



O C T A G O N

February 11, 2008

Dr. Peggy-Anne Brown, Chair
Ombudsman for Banking Services and Investments
P O Box 896, Station Adelaide
Toronto, Ontario
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Via email: publicaffairs@obsi.ca
Terms of Reference Review
Ombudsman for Banking Services and Investments
PO Box 896, Station Adelaide
Toronto, ON M5C 2K3

February 1, 2008

Dear Sirs/Mesdames:

Re: Proposed Amended Terms of Reference for the Ombudsman for Banking Services and Investments

We appreciate the opportunity to comment on the proposed Terms of Reference for the Ombudsman for Banking Services and Investments (OBSI). Like other participants in the investment industry we support OBSI's role in providing a neutral dispute resolution service for the investing public.

We support the comments made by the Investment Industry Association of Canada, concerns that we believe are shared throughout the investment industry.

The proposed Terms of Reference effectively creates a new regulatory body with the power to investigate any activity undertaken by an investment dealer, whether as a result of a complaint, a systemic inconvenience or for the edification of OBSI staff.

With a mandate to investigate any systemic issues, OBSI must anticipate taking on the role of seeking out class action like issues and will no longer be a neutral dispute resolution service. Combined with the ability to help the public 'articulate their complaints' it will allow OBSI staff broad leeway in determining the scope of their investigations. Such broad power raises questions regarding the extent to which firms are required to co-operate. Must a firm ask hundreds or thousands of clients for permission to share their information with OBSI or simply provide it without regard to privacy laws?

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Obtaining permission to provide their personal information from large numbers of clients would make any information request by OBSI a significant undertaking, far more onerous than a similar request by the existing regulatory bodies.

Any body with such broad powers should be subject to independent, formal oversight of its processes and application of industry and fairness standards. It must also have an appeals process before firms are effectively sanctioned by being publicly named for failing to co-operate or abide by OBSI decisions.

It is also significant that OBSI has determined that it may demand privileged information from participating firms (section 15(e)). Without any ability to appeal a decision by OBSI, a firm may be held out to the public for failure to co-operate because it considers certain materials privileged. If provided, this information might then be provided to securities regulators or law enforcement agencies at OBSI's discretion.

OBSI plays an important role in maintaining the integrity of the financial services industry. However, the proposed changes are not necessary to support that role and are duplicative of the roles of the provincial securities commissions and the Investment Dealers Association.

Yours truly,



David Lister
V.P. Compliance
Chief Compliance Officer

- c.c. John Palumbo, President and CEO, Octagon Capital Corporation
Ian Russell, IIAC
David Agnew, Ombudsman, OBSI
David Wilson – Chair OSC
Larry Waite, President & CEO, Mutual Fund Dealers Association
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