firms, on average, 67% of the time – underscoring the absence of OBSI bias against firms. Since 2018, however, firms paid \$1.6 million less in compensation than OBSI recommended. For complaints involving more than \$100,000, half of the investors received 44% less than OBSI recommended from 2019 to 2023.

If the complaint system is biased, it favours firms, not investors. The evidence clearly shows that investors routinely come up short in the current system. The CSA should categorically reject any premise of OBSI investor bias and recommendations rooted in this assumption.

2. The CSA's proposal is already fair. Adding judicial appeal would make it unfair.

The CSA proposal outlines a fair and balanced process for reviewing OBSI binding decisions and includes measures to protect all parties' due process rights. Despite this, some industry groups argue the framework must also include a right to judicial appeal.

A right to judicial appeal would make the complaint process slower, more complex, and impose legal costs beyond the reach of most everyday investors. The inevitable result? Most complainants would be compelled to accept low-ball settlements, regardless of the merit of their claims and the size of their financial losses.

Judicial appeal is unnecessary in the context of the CSA's proposed framework. It would impose a further financial burden that is prohibitive for most investors and reintroduce the very power imbalance the framework aims to address. It would inexorably tilt the playing field in favour of firms and put fairness beyond the reach of all but the wealthiest investors.

The UK, Australia, and New Zealand all have ombuds services that can make binding decisions without a right of judicial appeal. Canadian investors deserve no less.

3. The binding threshold is fair, and lowering it would increase harm to investors.

OBSI has a strong track record of handling complaints of up to \$350,000 fairly and responsibly, as successive, independent, expert reviews confirm. Despite this, some industry advocates argue that the \$350,000 threshold for binding OBSI decisions is too high and should be drastically reduced.

Lowering the binding threshold would indeed reduce the financial exposure of firms that harm investors, but at the direct expense of the very investors they have harmed – a fundamental violation of the fairness principle.

Limiting binding to lower amounts means that firms whose behaviour was more harmful to their clients would escape consequences, whereas firms that caused less harm would be bound by OBSI decisions. This would create a moral hazard by incentivizing bad actors to be even more reckless and predatory. It would also inevitably force clients with higher-value complaints into low-ball settlements, or risk getting nothing, reintroducing a power imbalance between the parties.

All investors with claims under OBSI's existing cap deserve a binding decision. Other countries have binding complaint systems that involve amounts far above \$350,000.

As Canada enters a period of deep economic and market challenges, increasingly financially vulnerable Canadians need to know that governments and regulators will protect them and ensure access to an effective complaint-handling system when their hard-earned assets are at stake.

The final binding framework must maintain a balanced review process, provide full access to binding decisions within OBSI's mandate, and resolve the ongoing unfairness to investors in our complaint system.

We welcome and appreciate the CSA's leadership on this critical issue and urge swift and decisive action to implement these much-needed improvements.

Sincerely and on behalf of the coalition of concerned consumer advocates,

Jean-Paul Bureaud



Executive Director
FAIR Canada

Cc:

Yves Ouellet, President and Chief Executive Officer, Autorité des marchés financiers

Brenda Leong, Chair and Chief Executive Officer, British Columbia Securities Commission

Gordon Johnson, Vice Chair, British Columbia Securities Commission

Kevin Hoyt, Chief Executive Officer, Financial and Consumer Services Commission (New Brunswick)

Roger Sobotkiewicz, Chair and Chief Executive Officer, Financial and Consumer Affairs Authority of Saskatchewan

David Cheop, Chair and Chief Executive Officer, Manitoba Securities Commission

Valerie Seager, Chair, Nova Scotia Securities Commission

Debora Bissou, Superintendent of Securities, Legal Registries Division (Securities Office), Department of Justice, Nunavut

Loyola Power, Superintendent, Office of the Superintendent of Securities, Newfoundland and Labrador

Matthew F. Yap, Superintendent of Securities, Office of the Superintendent of Securities, Northwest Territories

Fred Pretorius, Superintendent of Securities, Office of the Yukon Superintendent of Securities

Naizam Kanji, General Counsel and Executive Vice President, Legal and Governance, Ontario Securities Commission

Steve Dowling, Director, Financial and Consumer Services Division, Department of Justice and Public Safety, Prince Edward Island

Sarah Bradley, Ombudsman and Chief Executive Officer, OBSI

Members of the coalition of concerned consumer advocates

FAIR Canada

FAIR Canada is a national, independent, non-profit organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. As part of our commitment to be a trusted, independent voice on issues that affect retail investors, we conduct research to hear directly from investors about their experiences and concerns. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers. www.faircanada.ca

Canadian Association of Retired Persons (CARP)

CARP is the largest seniors' advocacy group in Canada with over 330,000 members and 25 chapters across Canada. CARP's mandate is to improve healthcare and financial security and support the human rights of Canadians as we age. Our vision is to have a society in which everyone can live active, independent, purposeful lives as they age. <https://www.carp.ca/>

Prosper Canada

Founded in 1986, Prosper Canada is a national charity dedicated to expanding economic opportunity for Canadians living in poverty through program and policy innovation. As Canada's leading national champion of financial empowerment, we work with partners in all sectors to develop and promote policies, programs, and resources that enable all Canadians to prosper. www.prospercanada.org

Public Interest Advocacy Centre (PIAC)

PIAC is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services. <https://www.piac.ca/>

Future of Law Lab, University of Toronto

The Future of Law Lab is a platform for students, academics, lawyers, and other professionals to participate in collaborative initiatives exploring how the law will evolve in the future. We dive into the intersection of law, technology, innovation, and entrepreneurship, with programming dedicated to each of these streams. As a hub of interdisciplinary activity, we are dedicated to bringing together individuals from all backgrounds to examine the changing face of the legal profession. <https://futureoflaw.utoronto.ca/>

Investor Protection Clinic (IPC), University of Toronto

The IPC at the University of Toronto, Faculty of Law provides free legal services and public legal education to members of vulnerable communities who are at risk of suffering harm, or may have suffered harm, relating to their investments. The IPC engages in a broad range of activities to educate the community and promote investor protection and rights. We focus on helping the elderly, newcomers to Canada, and others who may not be able to afford legal representation. <https://ipc.law.utoronto.ca/>

Consumers Council of Canada

Consumers Council of Canada is a national, independent, non-profit, voluntary organization that is working towards an improved marketplace for Canadian and Ontario consumers. Its aim is an

efficient, equitable, safe and effective marketplace. The Council conducts an active consumer-interest research program, represents consumers in institutional roles across the economy, including in financial services, and is active on behalf of Canadian consumers internationally through its membership in Consumers International. <https://www.consumerscouncil.com/>

CFA Societies Canada

CFA Societies Canada is a collaboration of 12 Canadian CFA Institute member societies representing over 21,000 Canadian CFA charterholders, whose mission is to lead the investment profession in Canada by advancing the highest professional standards, integrity, and ethics for the ultimate benefit of Canadian society. <http://www.cfacanada.org/>

Kenmar Associates

Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at www.canadianfundwatch.com. Kenmar also publishes the Fund OBSERVER on a monthly basis, discussing consumer protection issues primarily for retail investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused consumers and/or their counsel in filing investor complaints and restitution claims. www.canadianfundwatch.com

CanAge

CanAge is Canada's national seniors' advocacy organization. As an independent, non-partisan, non-profit organization, we educate and mobilize people on the issues that matter to older Canadians. We work to improve the lives of older adults through advocacy, policy, and community engagement. <https://www.canage.ca/>

The Investor Protection Clinic at Osgoode Hall Law School

The Investor Protection Clinic at Osgoode Hall Law School (the Clinic) provides free legal advice to people who believe their investments were mishandled and who cannot afford a lawyer. The Clinic also functions as a research lab, collecting data in an anonymized way that will be used for research purposes. <https://www.yorku.ca/osgoode/ipc/>