SENT via email Monday June 24th, 2013

ATTENTION: The Ombudsman for Banking Services and Investments, Mr. T. Fleming, Director, Stakeholder Relations and Communications

401 Bay St. Suite # 1505, P.O. Box 5
Toronto Ontario M5H 2Y4
email: tfleming@obsi.ca

Proposed changes to OBSI Terms of Reference (TOR)

Dear Mr. Fleming:

I don't normally participate in writing comment letters to Government or Govt. Agencies but the insulting changes being proposed compel me to speak out.

A robust Ombudsman is critical to retail investor protection. The cost of litigation in Canada is simply too much for the average retail investor seeking compensation after a dealer rejects a restitution claim. Without OBSI, many valid complaints would die stillborn. Hardly a day goes by that we don't hear about another victim of financial services industry abuse. Canadians need and deserve a strong Ombuds service, one that operates at world-class levels. As OBSI itself points out, retirees, pensioners and seniors are disproportionately represented among complainants and their vulnerability is well established. Given Canadian age demographics, this trend will increase. So, lowering hard fought for high Ombudsman standards seems to me to be irresponsible. [See http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/FOS-terms-of-reference.pdf/$file/FOS-terms-of-reference.pdf for an example of a Ombudsman TOR that is more balanced and clear]

It wasn't so long ago that OBSI management railed against Federal Government initiatives to let BIG Banks purchase their own Ombudsman services using a standard everyone agreed was weak against global standards and trends When The Ombudsman, Doug Melville, provided dramatic testimony to the Standing Committee on Finance http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5456470&Language=E&Mode=1 , one can see the tension between banks/dealers and OBSI and the low standards these entities are striving for . Ditto for his presentation in 2012 at an OECD Conference in Honk Kong where he highlighted the benefits of a robust financial ombudsman service. http://www.oecd.org/daf/fin/financial-education/HKSeminar2012S3Melville.pdf

Now the OBSI Board wants to lower its standards to a level that its own management feels is deficient in order to retain the banks that remain participating members within the OBSI fold. For me, the price is too high.

It is one thing to deal with wrong debits on a credit card and the like but it is a different story when you are trying to settle a case that impacts your life's savings. The latest numbers in the 2012 OBSI Annual Report bear this out. The dollar amount given out in bank restitution is trivial

compared to the numbers on the investment side. I say either the remaining banks play by world class Ombudsman rules or they be asked to leave. I have no doubt they will jump at the chance to depart.

If the Board approves these changes it is clear that over time as the banking industry's infamous lobbying power unfolds, the banking complaint handling standards will be reduced further and corresponding lowered standards will be induced like a cancer virus into OBSI's mandate. That would play into the investment's industry's hands (the biggest of which are bank owned) because that is precisely what a number of dealers would like to see happen. In the end, OBSI will collapse in a wave of criticism and conflicts. The CSA has an obligation to ensure OBSI is a safe destination for complaints since it is giving it sole source status in NI31-103. Clearly, a documented standard will be required similar to the one developed by the FCAC for the approval of banking dispute resolvers. See for example Regulatory Guide RG 139 ***Approval and oversight of external dispute resolution schemes*** http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg139-published-13-June-2013.pdf/$file/rg139-published-13-June-2013.pdf from Australian regulators.

I could enumerate several issues with the OBSI Terms of Reference but will focus on three:

Mixed portfolio analysis Requiring a complainant to bring insurance products to another Ombuds service is problematical. By the time an investor brings a complaint to OBSI he /she has suffered through a nasty dealer complaint handling process. Many are frustrated and angry. To now be told he/she must deal with two Ombuds services is enough to drive them over the bend. Just as importantly, this wacky approach is defective in theory since portfolios cannot be designed one way for investment purposes and evaluated another way for loss calculation purposes. This is irresponsible and unfair. The CSA, in conjunction with other regulators, should establish, a collaborative protocol between Ombuds services for mixed asset portfolios to avoid this situation.

Exempt Market Dealers (EMD) EMDs are fully registered dealers who engage in the business of trading in exempt securities, or any securities to qualified exempt market clients .FAIR Canada's comments in response to CSA Staff Consultation Note 45-401 noted the lack of data regarding the exempt market which prevents key information from forming part of the policy-making process, the serious compliance concerns that are known, a perception of weak enforcement which harms investors and weakens confidence in exempt market investing, and the lack of a sound rationale for the accredited investor and minimum amount exemptions. FAIR Canada urged the OSC to ensure that the OSC has adequate resources in order to have robust compliance with respect to issuers and registrants who operate in the exempt market. A recent Ontario Securities Commission released the findings of a targeted review exempt market dealers (EMDs) and PM's to assess compliance with important regulatory requirements, specifically know-your-client, know-your-product and suitability obligations. The OSC looked at a total of 87 EMDs and

PM's. OSC Staff identified a number of serious deficiencies, specifically around the sale of exempt securities to non-accredited investors, relying on purported "client-directed trade instructions" and inadequate processes for the collection, documentation and maintenance of KYC information. Of the registrants reviewed, most were issued deficiency reports and OSC staff will monitor for corrective action, conduct follow-up reviews and take further regulatory action as appropriate. Bottom line: The collection of KYC information is fundamental to ensuring an appropriate recommendation is made to a client by a dealer The client's KYC information establishes the "circumstances" of the client and the dealer then assesses those "circumstances" in relation to a proposed investment to determine suitable recommendations for the client. Since KYC /suitability information is a key component of loss assessment, how will the OBSI cope with such dealers?

The EMD market sector lacks the disciplines of the traditional IIROC dealers. We recommend the CSA delay mandating OBSI as the sole approved dispute resolver for EMD's until EMD's clean up their act. We also believe that IIROC or a newly formed SRO is required to set down rules, compliance and complaint handling criteria for this sector. Individual Securities commissions seem ill suited for the job. If EMD's are foisted upon OBSI before they are under better control, the impact on OBSI's already unacceptable cycle time performance will alienate investors further. Once stabilized, we agree that EMD's should fall under OBSI's domain with the proviso that OBSI maintain Terms of Reference acceptable and fair to retail investors. [Aside from these concerns it is not clear to me who will be able to evaluate portfolios that contain a mix of assets including Seg funds, real property, gold bullion, index linked GIC's , PPN's, variable annuities, investments in private companies etc. or if these too would be split among numerous Ombuds services] .

Systemic issues The Directors of OBSI are backtracking on the core OBSI public policy question of "Systemic issues". By backtracking, the Board is effectively saying OBSI should be willfully blind and knowingly silent on what its complaint statistics reveal. A case by case approach leaves non-complainants with identical complaints exposed to abuse and financial loss. How can this backtracking be good for investor protection? We argue that it demonstrates a low level of ethics and integrity that Canada should avoid. We should be clear-OBSI, while it is not a regulator, is an integral part of the regulatory system.

We urge the Board to read The ***Ombudsman as initiator: how the New Zealand Banking Ombudsman approaches systemic issues*** http://www.anzoa.com.au/publications/ANZOA-Conference-2012/ANZOA-2012_Ombudsman-as-initiator_Deb-Battell_paper.pdf Note the huge gap between Canada and New Zealand. Why should Canadian investors be second class?

Conclusion

OBSI provides an accessible way to address complaints that would not otherwise be resolved through the courts due to factors such as cost, time, intimidation/fear of court process. The

problems with investment dealers have been brewing for some time. At the Feb. 23rd, 2011 OBSI board of Directors meeting [minutes at http://www.obsi.ca/images/Documents/BoD_Highlights/EN/2011_02_feb_highlights_bod_s_mtg_en.pdf], Ombudsman Doug Melville painted a grim picture. He revealed that, OBSI is experiencing escalation of conflicts with investment firms around matters that previously were not a material concern and this affects OBSI's front-end process. These include: (a) refusal to sign consent agreements or requests for changes to longstanding consent agreement;(b) pre-emptive challenges to OBSI's mandate with respect to specific case files before OBSI staff have had an opportunity to review the case for mandate; (c) refusal to sign the tolling agreement by firms not covered by the blanket tolling agreement covering most bank-owned financial groups; and (4) refusal to provide or very slow to provide requested file information upon OBSI request .

This is why we argue for CSA Oversight of OBSI and a basic CSA imposed standard encapsulated in NI31-103 for dealing with systemic issues.

Trying to be consistent with Finance/FCAC complaint handling provisions for banks is a loser's game for OBSI and the investor complainants that depend on it. The Public Interest Advisory Council has condemned the bank rules on complaint handling. ***See Financial Consumers Betrayed by Finance Minister's OBSI Decision*** http://www.piac.ca/financial/financial_consumers_betrayed_by_finance_minister_s_obsi_decision as have SIPA www.sipa.ca , FAIR Canada www.faircanada.c a among others.

We urge all decision makers related to these proposals to *read* ***Fundamentals for a financial ombudsman report volume 1 - FINAL*** http://www.networkfso.org/Resolving-disputes-between-consumers-and-financial-businesses_Fundamentals-for-a-financial-ombudsman_The-World-Bank_January2012.pdf

These proposed TOR changes are not in the Public interest and should not be accepted.

I trust this Comment letter is useful to the OBSI Board of Directors. I welcome its public posting on the OBSI website so others can see the issue and hopefully submit their views as well.

Respectfully,

William Schalle, investor