

**From:** Harold Geller  
**Sent:** June 12, 2013 10:41 AM  
**To:** governance  
**Subject:** Terms of Reference - Request for Comment

Dear Tyler Fleming:

I write to comment on a specific aspect of the Proposed Changes to OBSI's Terms of Reference.

I will limit my comment to two issues:

- 1) Section 2(a) and former Section 11 - Systemic Issues  
The OBSI in its unique role uncovers potential systemic issues of concern to unwitting consumers. The OBSI should be required to either directly expose the potential systemic issues to the public or refer the issues to regulators for investigation. The potential harm to existing consumer and potential consumers of like products and/or services as a result of systemic issues is far greater public importance than the interest of a participating firm in avoiding potential liability. The consumer and the industry benefit from bringing attention to and remedying systemic issues.
- 2) Section 9 - Firm responsibility for action of their representatives.  
This issue is complex. Based on the present rules, participating firms are incented to refuse OBSI recommendations where the representative is primarily negligent or fraudulent. In refusing the OBSI recommendation the participating firm either wins because the consumer goes away or because the consumer will also name the representative in subsequent lawsuits. Through the litigation process the firm would shed most of its risk to the representative or the representative's E & O insurer. Through the OBSI process, the participating firm can only commence an action as against the representative and then assert that the OBSI resolution was reasonable - few firms would bother as the outcome of this litigation is assured high legal costs and an uncertain court ruling. The end result is that the present situation and proposal effectively gives the so-called "participating firms" another reason for not participating, that is, to ignore the OBSI. This is a serious dynamic which further erodes the credibility and viability of the present OBSI. This issue calls out for public consultation beyond the "usual industry suspects" who have insider or preferred advocacy relationships with the OBSI.

Yours truly,

Harold Geller  
Financial Services Group  
Doucet McBride LLP