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Terms of Reference Review  
Ombudsman for Banking Services and Investments  
P.O. Box 896, Station Adelaide  
Toronto, ON M5C 2K3  
*by email to: publicaffairs@obsi.ca*

**RE: Consultation Draft  
Ombudsman for Banking Services and Investments  
Terms of Reference**

I appreciate the opportunity to comment on the proposed revisions to the Terms of Reference of the Ombudsman for Banking Services and Investments (OBSI).

I have read the independent review of OBSI by The Navigator Company (September 2007).

**1. SYSTEMIC ISSUES**

1a. It is evident from the existing Terms of Reference that, up to this point, Participating Firms have enjoyed certain protections deriving from OBSI investigations, as indicated in section 7 under the heading, *"The Ombudsman's Principal Powers and Duties"*:

*7. The Ombudsman shall report to a Participating Firm information about any threat to Participating Firm staff or property of which the Ombudsman becomes aware in the course of the Ombudsman's duties. (page 4)*

Nevertheless, up to this point, the investing public has not enjoyed similar protections, given that the Ombudsman has been expressly prohibited, under section 9(c), from conducting investigations that extend beyond a matter reported by a particular Complainant.

In other words, while the Ombudsman has had a **duty** to inform Participating Firms about potential harms to their staff or property, the Ombudsman, until now, has been **prohibited** from taking action to protect the public, e.g. based on discoveries made in the course of investigating complaints, which could have a bearing on other clients.

This is a troubling disparity in the mandate of an organization, which claims to be independent of the financial services industry.

The Navigator report identifies the inability of the Ombudsman to address systemic issues as *“a clear flaw in the consumer protection framework.”* Investor advocates have called attention to this flaw in the mandate of OBSI for the past several years.

Although the consultation document contains amendments aimed at remedying this *“clear flaw,”* evidently such change will be too late for some consumers who have been harmed in the meantime. It is discouraging to find yet another instance in the Canadian context where changes necessary to protect the public interest have taken so long to occur.

1b. The definition of “Systemic Issue” (page 2) is too narrow and needs to be expanded along the following lines. Additions are indicated in bold type.

“Systemic Issue” means a matter discovered in the course of considering a Complaint, which may have caused **or could cause** a loss or inconvenience to one or more other Customers in a similar **or other** fashion to that experienced by the original Complainant, **or a matter, which could cause a different type of loss or inconvenience to the original Complainant or one or more other Customers, or other issues which may not yet have caused a loss or inconvenience, but which are in breach of securities rules or regulations;**

## **2. REFERRALS TO REGULATORY OR LAW ENFORCEMENT AGENCIES**

2a. Section 10(c) on page 7 makes reference to the circumstances where a Firm fails to co-operate in the Ombudsman’s investigation of a potential Systemic Issue or refuses to follow the Ombudsman’s recommendation. Reference is made to the provisions of section 25 with regard to the consequences of such non-cooperation. The concluding sentence in this section contains the phrase, *“OBSI may inform the regulating authority of non-cooperation by a Participating Firm.”*

This should be changed to *“OBSI **shall** inform the regulating authority of non-cooperation by a Participating Firm.”*

2b. Section 10(d) states that *“matters which in the judgement of the Ombudsman involve potential regulatory or criminal breaches may be referred to the appropriate regulatory or law enforcement agency.”*

This should be changed to *“matters which in the judgement of the Ombudsman involve potential regulatory or criminal breaches **shall** be referred to the appropriate regulatory or law enforcement agency.”*

### **3. REFERRAL OF UNFAIR COMPLAINT DECISIONS BY PARTICIPATING FIRMS TO REGULATORY AGENCIES**

As I expect OBSI is aware, the Mutual Fund Dealers Association of Canada and the Investment Dealers Association of Canada have been amending their complaint handling requirements. Member firms of these self-regulatory organizations are required to resolve client complaints in a prompt and fair manner. Evidently some complaints are not resolved fairly. I refer to the OBSI statistics of the past two years in which 50% of decisions by investment firms were overturned at the outcome of OBSI investigations.

What are the consequences for the firm for having unfairly decided a client complaint? Since complaint handling is a regulatory matter, a provision should be added to the Terms of Reference that where a Participating Firm has unfairly decided a client complaint, the matter **shall** be referred to the appropriate regulatory agency. This is consistent with the provision regarding referral in the event of non-cooperation.

### **4. 90-DAY TIMEFRAME FOR INTERNAL COMPLAINT HANDLING**

The 90-day timeframe for complaint handling at the firm level is a positive development in the current redress system. Another positive aspect of the present amendments is the strengthening of the requirement that firms should inform complainants of the availability of recourse to OBSI after 90 days, both in the firm's initial letter acknowledging the complaint, and also in the final letter with the firm's decision (15(c) and (f)).

The specification of the "*90-day*" timeframe needs clarification. This should be specified either as 90 calendar days or 12 weeks to avoid confusion with business days.

Thank you for the opportunity to comment on the proposed revisions. Please do not hesitate to contact me should you wish to discuss my present submission.

Yours truly,

Pamela J. Reeve