

SENT via email

July 10th, 2013

ATTENTION: The Ombudsman for Banking Services and Investments, Mr. T. Fleming

Director, Stakeholder Relations and Communications
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Proposed changes to OBSI Terms of Reference (TOR)

Dear Mr. Fleming:

I am writing to express my general dismay with your proposed changes to the OBSI Terms of Reference (TOR). Canada needs an OBSI that will be a strong advocate for the individual investor particularly considering the high costs of civil action. It seems as though investment fraud cases are becoming a daily occurrence necessitating a strong OBSI. I believe that the proposed changes to the TOR will make the OBSI a less effective source for justice for the individual investor in future.

By way of background, it is my belief that the current compensation structure is a fundamental flaw in the sales and distribution of investment products at the retail level in Canada. The current compensation structure remunerates advisors based upon the products they sell or by the size of assets gathered. I submit that compensating advisors in this manner leads to an inherent conflict of interest pitting the interest of the client against those of the advisor resulting in disputes. Until the method of compensating advisors changes this conflict cannot be avoided and results in the bulk of investor complaints the OBSI must decide upon.

I refer you to the statistical data regarding investment issues in your annual report of 2012. While it is impossible to know what percentage of your cases are motivated by the fees an advisor gets through impropriety, I have to suspect that the top three: Suitability, Fee Disclosure, and Suitability of Margin accounting for 58% of the total complaints are highly correlated to the advisors' paycheque. Of the remaining categories, the following are also likely driven by the desire to increase advisor fees/compensation: Unauthorized Transaction/Churning, Incomplete or inaccurate disclosure about a product, Margin Issues,

Inappropriate advice, Inappropriate investment strategy for a total of almost $\frac{3}{4}$ of the total complaints.

| Investment Issues | Primary | Secondary |
|--|----------------|------------------|
| Suitability | 146 | 29 |
| Fee Disclosure | 44 | 32 |
| Suitability of Margin or Leverage | 33 | 10 |
| Transaction errors | 30 | 3 |
| Unauthorized transaction and/or Churning | 22 | 1 |
| Service Issue | 20 | 21 |
| Incomplete or Inaccurate Disclosure About a Product | 17 | 16 |
| Transfer Delay | 16 | 2 |
| Instructions Not Followed | 13 | 8 |
| Margin Issues | 10 | 1 |
| Outside Business Activities, Off-Book Transactions | 9 | 3 |
| Fraud | 5 | 1 |
| Inappropriate Advice | 5 | 5 |
| Performance | 5 | 5 |
| Inappropriate Investment Strategy | 3 | 4 |
| Other | 3 | 2 |

The industry is a long way from separating fees for advice from products. Until such time as this happens, Canada will need a strong OBSI to settle disputes arising from conflicting

interest and other sources.

I will now comment on the proposed changes to the OBSI Terms of Reference.

1. Section 2(a): Definition of “Participating Firm”

As mentioned above, the structure of the industry itself, created by the industry, results in many investor complaints due to systemic conflict of interest. It is a daunting task to legally challenge a large financial institution that has wronged you. To now ask individual investors to navigate separate Ombudsman offices is a hurdle many will not jump. The objectives of a portfolio may be met by many products falling under different regulatory regimes. Bad advice for the portfolio as a whole is best met by one Ombudsman. A better solution to this problem would be to have the OBSI and the Ombudservice for Life and Health Insurance (OLHI) liaise with one office taking the lead, depending on the portfolio and the nature of the complaint.

2. Section 2(a) and former Section 11: Systemic issues

I find this to be the most slippery of changes. You are proposing to off load your responsibilities to identify systemic investment issues and set to resolve these issues because of a change in banking complaint handling “... *the Department of Finance adopted a new policy direction: any potential systemic issues identified in the investigation of an individual complaint should be referred by external complaint-handling bodies such as OBSI to the FCAC for investigation.*” Considering that banking issues as measured by dollars are minor in comparison to investment issues, I simply cannot comprehend your actions to “*eliminate(s) OBSI’s ability to investigate systemic issues on the investment side of our mandate as well*”. No explanation is offered as to why you must cease to protect individual investors in this manner. Given my preamble, it should be quite clear that I view this shirking of your responsibility as completely contrary to the best interest of the investing public and strongly urge the OBSI to stand up for investors by continuing to identify systemic issues that hurt the investing public. Your Chair Fernand Bélisle states: “*As we embark on this period of transition, the Board of Directors renews its commitment to ensure that the continual evolution of OBSI’s mandate will be consistent with the best interest of all stakeholders and the public interest mandate entrusted to OBSI by the regulators.*” By ignoring systemic issues that hurt the investing public the OBSI only serves the stakeholder best interest of financial institutions while permitting continued damage to the investing public and increasing it’s own future workload. The OBSI is not a commercial enterprise. It should be seeking to reduce its own business, not increase it.

3. Section 9: Firm responsibility for actions of their representatives

I applaud this. My review of legal results confirm that this is consistent with judgements being rendered in courts.

4. Section 14(a): Compensation limit

The limit of \$350,000 was set in 2002. Today's limit would be \$431,795.39 to compensate for inflation according to the [Bank of Canada](#). This an effective reduction in the limit of almost 19%. The compensation limit should be adjusted for inflation and reviewed on a regular basis, contrary to your current proposed changes.

5. Section 20(c): Escalation process

Decisions should be binding on all parties. However, since 'name and shame' is your only enforcement tool ineffective as it may be, then financial firms should not be allowed to 'explain' their position and thus undermine the effectiveness of this strategy.

Additionally, it appears that more delay is being added to the process by your proposed changes increasing the stress and anxiety of the victimized investment complainant. If the firm refuses to pay, then the reasons for judgement should be made public post haste.

6. The OBSI Consumer and Investor Advisory Council's continued existence should be entrenched in OBSI's Terms of Reference. That said, it seems strange that I do not have their thoughts on your proposed changes prior to them being made public.
7. The Three year independent review cycle should be maintained.

Overall, I do not support the proposed changes to OBSI TOR. These changes will generally weaken the ability of the investing public to obtain enforceable decisions in an impartial and timely manner. I hope that my commentary will be useful for the OBSI. Please feel free to post this letter publically.

Regards,

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