



Via Email

August 12, 2013

Tyler Fleming
Director, Stakeholder Relations and Communications
Ombudsman for Banking Services and Investments
401 Bay St., Suite 1505, P.O. Box 5
Toronto, ON M5H 2Y4

Dear Mr. Fleming:

Re: Proposed Changes to OBSI's Terms of Reference

This comment letter is being submitted on behalf of the following entities within RBC: RBC Dominion Securities Inc., RBC Direct Investing Inc., Royal Mutual Funds Inc., Phillips, Hager & North Investment Funds Ltd., RBC Phillips, Hager & North Investment Counsel Inc. and RBC Global Asset Management Inc. We are writing in response to the Ombudsman for Banking Services and Investment's ("OBSI") request for comment on the proposed changes to its Terms of Reference ("ToR") published on June 12, 2013 ("Proposal").

We acknowledge OBSI's efforts in enhancing its processes to conform to requirements set by the Financial Consumer Agency of Canada ("FCAC") under the *Complaints (Banks, Authorized Foreign Banks and External Complaints Bodies) Regulations* ("Regulations") and *Application Guide for External Complaint Bodies* ("Application Guide") as part of FCAC's application process for external complaints bodies for the banking sector. For example, the ToR will be amended to incorporate by reference OBSI's Code of Practice and Fairness Statement. In keeping with the OBSI's stated objectives of acting fairly towards participating firms and maintaining its status as an impartial entity that is independent of both industry and government, any changes to OBSI's governing documents should apply consistently to all participating firms, including securities registrants. On this note, we support OBSI's adoption of a uniform policy on the removal of its powers to investigate systemic issues.

We have participated in the industry working groups organized by the Investment Industry Association of Canada ("IIAC") and Investment Funds Institute of Canada ("IFIC") and support the comments submitted by the named industry associations. Additionally, we would like to provide comments on certain issues:

180-day guideline for escalating complaints

The existing requirement for an individual to bring their complaint to OBSI within 180 days following receipt of a Participating Firm's final response promotes certainty for both parties involved in a complaint. Thus deviation from the requirement should only be made in exceptional circumstances and subject to a timeframe of 12-months following the receipt of the final response. Circumstances that OBSI would consider should be clearly outlined in the ToR, such as where the Participating Firm has not notified the complainant of the 180-day requirement in writing or if the complainant experienced medical or other extenuating personal issues. Where OBSI decides to accept and investigate a complaint in such circumstances, the Participating Firms should be provided with written reasons for the decision.

Other proceedings related to the subject of a complaint

We agree that OBSI shall not investigate or shall cease to investigate complaints where the complaint is the subject of a legal proceeding that has been concluded with a binding decision. Any legal proceedings and negotiations of possible settlement concerning a complaint consume significant resources and time for both parties. Maintaining multiple ongoing proceedings in order to resolve the same complaint negatively impacts the efficiency and effectiveness of the dispute resolution process, thus appears contrary to the Regulations which require an external complaints body to perform their activities in an effective and cooperative manner. Consequently, in support of IFIC's recommendation, OBSI should not investigate a complaint that is part of an ongoing legal proceeding or arbitration without written consent of both Participating Firm and complainant. Likewise, OBSI should cease to be involved in a complaint where a settlement agreement is being negotiated or has been reached between the Participating Firm and the complainant for the complaint.

Self-imposed limitation period

As highlighted in our past submissions, the setting of an appropriate limitation period should take into consideration several aspects. First, as statutory limitation periods vary across Canada, OBSI should recognize the statutory limitation period applicable in the investor's jurisdiction of residence. For instance, the general limitation period is 2 years in a number of provinces including Ontario, British Columbia, Alberta, Saskatchewan and New Brunswick. In Newfoundland & Labrador, suitability cases are subject to a 2-year limitation period. Quebec has adopted a 3-year limitation period for torts. We note that in the majority of the Canadian jurisdictions, where most of the cases arise, the general trend in law is to move towards a 2-year limitation period from 6-years.

Second, under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"), registered firms are subject to a 7-year record retention requirement from the date the record is created, hence may not be able to produce evidence required for the cases past the applicable record retention period. Further, to promote legal certainty and avoid client confusion, the test of determining when a limitation period commences should be objective. Given that records of trading or advising activity are generally documented and available to clients, such as account statements and trade confirmation, it would be appropriate if the limitation period applicable to an investor commences at the time the related trading or advising activity occurred.

OBSI/Ombudsman Material Interest in a Complaint

The proposed amendments to section 12 are in line with the Regulations which require that every person who acts on behalf of OBSI in connection with a complaint is impartial of the parties to the complaint. It would be of particular importance in the event that a complaint is escalated to either the Ombudsman or a delegate before OBSI publishes a Participating Firm's refusal to accept recommendation, per proposed section 33. To this end, we suggest that the procedures for the delegation of the Ombudsman's powers and duties under section 4 be clearly outlined, including identifying the person(s) who would nominate and select the Ombudsman's delegate and the considerations involved. In addition, section 12 should be expanded to clarify that any OBSI staff assigned to a complaint, such as an investigator, who may have or be perceived to have a conflict of interest in a complaint should immediately disengage from the file.

Escalation Process

Currently, OBSI's final recourse for non-compliance is to make public any refusal by a firm to accept its recommendation. The proposed amendments will provide that, where applicable, the OBSI, and not the Participating Firm, may provide details of a case to the OBSI Board and appropriate regulator. The proposed escalation process to the OBSI Board to determine whether to publicize select information of a case appears to conflict with proposed section 31 which emphasizes that the OBSI Board does not consider specific complaints nor can the Board influence the decisions of OBSI staff. Further, it is proposed that should OBSI publishes information concerning the case, Participating Firms may refer

publicly only to information that OBSI chooses to disclose. We are concerned with the lack of ability for Participating Firms to review, comment and agree on the information to be announced by OBSI and to escalate the matter further if the situation warrants. It is uncertain how the proposed procedures as drafted would align with the Application Guide which expects an external complaints body to demonstrate how it will cooperate and resolve disputes with members.

In this regard, we urge OBSI to establish an appeal mechanism for its decisions, as recommended under the 2011 Independent Review Report conducted by the Navigator Company. As observed by the Report, an appeal mechanism would “give confidence to industry and consumers that OBSI is prepared to have its decisions tested.” With respect to the details of such process, we recommend that OBSI consider the proposals submitted by the IIAC in its letter dated May 21, 2013 addressed to Fern Belisle, Chair of OBSI Board.

Fees

As discussed above, OBSI’s policies and procedures should be applicable to its membership in a consistent manner. Thus the new proposed section 35 should be expanded to provide that information regarding the fees charged to all Participating Firms, not only banks that are Members, be made available on OBSI’s website.

We appreciate that the OBSI is working with the CSA to develop a new fee model that will be fair to participating firms. As outlined in our submission to the CSA dated February 15, 2013 concerning proposed amendments to NI 31-103, we believe that the most equitable funding formula is one based on a pay-per-use system. A pay-per-use system may incent Participating Firms to resolve a complaint without escalation to the OBSI, thereby promoting efficiency and causing less distress to the complainant, being goals common to both OBSI and Participating Firms. Second, Participating Firms will not be required to subsidize investigation and other costs for complaints to which they are not a party. While we acknowledge possible preference for stable funding and have certain management and administration costs allocated to all sectors of the membership, we recommend that OBSI consider adopting a pay-per-use system.

Transparency

The FCAC Application Guide expects an external complaints body applicant to demonstrate how it will publicize information on its complaint-handling process and results. Per OBSI’s Code of Practice, the organization’s commitment to transparency is limited to ensuring that applicable documentation is in plain language and that decisions and recommendations are explained to both parties involved in a complaint if requested. We suggest that OBSI further this mandate by publishing its past decisions and recommendations on its website on an anonymous basis, similar to the process adopted by the Offices of the Information and Privacy Commissioner.

Consultation with Members

The Regulations requires an external complaints body to consult at least once a year with its members and with persons who have made complaints since the previous consultation with respect to the discharge of its functions as an external complaints body. In our view, this element could be incorporated into the ToR to ensure and enhance direct dialogue between OBSI and Participating Firms.

We would be pleased to discuss our comments further with you. If you have questions or require additional information, please do not hesitate to contact the undersigned.

Sincerely,

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