

## **TERMS OF REFERENCE**

### **Ombudsman for Banking Services and Investments (OBSI)**

#### **PART 1 – PURPOSE AND SCOPE**

**1.1 OBSI’s purpose** – OBSI seeks to resolve disputes between participating financial services firms and their customers if they are unable to resolve them on their own. OBSI is independent and impartial, operates in the public interest, and its services are free and accessible to consumers without the need for legal representation. As an alternative to the legal system, OBSI works efficiently and confidentially to find a fair outcome through a fair process.

**1.2 Scope** – These Terms of Reference describe the principal powers and duties of OBSI, the obligations of Participating Firms, the scope of OBSI’s mandate, and OBSI’s process for receiving, investigating and seeking resolution of Complaints about Participating Firms.

#### **PART 2 – DEFINITIONS AND INTERPRETATION**

**2.1 Definitions** – In these Terms of Reference,

“**Board**” means the board of directors of OBSI.

“**Commercial Judgment**” means assessments of risk (such as in lending, taking security or insurance underwriting), and assessments of financial and commercial criteria or of the character of a Customer.

“**Complainant**” means any Customer of a Participating Firm or its Representative making a Complaint to OBSI and includes the authorized representative(s) of the Customer, such as a personal representative, guardian, trustee or executor.

“**Complaint**” means an expression of dissatisfaction made by a Customer about the Provision of a Financial Service in Canada by a Participating Firm, or Representative of a Participating Firm, made

- (a) in writing; or
- (b) verbally, either
  - (i) at the reportable complaint level (if the Participating Firm’s regulator has established such a level); or

- (ii) at any level, if the Customer's dissatisfaction has been recorded by the Participating Firm,

and a Complaint includes issues identified by OBSI in the course of its investigation that are materially connected to issues raised by the Complainant.

**"Customer"** means an individual who, or small business that, requested or received a Financial Service from a Participating Firm or its Representative, regardless of whether the Financial Service was received through an account at the Participating Firm, provided it is reasonable for the individual or small business to believe that they were requesting or receiving a Financial Service from a Representative or a Participating Firm.

**"Financial Service"** is any service related to the provision of financial advice or products including buying or selling investments, devising or implementing investment plans, or saving, borrowing, lending, financial planning or wealth management strategies.

**"Industry Ombudservice"** means any of OBSI, the Ombudservice for Life and Health Insurance (OLHI) and the General Insurance Ombudservice (GIO).

**"OBSI"** means the Ombudsman for Banking Services and Investments, an organization incorporated under the *Canada Not-for-profit Corporations Act*

**"Ombudsman"** means the individual appointed by the Board to exercise the powers and duties of the office of OBSI or a person to whom the powers of the Ombudsman have been delegated in accordance with section 4.4.

**"Participating Firm"** means

- (a) an Industry Member as defined in OBSI's by-laws; and
- (b) any affiliated entity controlled by an Industry Member and eligible itself for membership in OBSI, excluding affiliated entities whose main business is the provision of insurance products or services;

that directly or indirectly provides Financial Services in Canada.

**"Provision of a Financial Service in Canada"** means the provision of a Financial Service

- (a) to any consumer (Canadian or foreign) while that consumer is located in Canada; or

(b) to a resident of Canada, regardless of where they are when they receive the Financial Service; or

(c) from a place of business in Canada to any consumer (Canadian or foreign);

and includes providing, inadequately providing, and failing to provide Financial Services.

**“Regulator”** means any applicable regulator and includes a self-regulatory organization.

**“Representative”** of a Participating Firm includes any individual who dealt with the Complainant or supervised the dealing with the Complainant in the Provision of Financial Service that gave rise to the Complaint, whether the individual is an employee, agent, or third-party contractor of the Participating Firm.

**“Small business”** means an enterprise, irrespective of legal form, with annual gross revenues under \$5 million in each of the 5 years preceding submission of the enterprise’s Complaint to OBSI.

**“Standards”** means any applicable statutory or regulatory requirements for handling and resolving complaints, as well as any other standards adopted by the Board for those purposes.

## **2.2 Interpretation**

**2.2.1 Delegation by Ombudsman** – In recognition of the fact that the Ombudsman’s powers may be delegated, certain provisions of these Terms of Reference refer to OBSI rather than to the Ombudsman. These provisions should be interpreted as references to OBSI management or staff exercising the powers and performing the duties of the Ombudsman delegated to them.

**2.2.2 Gender and number** – In these Terms of Reference, all references to the male gender include, where the context admits, the female gender and vice versa, and references to the singular number include, where the context admits, the plural number and vice versa.

**2.2.3 Parts, sections and paragraph numbers** – In these Terms of Reference, all references to parts, sections and paragraphs mean parts, sections and paragraphs of these Terms of Reference unless otherwise indicated.

**2.2.4 Conflicts with statutes, regulations and by-laws** – If any statute or regulation applicable in Canada or any portion of OBSI’s by-laws conflicts with

any portion of these Terms of Reference, the statute, regulation or by-law will govern and the conflicting portion of these Terms of Reference will be disregarded.

### **PART 3 – OBSI ORGANIZATION AND GOVERNANCE**

**3.1 Incorporation** – OBSI is incorporated as a non-profit organization under the *Canada Not-for-profit Corporations Act*.

**3.2 Membership** – Membership in OBSI is available to any firm engaged in the Provision of a Financial Service in Canada. A full list of Participating Firms can be found on OBSI’s website.

**3.3 Fees** – OBSI levies fees on all Participating Firms in accordance with its by-laws. Information about the fees can be found on OBSI’s website.

**3.4 Governance** – OBSI is governed in accordance with the terms of its by-laws, all applicable laws and regulations, and the following governance principles:

- (a) The Board is responsible for overseeing OBSI and the Ombudsman, and the Ombudsman is accountable to the Board.
- (b) The Ombudsman is OBSI’s Chief Executive Officer and leads OBSI’s senior management team.
- (c) A majority of directors on the Board are Community Directors elected in accordance with OBSI’s by-laws, and must not occupy specified positions in Participating Firms, self-regulatory organizations or government or have occupied such positions in the two years prior to their election to the Board.
- (d) A minority of directors on the Board are Industry Directors elected in accordance with OBSI’s by-laws.
- (e) The Board oversees the business and affairs of OBSI, establishes the strategies and objectives to be implemented by management, monitors standards of performance, and ensures that OBSI conducts its business and affairs in a manner consistent with its mission and objectives.
- (f) To maintain the independence and impartiality of OBSI staff, the Board does not consider Complaints. The final decision concerning

Complaints rests with OBSI. There is no appeal to the Board, nor can the Board influence the decisions of OBSI staff.

#### **PART 4 – OMBUDSMAN’S POWERS AND DUTIES**

**4.1 Principal powers and duties** - The Ombudsman at all times will serve as an independent and impartial arbiter of Complaints and will not act as an advocate for Participating Firms, Complainants or any other person. The Ombudsman will:

- (a) Act fairly in accordance with OBSI’s Fairness Statement adopted by the Board;
- (b) adhere to these Terms of Reference and all applicable Standards;
- (c) advise the public about procedures for making a Complaint to OBSI, to a Participating Firm or to another appropriate body;
- (d) receive Complaints;
- (e) where necessary, and without advocating on their behalf, assist Complainants with the complaint process, including helping them articulate their Complaint to OBSI or a Participating Firm;
- (f) investigate Complaints with a view to resolving them through appropriate dispute resolution processes; and
- (g) as appropriate in the circumstances, make recommendations to Participating Firms and Complainants to resolve Complaints or reject them on their merits.

**4.2 Duty to oversee staff compliance** – The Ombudsman is responsible for ensuring that all OBSI personnel (including officers, employees, consultants, independent contractors and agents) comply with these Terms of Reference, OBSI’s Code of Conduct and all policies and procedures adopted by the Board.

**4.3 Duty to safeguard privacy** – The Ombudsman is responsible for ensuring that OBSI complies with all applicable legislation protecting the privacy of personal information, and all privacy policies and procedures adopted by the Board.

**4.4 Ombudsman may delegate** – The Ombudsman may delegate any of the Ombudsman’s powers to OBSI staff.

## **PART 5 – COMPLAINTS TO OBSI**

**5.1 Preconditions for OBSI involvement** – Subject to the limitations set out below in Part 6 - Exclusions from OBSI’s Mandate, OBSI may investigate any Complaint it receives provided OBSI is satisfied that:

- (a) Appropriate Complainant** - the Complaint was made by all persons having an interest in the subject matter of the Complaint, or that OBSI can fairly consider the Complaint without the participation of one or more people having an interest in the subject matter of the Complaint;
- (b) No vexatious claims** - the Complaint is not frivolous or vexatious and that the Complainant is not pursuing it in an abusive, vexatious or threatening way;
- (c) Firm had opportunity to investigate** - the Participating Firm to which the Complaint relates received the Complaint or the substance of it and rejected the Complaint, made an offer to resolve it, or had at least 90-calendar days to respond to it;
- (d) Complaint made to OBSI within 180 days** - the Complaint was made to OBSI no more than 180-calendar days after the Complainant received a written notice rejecting the Complaint, or a written offer for the resolution of the Complaint, from the Participating Firm, subject to section 5.5 - OBSI may extend time for filing Complaints;
- (e) Claim made to Participating Firm within 6 years** - the Complaint was made to the Participating Firm no more than six years after the Complainant knew or reasonably ought to have known about the problem or issue giving rise to the Complaint, having regard to what a reasonable person in the Complainant’s circumstances, with the Complainant’s abilities and limitations ought to have known;
- (f) No concurrent proceedings** - the Complainant has not commenced proceedings in any court or before an arbitration tribunal to adjudicate the subject matter of the Complaint or, if such proceedings have been commenced, the Complainant has agreed to hold them in abeyance pending completion of OBSI’s investigation of the Complaint;
- (g) Consents received** - OBSI has received appropriate consents concerning the release and treatment of confidential information from all necessary parties

and any other consents, agreements or releases that OBSI considers appropriate in the circumstances; and

**(h) No previous OBSI investigation** - OBSI has not previously investigated the Complaint or, if OBSI has done so, that new material information that was not reasonably available has become available and OBSI is satisfied the new information warrants treating it as a new Complaint.

**5.2 Response from firm not required** – Nothing in section 5.1 (d) requires a Complainant to wait for the 90-day period stipulated in section 5.1 (c) to elapse before submitting their Complaint to OBSI if the Complainant has received an offer to settle the Complaint or a notice of its rejection from the Participating Firm.

**5.3 Effect of firm offer or rejection** – The 180-day period stipulated in section 5.1 (d) commences as soon as the Complainant receives from the Participating Firm a written notice rejecting the Complaint or a written offer for the resolution of the Complaint, even if the 90-day period stipulated in section 5.1 (c) has not yet expired.

**5.4 OBSI may extend time for firm’s response** – Despite section 5.1 (c), OBSI may decide that the Participating Firm has not had sufficient time to address a Complaint and that the Participating Firm’s internal process should continue for a reasonable period of time to be established by OBSI in consultation with the Complainant and the Participating Firm.

**5.5 OBSI may extend time for filing Complaints** – If OBSI considers it fair to do so, OBSI may investigate a Complaint it receives later than the 180-calendar days stipulated under section 5.1 (d). In assessing the fairness of doing so, OBSI will consider, among other things:

(a) Whether, and in what manner, the Participating Firm notified the Complainant of the right to bring a Complaint to OBSI, including whether any written notice provided by the Participating Firm sufficiently specified the 180-calendar day period within which the Complainant has the right to bring a Complaint to OBSI and whether the Participating Firm adhered to any complaint-handling requirements that may apply;

(b) the extent to which the Complainant and the Participating Firm were occupied with negotiations for the resolution of the Complaint during the 180-calendar day period; and

(c) whether the Complainant was subject to extraordinary circumstances.

**5.6 Determining whether time limit was exceeded** – OBSI may commence investigation of a Complaint to ascertain whether the Complaint was made within or beyond the time limit set out in section 5.1 (e).

**5.7 Effect of regulatory proceedings** – For purposes of section 5.1 (f), OBSI will not consider a regulatory proceeding, hearing or mediation to be a proceeding before a court or arbitration tribunal.

**5.8 Effect of class proceedings** – For purposes of section 5.1 (f), OBSI will not consider a class proceeding to be a proceeding commenced by the Complainant unless the Complainant is named as a representative plaintiff rather than merely a member of the class.

**5.9 Joint investigations with other Ombudservices** – Where, in the opinion of OBSI, the subject matter of a Complaint (in whole or in part) is one in which another Industry Ombudservice has expertise and the Complainant and the Participating Firm consent, OBSI may cooperate with that Industry Ombudservice in the investigation of the Complaint and may, if appropriate, make a recommendation jointly with the other Industry Ombudservice for the resolution of the Complaint. Similarly, OBSI may cooperate with another Industry Ombudservice in the investigation and resolution of a Complaint referred to OBSI by that Industry Ombudservice.

## **PART 6 – EXCLUSIONS FROM OBSI’S MANDATE**

**6.1 Matters excluded** – OBSI will not investigate Complaints, or portions of Complaints, that relate solely to:

- (a) The general interest rate and risk management policies and practices of a Participating Firm;
- (b) the pricing of Financial Services by a Participating Firm;
- (c) the scale of fees or charges generally applicable to Financial Services offered to Customers of the Participating Firm in similar circumstances; or
- (d) the Commercial Judgment of a Participating Firm.

However, OBSI may investigate whether the process by which a Participating Firm implemented its policies and practices or made or maintained a Commercial



Judgment was biased, incomplete, not in accordance with the Participating Firm's policies and procedures or otherwise was unfair.

**6.2 Matters already decided** – OBSI will not investigate a Complaint where the same subject matter, raised by the same Complainant, has been considered in proceedings in or before any court, tribunal, arbitrator, or any other independent dispute resolution body, and those proceedings have concluded with a binding decision on, or final disposition of, the merits of the Complaint. OBSI will also not investigate a Complaint where the same subject matter has been the subject of a settlement agreement between the Complainant and the Participating Firm.

**6.3 Regulatory proceedings and investigations** – The proceedings referred to in section 6.2 do not include proceedings conducted by a regulator, and the existence of a regulatory investigation into the subject matter of a Complaint does not preclude OBSI from conducting its own investigation into the Complaint. However, OBSI may decline to conduct an investigation in these circumstances or may defer its own investigation until the regulatory investigation is concluded. Where OBSI so declines, or defers, it will inform the Complainant and the Participating Firm of its decision and will inform the Complainant about other dispute resolution alternatives that may be available.

**6.4 More appropriate forum** – OBSI may decline to investigate a Complaint if OBSI decides that the Complaint can be dealt with more appropriately by other means, such as a proceeding before a court, tribunal, arbitrator, regulator or any other dispute resolution process.

**6.5 OBSI to determine whether Complaints fall within mandate** – All questions of whether a Complaint falls within OBSI's mandate will be determined exclusively by OBSI. In making that determination, OBSI will have regard to these Terms of Reference and may consider representations from the Complainant and from the Participating Firm.

## **PART 7 – AGREEMENT TO SUSPEND STATUTORY LIMITATION PERIODS**

**7.1 Parties deemed to agree** – To the extent permitted by applicable law, every Complainant and Participating Firm must agree, and by submitting a Complaint to OBSI or by becoming a Member of OBSI each does agree, that the running of any statutory limitation period in respect of a Complaint will be suspended from the time the Complaint is submitted to OBSI until OBSI's involvement in the resolution of the Complaint ends. For purposes of this section, a Complaint is submitted to OBSI when the Complainant signs a consent

letter authorizing OBSI to investigate the Complaint, and OBSI's involvement ends when:

- (a) The Complainant revokes their authorization for OBSI to investigate the Complaint; or
- (b) OBSI issues a written rejection of the Complaint or a written recommendation for resolving it, and any requested reconsideration review has been completed by OBSI, or the time for requesting a reconsideration review has expired.

**7.2 Other defences and remedies not affected** – Nothing in section 7.1 prevents the Participating Firm or Complainant from raising any defences relating to the passage of time before OBSI's receipt of the consent letter signed by the Complainant, or from proceeding at any time with legal remedies against each other.

## **PART 8 – EXECUTION OF OBSI'S MANDATE**

**8.1 General practices** – In carrying out its mandate and in resolving each Complaint, OBSI will abide by these Terms of Reference, the Standards and the following practices:

- (a) In determining what is fair to the Complainant and the Participating Firm, OBSI will take into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct applicable to the subject matter of the Complaint.
- (b) To identify general principles of good financial services and business practice, OBSI may, where appropriate, consult within the financial services industry, including with individual firms, associations, regulators, industry entities and consumer groups, counsel and academic experts or elsewhere.
- (c) OBSI will not be bound by the rules of evidence applied in courts, arbitrations or regulatory hearings.
- (d) OBSI will not be bound by any of its previous recommendations.

**8.2 No advice to parties** – In carrying out their duties, and, in particular their, duty under Section 4.1 (e), the Ombudsman and OBSI staff will not provide

Complainants or Participating Firms with legal, accounting or financial advice on matters relating to Complaints.

## **PART 9 – PROCEDURE WHERE CONFLICTS OF INTEREST ARISE**

**9.1 Definition of conflict of interest** – For purposes of this Part, a conflict of interest is:

- (a) a material interest in the outcome of a Complaint;
- (b) an interest that reasonably may be perceived as a material interest in the outcome of a Complaint; or
- (c) a prior involvement in the Complaint, or involvement with the Complainant or the Participating Firm or Representative against whom the Complaint is directed, that reasonably may be perceived as creating an impediment to the fair and impartial evaluation of the Complaint.

**9.2 Where Ombudsman is conflicted** – In the event that the Ombudsman has a conflict of interest, the Ombudsman will immediately cease all involvement in the investigation or resolution of the Complaint. In such cases, the Ombudsman will immediately inform the Board about the conflict of interest and the Chair, or his or her delegate, will assign responsibility for investigating and resolving the Complaint to another OBSI staff member, or an external investigator, who does not have a conflict of interest.

**9.3 Where Deputy Ombudsman or OBSI investigator is conflicted** – In the event that a Deputy Ombudsman or an OBSI staff member investigating a Complaint has a conflict of interest, the Deputy Ombudsman or staff member will immediately cease all involvement in the investigation or resolution of the Complaint and will immediately inform his or her supervisor about the conflict of interest. In such cases, the Ombudsman will assign responsibility for investigation and resolution of the Complaint to himself or herself, to another Deputy Ombudsman or to another OBSI staff member who does not have a conflict of interest.

## **PART 10 – MONETARY LIMITS**

**10.1 Limit on single Complaints** – OBSI may investigate a Complaint involving a claim for any monetary amount if the Complaint falls within OBSI's mandate under these Terms of Reference. However, OBSI may not recommend

that a Participating Firm pay an amount greater than \$350,000 in respect of any single Complaint.

**10.2 Limit where multiple Complaints** – The limit set out in section 10.1 does not apply to separate Complaints made by a Complainant about unrelated subject matters. In such cases, each of the separate Complaints has a monetary limit of \$350,000.

**10.3 No improper division of Complaints** – A Complaint shall not be divided into two or more Complaints about the same subject matter for the purpose of avoiding the monetary limit set out in section 10.1.

## **PART 11 – FIRMS’ COMPLAINT HANDLING PROCEDURES**

**11.1 Internal complaint handling procedures** – All Participating Firms will have in place and use the internal complaint handling procedures mandated by their regulators. If no such procedures are mandated for a particular Participating Firm, it nonetheless should put in place and use internal complaint handling procedures that are fair and generally equivalent to those mandated by banking or investment regulators in Canada as applicable.

**11.2 Fair practices** – At a minimum, and regardless of whether the Participating Firm believes the Complaint falls within OBSI’s mandate, the Participating Firm should:

- (a) Appoint a senior official to act as the final internal decision-maker on unresolved Complaints;
- (b) promote their internal and external complaint-handling processes through websites, brochures, mailings, emails and other means necessary to ensure Customers have ready access to them in the event of a Complaint;
- (c) inform the Complainant in writing that they have a right to bring the Complaint to OBSI 90-calendar days after making their Complaint to the Participating Firm and within 180-calendar days of the Participating Firm rejecting the Complaint or making an offer to resolve it;
- (d) inform the Complainant in writing about the existence of time limits for commencing a lawsuit or arbitration, and that a lawyer should be consulted for advice about those time limits; and

(e) provide the Complainant with a substantive written response to their Complaint within 90-calendar days of receiving it, or, if a substantive response could not be provided within 90-calendar days, the Participating Firm should provide the Complainant with a statement in writing setting out:

- (i) the reason for the delay;
- (ii) an estimate of the date by which the Participating Firm would provide a substantive response to the Complaint; and
- (iii) a reminder that the Complainant has a right to bring the Complaint to OBSI because 90-calendar days have passed.

## **PART 12 – FIRM’S OBLIGATIONS DURING OBSI INVESTIGATIONS**

**12.1 Full Cooperation with investigation** – Every Participating Firm must:

- (a) Fully cooperate with OBSI and assist in its investigation of a Complaint; and
- (b) ensure the appropriate parties representing its institution are available to discuss a Complaint, participate in an investigatory interview, and respond to a settlement proposal, in a timely manner.

**12.2 Providing relevant documents, records and things in a timely manner** – Every Participating Firm must provide OBSI with the following in a timely manner:

- (a) Copies of all requested documents, records and things in the Participating Firm’s possession or control relating to the subject matter of a Complaint;
- (b) information generated and uncovered in the course of the Participating Firm’s internal investigation into the subject matter of a Complaint;
- (c) redacted copies of any document, record or thing that contains information protected by:
  - (i) legal privilege or privacy laws; or

- (ii) a duty of confidentiality to a third-party, where consent to disclose has not been obtained, despite best efforts to obtain consent,

and

- (d) access to original documents if needed for an investigation, to verify the authenticity of a document or signature, unless doing so would cause a waiver of privilege, breach of law, or duty of confidentiality to a third-party where consent to disclose has not been obtained, despite the Participating Firm's best efforts to obtain that consent.

**12.3 Extent of obligations** – The obligations set out in sections 12.1 and 12.2 apply not only in respect of investigations into Complaints relating to the Participating Firm itself and its own present and former Representatives, but also in respect of investigations into Complaints relating to other Participating Firms and their present and former Representatives.

**12.4 Consequences of failure to cooperate** – If a Participating Firm fails to fully cooperate with OBSI's investigation of a Complaint:

- (a) OBSI must first disclose to the Board and the Participating Firm's regulators and then to the public:
  - (i) the name of the Participating Firm;
  - (ii) the fact that the Participating Firm has failed to comply with its obligations under these Terms of Reference; and
  - (iii) particulars of the non-cooperation, in such manner and detail as OBSI considers appropriate;
- (b) OBSI must disclose to the Participating Firm's regulators the identity of the Complainant and their representative or the Representative at the Participating Firm; and
- (c) OBSI may disclose to the Board the identity of the Complainant and the Representative at the Participating Firm.

**12.5 Escalation before OBSI publicizes non-cooperation** – Where the Participating Firm fails to fully cooperate in an investigation, the Participating Firm's reasons for its failure to cooperate will be escalated to the Ombudsman before OBSI publicizes the failure to cooperate.

**12.6 Reporting Threats** - The Participating Firm will inform OBSI of any threat, made by anyone involved in a Complaint, against the personnel or property of OBSI.

## **PART 13 – RECOMMENDATIONS AND REJECTIONS OF COMPLAINTS**

**13.1 OBSI determinations** – After investigating a Complaint, OBSI will make a recommendation for payment of compensation or other action if, in OBSI’s opinion, the Complainant has suffered loss, damage or harm because of an act or omission of the Participating Firm or its Representative in the Provision of a Financial Service in Canada.

**13.2 Basis for determination** – OBSI will make a recommendation or reject a Complaint with reference to what is, in OBSI’s opinion, fair in all the circumstances to the Complainant and the Participating Firm, having regard to the general practices set out in Part 8 and, the provisions of this Part.

**13.3 Settlement efforts while OBSI investigates** – While investigating a Complaint, OBSI may seek to promote a resolution of the Complaint by agreement between the Complainant and the Participating Firm. The Complainant and the Participating Firm may also continue to seek to resolve the Complaint themselves if both parties agree. If no resolution is agreed upon, OBSI will complete its investigation of the Complaint and will either make a recommendation for its resolution or reject the Complaint.

**13.4 Nature of compensation** – Where OBSI recommends payment of compensation, it may do so to compensate the Complainant for monetary and non-monetary losses.

**13.5 Quantum of compensation** – Any payment OBSI recommends will not exceed:

(a) The amount OBSI considers appropriate to compensate the Complainant for loss, damage and harm suffered by the Complainant due to the acts or omissions of the Participating Firm or its Representative in the Provision of a Financial Service; and

(b) in aggregate, the monetary limits stipulated in Part 10.

**13.6 Format of recommendations** – All recommendations from OBSI will be made in writing and will include a summary of OBSI’s reasons. Where OBSI conducts an investigation jointly with another Industry Ombudservice under section 5.9, OBSI may issue any compensation recommendation jointly with that other Ombudservice.

**13.7 Recommendations not binding** – OBSI’s recommendations will not be binding on the Participating Firm or the Complainant.

**13.8 Consequences of refusal of a recommendation** – If a Participating Firm refuses an OBSI recommendation for resolution of a Complaint:

- (a) OBSI must first disclose to the Board and the Participating Firm’s regulators and then to the public:
  - (i) The name of the Participating Firm;
  - (ii) the fact that the Participating Firm has refused the recommendation; and
  - (iii) particulars of the Complaint, as well as particulars of the recommendation, in such manner and detail as OBSI considers appropriate; and
- (b) OBSI must disclose to the Participating Firm’s regulators the identity of the Complainant and the Representative of the Participating Firm; and
- (c) OBSI may disclose to the Board the identity of the Complainant and the Representative at the Participating Firm.

**13.9 Escalation before OBSI publicizes refusal** – Where OBSI makes a recommendation for resolution of a complaint but the Participating Firm refuses that recommendation, the Complaint and the Participating Firm’s reason for refusal will be escalated to the Ombudsman before OBSI publicizes the refusal.

## **PART 14 – RECONSIDERATION REVIEWS**

**14.1 Request for reconsideration** – OBSI will conduct a reconsideration review where the Complainant alleges:

- (a) OBSI overlooked material information;
- (b) OBSI failed to address material issues raised by the Complaint;
- (c) OBSI made a material error in analyzing information; or



(d) new material information is available that was not previously considered by OBSI.

**14.2 Time limit for requesting reconsideration** – A request for reconsideration must be made by a Complainant in writing within 30-calendar days of OBSI issuing its notice rejecting the Complaint or issuing its recommendation.

**14.3 OBSI may extend time** – OBSI may extend the time limit stipulated in section 14.2 if the Complainant shows good cause for missing the time limit.

**14.4 Decision following reconsideration** – After completing a reconsideration review, OBSI may affirm its previous rejection of the Complaint, or may affirm, or modify, its previous recommendation, and OBSI will provide the Complainant and the Participating Firm with written notice of OBSI’s decision and the reasons for it.

**14.5 Reopening of Complaint** – Where a reconsideration results in the reopening of a Complaint under section 14.1 (a), (b) or (c), OBSI will notify the Participating Firm that the Complaint is being reopened.

**14.6 New information** – Where OBSI is satisfied, after a reconsideration review, that the criterion in section 14.1 (d) is met, OBSI may reopen the Complaint or consider the Complaint to be a new Complaint, and may deal with it accordingly, including ensuring the Participating Firm is provided an opportunity to investigate and respond to the new Complaint.

## **PART 15 – LIMITS ON ROLE OF OBSI BOARD**

**15.1 No appeal to Board** – Decisions by the Ombudsman or by OBSI to investigate or not investigate a Complaint, to defer an investigation, to reject a Complaint, to recommend payment of compensation or other action, or to reconsider or not reconsider a Complaint are final and cannot be appealed to OBSI’s Board.

**15.2 No interference by Board** – The Board will not:

- (a) Seek the identity of any Complainant who has made an inquiry or Complaint to OBSI;
- (b) seek information relating to any specific inquiry or Complaint made to OBSI;

(c) make any representation about an inquiry or a Complaint to a Participating Firm or a Complainant; or

(d) act on any information received that reveals the identity of a Complainant or any information described in sub-paragraph (a) or (b) above.

**15.3 Board may consider complaints about OBSI** – The Board may consider any concerns brought to its attention about OBSI’s complaint-handling process or about the conduct of any employee or officer of OBSI.

## **PART 16 – CONFIDENTIALITY AND DISCLOSURE**

**16.1 General principles** – OBSI’s dispute resolution process is confidential to the parties to the Complaint and OBSI. Accordingly, except as required by law or otherwise provided in these Terms of Reference:

(a) All discussions and correspondence between OBSI and the Complainant, the Participating Firm and their respective representatives that form part of the dispute resolution process are not to be disclosed for any purpose, other than to a professional advisor or a representative who has agreed to comply with this confidentiality requirement, and are not to be used by anyone in any ongoing or subsequent legal or regulatory proceedings except as set out in Part 16.5; and

(b) OBSI’s files relating to every Complaint are to remain confidential and protected from disclosure.

**16.2 Internal disclosure within OBSI** – OBSI may disclose information about a Complaint to its employees, agents, advisors and consultants in the course of carrying out its activities, provided they are made subject to the same confidentiality obligations as OBSI, Complainants and Participating Firms.

**16.3 Ombudsman and OBSI not to be called to testify** – Complainants and Participating Firms must agree, and by participating in OBSI’s dispute resolution process do agree, not to call or attempt to compel the Ombudsman or OBSI staff to testify in any legal or regulatory proceedings relating to a Complaint.

**16.4 Use of initial consent letter** – An initial consent letter signed by a Complainant submitting their Complaint to OBSI may be disclosed and used for the purpose of enforcing its terms, and also for the purpose of establishing when the suspension of any statutory limitation period commenced.

**16.5 Disclosure to regulators** - Nothing in these Terms of Reference prevents a Complainant from sharing information with a regulator for regulatory purposes. Participating Firms and OBSI must, and Complainants may, comply with a written request from a regulator for disclosure of information, documents, records or things. Where OBSI complies with such a request, or where OBSI notifies a regulator that a Participating Firm has refused a recommendation or failed to comply with its obligations under these Terms of Reference, the Participating Firm and the Complainant may discuss the Complaint and the underlying facts with the regulator.

**16.6 Public disclosure** – Where OBSI discloses to the public that a Participating Firm has failed to comply with its obligations under these Terms of Reference or has refused a recommendation made by OBSI, the Participating Firm and the Complainant may refer publicly to the information publicly disclosed by OBSI about the Complaint.

**16.7 Confidentiality requests** – If any person provides confidential or personal information to OBSI and requests that it not be disclosed to anyone else, OBSI will not disclose the information except with the consent of the person who provided the information to OBSI or as required by law or by a regulator. If consent is not given and the information is prejudicial to any party to a Complaint, OBSI will not use that information for purposes of making a recommendation adverse to any party to whom the information is denied.

**16.8 Proprietary information** – Notwithstanding section 16.7, when making its recommendations OBSI may take into account the need to maintain confidentiality regarding a Participating Firm’s proprietary systems and security measures of which OBSI has knowledge, even though no disclosure of those systems and measures has been made to the Complainant.

**16.9 Reporting threats** – OBSI will inform a Participating Firm of any threat, made by anyone involved in a Complaint, against a Complainant, the Participating Firm, or OBSI, including threats against personnel or property. Nothing in these Terms of Reference prohibits OBSI from notifying a Complainant or a Participating Firm and law enforcement officials about a threat. OBSI will not disclose to the person making such a threat any information about who from OBSI provided the notification, nor may the Complainant or Participating Firm make such disclosure, unless it is required by law, and then only to the extent so required.

## **PART 17 – ANNUAL REPORTING**

**17.1 Matters to be reported** – OBSI will prepare and publicly disclose an annual report as well as other reports containing statistics, anonymized case

studies of Complaints for educational purposes (with Complainant and Participating Firm identifiers removed), other information that OBSI considers appropriate to the interests of interested parties and the general public, and information required by law or regulation.

## **PART 18 – THIRD PARTY EVALUATIONS**

**18.1 Periodic evaluation** – OBSI must submit itself to knowledgeable, independent third-party evaluations of its operations, conducted according to timelines established by its regulators.

**18.2 Evaluations to be made public** – OBSI will make public the outcome of each evaluation conducted under section 18.1.

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