



THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
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BY EMAIL: publicaffairs@obsi.ca

June 26, 2008

Peggy Anne Brown
Chair, Board of Directors
Terms of Reference Review
OBSI
PO Box 896, Station Adelaide
Toronto, ON
M5C 2K3

Dear Dr. Brown,

Re: Proposed Amendments – Terms of Reference

We are writing to provide the comments of The Investment Funds Institute of Canada (“IFIC”) on the proposed revisions to the Ombudsman for Banking Services and Investments (“OBSI”) Terms of Reference (“ToR”) as described in the post consultation draft.

We have previously stated our support for efforts to improve and make more efficient the systems for complaint handling and dispute resolution in our industry. We acknowledge the favourable responses you have made to some of the comments provided in our submission of January 29, 2008. However, the proposed draft ToR as provided to us in May continues to raise concerns on the part of our Members in a number of areas. We outline our concerns below and provide suggested wording in the attached ToR markup for your consideration.

In addition to the specific suggestions provided below we would also like to reemphasize the need for a more coordinated approach to consultations with industry and other regulatory bodies on matters of significance affecting OBSI’s mandate. In particular we are asking OBSI to develop consultation processes that include the participation of industry, regulators and SROs on matters that will affect the carrying out of OBSI’s mandate and how it interacts with other agencies. We welcome your support in your letter of May 13, 2008 for a meeting involving the SROs, the industry associations and OBSI, and we look forward to hearing from David Agnew regarding the timing and location for such a meeting.

Systemic Issues

You have indicated to us that the development of a role for OBSI on matters termed “Systemic” is not an item you are prepared to remove from the proposed ToR, despite the concerns it has raised in our industry and others as to the possible expansion of OBSI’s role into regulatory areas. In response to our comments, OBSI has added wording to the definition of “Systemic” which emphasizes that systemic issues shall be considered only

at the level of the firm against which the original complaint was lodged, and provides examples of the types of issues that could be included, such as: undisclosed fees or charges, misleading communications, administrative errors or product flaws. In our view, this definition of a “Systemic Issue” is still open to broad interpretation by OBSI and gives rise to concerns noted in our earlier submission. We recommend that “Systemic Issue” be defined as an issue which has caused widespread loss to customers similarly situated and in a similar fashion to that experienced by the original complainant. We believe that the examples provided by OBSI do not serve to narrow or clarify the definition and that our proposed simpler definition lessens concerns of the industry, while at the same time achieves a role for OBSI on issues of a wider dimension.

OBSI Procedures

There continue to be matters of concern as regards OBSI’s role on Systemic Issues as described in the New Section. The proposal to enable OBSI to investigate Systemic Issues places OBSI directly in the role of a regulator and requires competencies and expertise which may not exist at OBSI and would be very costly to acquire. We recommend that an acceptable process for OBSI should include:

- notification to the firm that a Systemic Issue may have occurred;
- a request to the firm to investigate and respond back to OBSI, within the agreed upon timeframe, whether or not a Systemic Issue has occurred and, if so, what steps have been taken to resolve the issue;
- if no response is received from the firm, the ability to draw the matter to the attention of the CEO of the firm;
- if the firm fails yet again to reply, at that time OBSI may refer the issue to the firm’s regulator.

Section 11 broadens the involvement of OBSI in the context of a complaint involving a claim to include Systemic Issues. As noted above, OBSI would have no role in the investigation or enforcement of a Systemic Issue beyond notifying the Senior Officer of the firm, that a Systemic Issue may have occurred, and the relevant regulator be notified should the Senior Officer be unresponsive. All reference to Systemic Issues in Section 11 should be removed.

Timelines for Reference to OBSI

There are further concerns relating to the timelines for properly responding in complex cases, as described in Sections 8(b) and 15(c). OBSI has accommodated, in its proposed revisions, the possibility that the various regulators and SROs may allow for different timelines for providing a fulsome response to a client. However, this accommodation does not respond to the more important issue that 90 days, from the receipt of a written complaint, may not be sufficient for a firm to properly respond in complicated cases, and that bringing in OBSI at that stage may slow down rather than speed up the path to settlement for the client. In the interest of allowing time for proper resolution at the firm before another, possibly longer process is launched with OBSI, we recommend that OBSI

allow the internal process of a firm to continue beyond 90 days on receipt of a request from the firm for additional time. After the expiry of the initial 90-day period the firm would be required to either request an additional period of up to 90 days to complete internal processes, or allow OBSI to commence their investigation. If additional time is requested by the firm, OBSI would be required to respond to the firm within 30 days of the request for additional time.

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Thank you for providing us with an opportunity to comment. We believe that strengthening the consultation process with industry is the most effective way of ensuring an ongoing and durable role for OBSI in the future. We hope that you will agree to provide a place at the table for industry in future discussions of this nature, and in discussions concerning protocols for information sharing that we understand will be the subject of future meetings with regulators and SROs. By including industry at an early stage in these discussions we can expedite the achievement of outcomes that work for all parties.

We look forward to discussing our views with you further. If you have any questions regarding this submission, please contact me directly by phone at 416-309-2300 or by email at jdelaurentiis@ific.ca or Jon Cockerline, Director, Policy – Dealer Issues by phone at 416-309-2327 or by email at jcockerline@ific.ca.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



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