

April 24, 2026

Submitted via E-Mail: review@crkhoury.com

Attention:

Phil Khoury
Principal, Crkhoury
North Melbourne VIC
3051, Wurundjeri Land
Australia

Dear Mr. Khoury:

RE: REQUEST FOR COMMENT FOR OBSI INDEPENDENT EXTERNAL REVIEW

The Canadian Forum for Financial Markets (the “CFFiM”) is a values-driven, purposeful, and reform-minded organization dedicated to improving the health and competitiveness of Canada’s financial markets for the greater good.

We appreciate the opportunity to provide comments in support of your evaluation of Canada’s Ombudsman for Banking Services and Investments (the “OBSI”). We offer the below constructive analysis, as a solutions partner, to sustain fair, effective investor dispute resolution in Canada. Though this analysis is focused on investment firms and investment related complaints, various of its observations and principles may apply to banks and credit unions as well.

EXECUTIVE SUMMARY

The OBSI is not a classical ombuds model. It is structurally flawed with compromised fairness, independence, and neutrality, which the OBSI should protect. In particular, the OBSI depends on regulators for designation, mandate definition, oversight, performance review, and operational coordination, and is at risk of regulatory capture.

In reality, the OBSI is defacto not an independent ombudsman but more of a mediated settlement service overseen by regulators. It does not need, nor should it have binding powers – an ‘evidence-last’ proposed reform that brings harm.

A. FAIRNESS, INDEPENDENCE AND IMPARTIALITY

The Request for Comment for OBSI states: “All Ombudsman services are, to some extent, judged by stakeholders as to their apparent fairness – to both consumers and firms.” Assessments of fairness, independence and impartiality are key.

Independence

A truly independent ombuds institution is not a quasi-regulator and not on the side of the complainant or the industry.

Neutrality

If a party sees the OBSI as aligned with the other side, its decisions lose credibility.

Fairness

Fairness principles include that each party has an unbiased equal opportunity to be heard with decisions based on evidence.

B. STRATEGIC VIEWS REGARDING THE OBSI’S APPROPRIATE ROLE

With a view to the importance of fairness, independence and impartiality, the following is offered with regard to the issues raised in the Request for Comment:

Public Awareness and Accessibility

The OBSI has done an excellent job at public awareness.

Great caution should be exercised in assisting clients in making a complaint. Assisting consumers directly with their complaints is a threat to neutrality. Even if the OBSI does not draft complaints but explains how to make a complaint, what firms expect, helps articulate issues by asking guided questions, sets out what information the consumer should provide and interprets firm responses for complainants, it is more interventionist than what an ombuds office would do. It blends assistance with adjudication and is therefore structurally problematic. While this is described as “accessibility”, the reason is political, not principled, rendering the OBSI more of a compensatory dispute-resolution mechanism than an independent ombuds office.

Encouraging good practices by banks, credit unions, and investment firms.

Consumer confidence in fair treatment by banks, credit unions and investment firms are the responsibility of those organizations rather than the OBSI.

Educating/informing the public about banking and investment risks

Public education is not an ombuds function. Public awareness campaigns that educate consumers and warn about risks are functions of consumer protection agencies, regulators and other government

agencies.¹ These functions are incompatible with neutrality and independence and shift the OBSI into consumer advocate and regulator.

Providing guidance to firms on what OBSI considers fair practice:

Providing guidance to firms on what the OBSI considers fair practice renders the OBSI a policy actor, standard setter, and de facto co-regulator. Standards are defined by legislators, regulators, and courts. An ombuds office reviews practices but does not define them. Doing so also compromises neutrality as it risks, or gives the appearance of, pre-committing the OBSI to positions that may not suit all fact patterns. The OBSI should focus solely on case findings.

Working with Government and Regulators

The Request for Comment for OBSI Independent External Review states that “it is important that an Ombudsman works in a coordinated and complimentary way with the relevant government agencies and regulators,” and asks whether this is being done effectively.

True ombudsman independence requires control over its mandate, budget autonomy and protection from political or regulatory interference.

For investment firms, in Canada, the OBSI’s mandate is defined by the Canadian Securities Administrators (CSA). The OBSI’s continued existence as the designated service provider depends on CSA approval. The Amended and Restated Memorandum of Understanding Concerning Oversight of the OBSI among the CSA and the OBSI (the “MOU”)² allows significant oversight activities and envisions the OBSI as contributing to regulatory objectives. This creates a flawed model whereby the OBSI is a regulatory tool and must comply with regulatory expectations to survive, undermining a foundation of independence even if regulators do not interfere with specific case outcomes. The Canadian Joint Regulatory Committee which includes the CSA and the Canadian Investment Regulatory Organization (CIRO) is also multi-headed, not transparent and not subject to clear administrative law constraints. From a governance and administrative law perspective, the model is flawed. It conflates accountability with an operational oversight that does not support independence.

The OBSI information-sharing with regulators, as also reflected in the MOU,³ undermines investigative neutrality. The OBSI’s process relies on candid evidence from firms and consumers and protection from regulatory consequence. If OBSI actively shares data or insights with regulators, it risks altering what both consumers and firms reveal, rendering the OBSI’s fact-finding less reliable.

The OBSI and regulators have distinct mandates. Direct coordination collapses the distinction and encourages regulators to treat the OBSI as an outsourced complaint centre and an intelligence-gathering channel under regulatory control, undermining the OBSI’s identity.

C. ENGAGING WITH STAKEHOLDERS: THE PROPOSAL FOR BINDING POWERS

¹ <https://www.obsi.ca/en/news/bulletins-consumers>

² [Amended and Restated Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments among the Canadian Securities Administrators and OBSI | OSC](#)

³ MOU, Schedule A, Terms of Reference of the JRC

The [proposal](#) that has been made to provide the OBSI with binding dispute resolution powers⁴ is derived from a narrative created in part through past evaluations and not substantiated by Canadian evidence or international standards. The narrative includes a mischaracterization by securities regulators of a ‘just say no’ attitude toward the OBSI. ⁵It is a narrative-first, evidence-last approach constructed to support a predetermined reform goal wrongfully placing Canada under pressure for years to move toward a UK-style binding system.

No Statistical Support

Past Independent Evaluations have characterized the OBSI’ lack of binding authority as a “structural weakness” that allows firms to reject OBSI recommendations .⁶ One evaluation went as far as claiming that the OBSI’s “name and shame” system has undermined the public’s perception of the OBSI .⁷

These claims are not supported by the OBSI own statistics, which demonstrate exceedingly high compliance rates. Since 2015, the total number of cases that have resulted in either a refusal or a “low settlement” represented less than 1% of the OBSI’s total recommendations. There has been a clear and steady decline in both refusals and “low settlements”. These statistics stand in stark contrast to the claim that the OSBI needs binding powers.

Fig. 1. OBSI Recommendations – Investment Complaints⁸			
Year	Cases with Recommendations for Monetary Compensation	Low Settlements	Refusals
2015	166	23	6
2016	150	26	1
2017	150	23	0
2018	135	11	0
2019	180	12	0
2020	142	8	1
2021	215	8	0
2022	148	3	0
2023	175	2	0
2024	216	2	0
Total	1,677	118	8

In an attempt to justify the imposition of binding dispute resolution powers, past evaluations have claimed that, while the OBSI has high compliance rates, “low settlements” for higher monetary recommendations

⁴ [CSA Notice and Request for Comment, Registered Firms Requirements Pertaining to an Independent Dispute Resolution Service](#) (November 30, 2023); and [CSA Notice and Request for Comment 25-314, Proposed approach to oversight and refinements to the binding authority framework for an identified ombudservices](#) (July 15, 2025).

⁵ Grant Vingoe and Andrew Kreigler, “Canadian Investors Need a more Powerful Financial Services Ombudsman” *Globe and Mail* (April 3, 2024); and Jameson Berkow, “Binding regime for investment disputes inches closer to reality - The *Globe and Mail*, (July 15, 2025)” quoting Grant Vingoe.

⁶ Independent Evaluation – 2011, *supra*.

⁷ Independent Evaluation – 2016, *supra*.

⁸ These statistics are gathered from: (1) The annual reports of the OBSI Joint Regulatory Authority for the years 2015 to 2024, which are available [here](#); (2) the OBSI’s Annual Reports for the years 2015 to 2024, which are available [here](#); (3) the Independent Evaluation – 2016, *supra* and (4) the Independent Evaluation – 2021, *supra* .

are indicative of a continued power-imbalance that must be corrected with binding dispute resolution powers.⁹ However, the data that has been produced in support of this proposition is lacking and, despite our attempts to obtain further information through a Freedom of Information request, the OBSI has never released comprehensive statistics on the occurrence or circumstances of ‘low settlements’.

Rather, the narrative created relies on isolated examples and:

- Ignores why OBSI recommendations occasionally differ from firm positions: Firms sometimes question recommendations because OBSI’s approach is not rooted in facts or law, but in discretionary standards.
- Frames normal dispute-resolution behavior as bad faith: In a dispute system, parties sometimes challenge recommendations, negotiate, and seek review. The narrative treats this normal process as “non-compliance”.
- Does not address the OBSI’s design which is for banking complaints rather than investment complaints.

“Low settlements” are not a systemic problem by any measure. In the event that they were, they could be addressed by allowing the OBSI to publish low settlements. The OBSI exceedingly high acceptance rates demonstrate that its name-and-shame system could be applied to low settlements without the need to adopt binding powers. The same recognition has been made in past evaluations but has been ignored.

No International Standards

Past Independent Evaluations have adopted the view that there is a natural or “inevitable” evolution of financial Ombud services towards the adoption of binding dispute resolution powers.¹⁰

This view based on the narrow observation that “comparable counterparts” such as Australia, the United Kingdom, Ireland, and New Zealand, have adopted forms of binding dispute resolution services, without consideration of structural differences to Canada.¹¹ This analysis also fails to acknowledge that numerous industry Ombud services in Canada and abroad maintain dispute resolution services that do not include binding powers.¹² Contrary to past evaluations, there is no internationally accepted “best practices” or norms in favour of a binding OBSI. In contrast, those jurisdictions that have established binding dispute resolution practices can be seen as outliers. In any event, Canada should be informed by its own data.

The United Kingdom

This observation is particularly important given recent [reforms](#) that have been undertaken in the United Kingdom. After years of criticism, the UK government and the Financial Conduct Authority launched a public consultation on the Financial Ombudsman Service’s (“FOS”) binding authority. In the course of that consultation, it was noted that the FOS’ ability to make binding decisions had the unintended consequence of turning the FOS into a “quasi regulator”, which created uncertainty for consumers and

⁹ Independent Evaluation – 2016, *supra*; and Independent Evaluation – 2021, *supra*.

¹⁰ [Ombudsmans for Banking Services and Investments, Independent Review](#) (2011) [Independent Evaluation – 2011].

¹¹ *Ibid*, and [Ombudsmans for Banking Services and Investments, Independent Review](#) (2007) [Independent Evaluation – 2007].

¹² <https://cffim-fcmfi.ca/wp-content/uploads/2024/03/IIAC-Investor-Disputes-Deserve-Accessible-Cost-Effective-Fair-and-Reasonable-Resolutions-Feb-28-2024-1.pdf>, Appendix A.

businesses and had negative impact on investments in the UK.¹³ In other words, it was observed that the FOS had created considerable uncertainty in the UK's financial system, which was impacting the attractiveness and competitiveness of the UK's markets.

In response to these concerns, the UK government has initiated what it refers to as the most significant package of reforms since the FOS' inception. Among other things, this includes fundamentally reforming the FOS' "fair and reasonableness test" to provide firms with a complete legal defence and introducing a referral mechanism between the FOS and the FCA where there is ambiguity in regulatory requirements and/or the issues raised in a FOS proceeding are of systemic importance.¹⁴ It is not suggested that these regulatory "fixes" are transferable to the Canada. However, the UK's recent reforms provide a clear indication that providing a financial Ombud services with binding powers can have negative impacts on regulatory consistency and competitiveness.

Concerns With Binding Powers

Providing the OBSI with binding dispute resolution powers brings the following:

- First, binding powers must be accompanied by increased procedural rights and the ability to appeal an OBSI decision. We note, for example, that the 2007 evaluation included an appeal mechanism as part of its recommended package reforms¹⁵, and the 2011 evaluation recommended a "safety valve" to allow regulators to address ambiguous regulatory requirements and issues of systemic concern¹⁶. Binding proceedings should also include the right to a hearing and cross examinations and must be supported by form written decisions. These rights and processes negate the informality and flexibility, the OBSI describes as a benefit. Adopting binding decision making in the absence of these procedural rights would create an inherently flawed adjudicative body that does not adhere to the basic tenants of natural justice.
- Second, providing the OBSI with binding powers transforms the OBSI into a sort of quasi-regulator. This problem has already been observed in the UK and is of particular concern in Canada, given that our regulatory system is split between multiple regulators including 2 national banking regulators, 13 provincial/territorial securities regulator, and a national self-regulatory body. Simply put, Canada does not need another 'regulator' to its already over-layered, convoluted system of regulation.
- Finally, providing the OBSI with binding dispute resolution powers has the potential to usurp the power of Canada's provincial courts and undermine the viability of CIRO arbitration system, both of whom have strengths unavailable to the OBSI. Past evaluations have failed to recognize

¹³ Government of the United Kingdom, *New Approach to Ensuring Regulators and Regulation Support Growth* (March 31, 2025); HM Treasury, *Review of the Financial Ombudsman Service – Consultation* (July 2025); and Government of the United Kingdom, *Financial Ombudsman Service reform to deliver fast and impartial complaint resolution* (March 16, 2026).

¹⁴

¹⁵ Independent Evaluation – 2007, *supra*.

¹⁶ Independent Evaluation – 2011, *supra*.

Canada's interest in maintaining separate avenues for complaint handling with one evaluator noting that increasing the OBSI's monetary limits will have the "benefit" of eliminating the need for CIRO arbitration program.¹⁷

We welcome a considered re-evaluation in light of issues raised.

Respectfully,

The Canadian Forum for Financial Markets

¹⁷ Independent Evaluation – 2016, *supra*.