

Via courier and e-mail (publicaffairs@obsi.ca)

January 30, 2008

Terms of Reference Review  
Ombudsman for Banking Services and Investments  
PO Box 896, Station Adelaide  
Toronto, ON  
M5C 2K3

Attn: Peggy Anne Brown, Chair, Board of Directors

Dear Dr. Brown,

Re: Proposed Amendments - Terms of Reference

This letter provides comments on the proposed Terms of Reference for the Ombudsman for Banking Services and Investments (“OBSI”) on behalf of Manulife Investments which includes our mutual fund dealers - Manulife Securities International Limited and Berkshire Investment Group Inc. - and our securities dealer - Berkshire Securities Inc.

Manulife Investments supports effective consumer complaint resolution processes that provide our clients with timely, appropriate outcomes. However, we have significant concerns about the Terms of Reference. Manulife Investments and our affiliated companies have participated in the preparation of and support the detailed comments that have been submitted by industry associations such as the Canadian Bankers Association and Investment Funds Institute of Canada. We trust those comments will receive due consideration. As such, in this letter, we focus on what we believe are the most significant issues that must be addressed.

### **Systemic Issues**

Manulife Investments has serious concerns about the addition of systemic issues to the OBSI Terms of Reference. We firmly believe that the management and resolution of systemic issues within a company are the responsibility of the company and its regulators. Companies and regulators should be the ones responsible for establishing processes that are reasonably designed to detect and address systemic issues. Manulife Investments believes that where a third party identifies a systemic issue it should be referred to the company and the regulator for review, investigation and appropriate resolution.

The gathering of information and factors considered in the resolution of a systemic issue are very dissimilar from those required to resolve an individual complaint. By way of example, this is explicitly recognized in the system established in the UK to investigate

and address ‘widespread issues’. In the UK, regulators consider, investigate and resolve systemic issues. It is our understanding that the UK Financial Services Ombudsman plays a very limited role in ‘widespread issues’.

Manulife Investments does not believe that the OBSI has the expertise or the appropriate legal framework required to properly investigate and resolve systemic issues. Taking on systemic issues would require a complete overhaul in the OBSI functions, structures and processes. We believe these changes would be a substantial departure from the OBSI mandate and the unique role that it has assumed as an independent, impartial and accessible arbiter. In fact, these proposed changes would, to the contrary, make the OBSI process more complicated, time-consuming, legalistic and less-responsive for consumers and companies. We believe that investigation, analysis and considered resolution of systemic issues are regulatory functions. The OBSI is not and was never intended to be a regulator.

We strongly urge the Board to not add investigation and resolution of systemic issues to the OBSI Terms of Reference. The OBSI should refer potential systemic issues to the company and regulator for further review, investigation and resolution.

#### **The OBSI Role in Consumer Protection**

Manulife Investments believes that an effective complaint resolution process ensures that the parties involved receive appropriate outcomes. We believe that an ombudsman can play an important role in promoting confidence in the system by consumers and member companies alike.

We do not, however, believe that an ombudsman should be an advocate for either the consumer or the company. Consequently, Manulife Investments has serious concerns about the current nature and level of involvement that the OBSI has with consumers who seek access to its complaint resolution system. Specifically, Manulife Investments is concerned with the level of advocacy that the OBSI currently provides on behalf of consumers. We note that the Terms of Reference, inspired by the Independent Review, envisage an even more proactive OBSI where the Ombudsman has a role in using its position to protect consumers. We do not believe that being proactive or being an advocate are appropriate roles for an adjudicative body.

The Terms of Reference should confirm that the OBSI is an impartial, adjudicative body that does not prefer the interests of either the consumer or the company.

#### **Right to Seek Court Opinion on Novel Questions of Law**

In reviewing international financial services ombudsman systems, we noted that both the UK and Australian systems have mechanisms which permit companies to access the courts where the complaint raises novel questions of law. We recognize that it is important to ensure that the Ombudsman continues to provide timely and simple processes. In fulfilling its mandate it is appropriate for the OBSI to make determinations in accordance with existing law. However, where the application of law is unclear or where there is a novel question of law, we believe that it would be inappropriate for the



OBSI to recommend settlement backed by the threat of publication where there is a good faith disagreement over a point of law. In effect, OBSI would be overriding or ignoring the law. The OBSI Terms of Reference should formalize access to the court system where the application of the law is unclear.

We would welcome the opportunity to discuss these issues with you in further detail.

Yours truly,

A handwritten signature in black ink, appearing to read 'Clive Anderson', written over a faint, larger version of the same signature.

Clive Anderson  
Vice-President and Chief Counsel  
Manulife Investments

cc: Serge Dupont, Department of Finance  
Bob Christie, Chair, Joint Forum of Financial Market Regulators