

OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS

TERMS OF REFERENCE

Purpose

1. These Terms of Reference describe the principal powers and duties of OBSI, the duties of Participating Firms, the scope of OBSI's mandate, and OBSI's process for receiving, investigating and seeking resolution of Complaints about Participating Firms.

The Ombudsman is the decision-maker who heads OBSI. In recognition of the fact that certain Ombudsman powers and duties may be delegated, certain provisions of these Terms of Reference refer to OBSI rather than to the Ombudsman. These provisions should be interpreted as references to OBSI management or staff exercising the powers and performing the duties of the Ombudsman delegated to them.

Definitions

2. In these Terms of Reference:

- (a) the following expressions have the following meanings:

“Board” means the board of directors of OBSI;

“Commercial Judgment” means assessments of risk (such as in lending, taking security or insurance underwriting), and assessments of financial and commercial criteria or of character of a Customer;

“Complainant” means any small business or individual Customer of a Participating Firm or its Representative making a Complaint to OBSI and includes the authorized representative(s) of the Customer, such as a personal representative, guardian, trustee or executor;

“Complaint” means an expression of dissatisfaction made by a Customer

- i) in writing; or
- ii) at the reportable complaint level, where a Participating Firm's regulator has established such a level; or
- iii) where a reportable level in ii) above has not been established, that has been recorded by the Participating Firm

about the provision within Canada of a Financial Service by a Participating Firm to a Customer;

“Customer” means an individual who, or small business that, applied for or received a Financial Service from a Participating Firm;

“Financial Service” means a financial product or service, or advice about a financial product or service;

“GIO” means the General Insurance OmbudService;

“Industry OmbudService” means any of OBSI, the OLHI and the GIO;

“Member” means a person or entity that is a Member of OBSI pursuant to OBSI’s By-Law;

“OBSI” means the Ombudsman for Banking Services and Investments;

“OLHI” means the Ombudservice for Life and Health Insurance;

“Ombudsman” means the individual appointed by the Board to exercise the powers and duties of that office of OBSI or a person to whom the powers of the Ombudsman have been delegated in accordance with Section 4;

“Participating Firm” means a Member that is a domestic or foreign financial institution or other entity that directly or indirectly provides financial products or services to customers in Canada as well as any affiliated entity controlled by such Member, provided that such affiliated entity is itself eligible for membership in OBSI but, for greater certainty, excluding any affiliated entity whose main business is the provision of insurance products or services;

“Regulator” means any applicable regulator and includes a self-regulatory organization;

“Representative” means any individual who dealt with the Complainant or supervised the dealing with the Complainant in the provision of the Financial Service that gave rise to the Complaint, whether the individual is an employee, agent, or third party contractor of the Participating Firm;

“Standards” means any standards adopted by the Board for the handling and resolution of Complaints; and

- (b) references to the provision of Financial Services include, where the context admits, references to their non-provision;
- (c) references to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa; and
- (d) references to sections and paragraphs are to sections and paragraphs of these terms of reference.

Principal Powers and Duties

3. The Ombudsman shall at all times serve as an independent and impartial arbiter of Complaints and shall not act as an advocate for Participating Firms, Complainants or any other person. The Ombudsman shall:
 - (a) act within these Terms of Reference;
 - (b) adhere to the Standards adopted by the Board;
 - (c) receive Complaints;
 - (d) subject to Sections 8 to 16, investigate Complaints with a view to their resolution through appropriate dispute resolution processes;
 - (e) if appropriate in the circumstances, make recommendations to Participating Firms and Complainants to resolve Complaints or reject Complaints on their merits;
 - (f) advise the public about the procedures for making a Complaint to OBSI, a Participating Firm or other appropriate body;
 - (g) assist Complainants with the Complaint process, including helping them articulate their Complaint to a Participating Firm where necessary;
 - (h) not provide general information about a Participating Firm or a Financial Service; and
 - (i) not provide legal, accounting or other professional advice.
4. The Ombudsman may delegate certain of the Ombudsman's powers and duties, including the powers to investigate matters, request information from Complainants and from Participating Firms, make recommendations and reject Complaints.
5. The Ombudsman is responsible for compliance by OBSI with all applicable legislation protecting the privacy of personal information as well as the privacy policies and procedures of OBSI.
6. The Ombudsman shall ensure that all officers, employees, consultants, independent contractors, and agents of OBSI when first hired or retained, and periodically thereafter, acknowledge their understanding and compliance with the Code of Conduct and privacy policies and procedures adopted by the Board.
7. OBSI shall report to a Participating Firm information about any threat to that Participating Firm's staff or property of which OBSI becomes aware in the course of OBSI's activities. In that event, the Participating Firm shall keep the identity of the person who made such report confidential.

OBSI's Mandate

8. OBSI shall perform its mandate in a manner that is fair. OBSI's Fairness Statement outlines how OBSI approaches the issue of fairness in its complaint-handling mandate and is available on OBSI's website¹.
9. OBSI's mandate includes receiving, investigating and making recommendations regarding Complaints in respect of a Participating Firm that are based on the action, or lack thereof, of a Representative of the Participating Firm. Subject to Sections 10 to 16, OBSI may investigate any Complaint received if OBSI is satisfied that:
 - (a) the Complaint is made to OBSI by the Complainant. It is desirable that all persons with an interest in the Complaint make the Complaint. Nevertheless, OBSI may decide that the non-participation of a person with an interest in the Complaint does not prevent OBSI from considering the Complaint, provided that all necessary consents to release confidential information have been obtained;
 - (b) the Participating Firm to which the Complaint relates has previously received a Complaint with respect to the subject matter of the Complaint made to OBSI and:
 - (i) has rejected the Complaint or made an offer for resolution of the Complaint which the Complainant has not accepted; or
 - (ii) 90 calendar days have elapsed since the Complaint was received by the Participating Firm and the Complainant requests a review by OBSI. Nevertheless, OBSI may decide that the Participating Firm has not had sufficient opportunity to address the Complaint and that the Participating Firm's internal process should continue for a reasonable period of time to be established by OBSI in consultation with the Complainant and the Participating Firm;
 - (c) if the Participating Firm has provided to the Complainant a written rejection or offer for resolution with respect to the Complaint, the Complaint has been made to OBSI within 180 calendar days of the receipt in writing by the Complainant of such rejection or offer.

In some instances, OBSI may also receive and investigate a Complaint made more than 180 days after receipt in writing by the Complainant of such rejection or recommendation if OBSI considers it fair to do so. Before doing so, OBSI will consider whether this would be fair to the Participating Firm and whether, and the manner in which, the Participating Firm notified the Complainant of the right to bring the Complaint to OBSI, including whether any written notice provided by the Participating Firm sufficiently specified the 180 calendar day period within which the Complainant has the right to bring the Complaint to OBSI and whether

¹ [URL to be inserted.]

the Participating Firm adhered to any regulatory complaint-handling requirements that may apply;

- (d) the subject matter of the Complaint by the same Complainant (or any one or more of them) was not previously considered by OBSI. Where a Complaint has been previously considered but, in the opinion of OBSI, relevant new information is available, OBSI may request that the Participating Firm reconsider the Complaint in light of the new information. After the Participating Firm reconsiders the Complaint, or if the Participating Firm refuses to reconsider the Complaint, OBSI may reconsider the Complaint;
 - (e) where the subject matter of the Complaint by the same Complainant (or any one or more of them) is the subject of any Complainant-initiated proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body (which, for greater certainty, do not include hearings or proceedings conducted by a regulator), the Complainant has agreed not to proceed with the action pending the completion of OBSI's consideration of the Complaint;
 - (f) OBSI has received appropriate consents concerning the release and treatment of confidential information from all necessary parties and any other agreements or releases that OBSI considers appropriate in the circumstances; and
 - (g) the Complaint is being pursued reasonably by the Complainant and not in a frivolous, vexatious or threatening manner.
10. OBSI shall not investigate or shall cease to investigate Complaints:
- (a) to the extent that their subject matter materially relates to:
 - (i) the general interest rate and risk management policies and practices of a Participating Firm;
 - (ii) the pricing of Financial Services by a Participating Firm;
 - (iii) the scale of fees or charges generally applicable to Financial Services offered to Customers of the Participating Firm in similar circumstances; or
 - (iv) the Commercial Judgment of a Participating Firm.

Nevertheless, OBSI may investigate a Complaint that the process by which the Participating Firm implemented its policies and practices or made a Commercial Judgment was biased, incomplete, not in accordance with the Participating Firm's policies and procedures or was otherwise unfair;

- (b) where the subject matter of the Complaint by the same Complainant (or any one or more of them) has been the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body (which, for greater certainty, do not include hearings or proceedings conducted by

a regulator), and where OBSI has been informed that those proceedings have concluded with a binding decision or finding on the merits of the Complaint. In instances of proceedings initiated by a Participating Firm, where these proceedings have not yet concluded with a binding decision or finding on the merits of the Complaint, OBSI may choose to investigate if the information that is available relating to the Complaint gives reason for OBSI to suspect that the Participating Firm made an error, did not follow its policies and procedures or treated the Complainant unfairly; or

- (c) where OBSI decides that there is a more appropriate place for the Complaint to be dealt with, such as a court of law, a regulatory procedure, an arbitration procedure or any other dispute resolution process.
11. OBSI shall not investigate or shall cease to investigate a Complaint made to a Participating Firm more than six years after the time the Complainant knew or reasonably ought to have known of the problem or issue giving rise to the Complaint. Nevertheless, OBSI is entitled to begin an investigation to determine whether the six year time limit applies.
 12. For Complaints where either the Ombudsman or OBSI has or may reasonably be perceived to have a material interest, including prior involvement in the Complaint or a personal or pecuniary interest:
 - a) The Ombudsman shall not be involved or shall cease to be involved in the investigation or resolution of Complaints the subject matter of which the Ombudsman has or may reasonably be perceived to have a material interest. In those circumstances, the Ombudsman shall notify the Complainant, the Participating Firm and the Chair of the Board of that interest, and shall refer the Complaint to a staff member designated by the Board or the Chair in accordance with Section 1, provided that person does not have a material interest in the subject matter of the Complaint. The Ombudsman thereafter shall not have any further involvement in the investigation or settlement of the Complaint; and
 - b) OBSI shall not investigate or shall cease to investigate Complaints the subject matter of which OBSI has or may reasonably be perceived to have a material interest. In those circumstances, the OBSI shall notify the Complainant, the Participating Firm and the Chair of the Board of that interest, and shall refer the Complaint to an external expert designated by the Board or the Chair, provided that person does not have a material interest in the subject matter of the Complaint. OBSI thereafter shall not have any further involvement in the investigation or settlement of the Complaint.
 13. OBSI may proceed with an investigation of a Complaint that is also being investigated by a regulator having authority over the Participating Firm in respect of which the Complaint is made. Should OBSI defer consideration of or decline to consider the Complaint, it shall notify the Complainant and the Participating Firm of its decision, any

further steps that it may consider taking following the completion of the regulatory investigation, and any other dispute resolution alternatives that may be available to the Complainant.

14. OBSI may investigate a Complaint involving a claim for any monetary amount if the Complaint falls within OBSI's mandate under these Terms of Reference, provided that:
 - (a) OBSI may not make a recommendation that a Participating Firm pay an amount greater than \$350,000 in respect of any single Complaint; and
 - (b) a Complaint shall not be divided into two or more Complaints about the same subject matter for the purpose of avoiding the limitation in Section 14(a). The limit on the amount of OBSI's recommendation does not apply to separate Complaints made by a Complainant about unrelated subject matter.
15. In relation to individual Complaints:
 - (a) The Board shall not:
 - (i) consider a request to hear an appeal or reconsideration of any recommendation made by OBSI, or of the rejection of a Complaint by OBSI;
 - (ii) seek the identity of any Complainant who has made an inquiry or Complaint to OBSI;
 - (iii) seek information relating to any specific inquiry or Complaint made to OBSI;
 - (iv) make any representation relating to an inquiry or a Complaint to a Participating Firm or a Complainant; or
 - (v) act on any information received that reveals the identity of a Complainant or any information described in paragraph (ii) or (iii) above;
 - (b) the Chair of the Board may, in a manner that the Chair deems appropriate, consider any concerns about the general complaint-handling process or the conduct of an employee or officer of OBSI; and
 - (c) the Chair of the Board shall be provided with a copy of any Complaint addressed to a director or the Board or of any Complaint that a Complainant has requested be forwarded to, reviewed by or appealed to the Board. The Chair or his or her designate shall respond to the Complainant on behalf of the Board indicating the limits of the Board's authority.
16. Where, in the opinion of OBSI, the subject matter of a Complaint (in whole or in part) is one in which another Industry OmbudService has expertise and the Complainant and the Participating Firm consent, OBSI may co-operate with that Industry OmbudService in the

investigation of the Complaint and may, if appropriate, make a recommendation jointly with the other Industry OmbudService for the resolution of the Complaint. Similarly, OBSI may co-operate with another Industry OmbudService in the investigation and resolution of a Complaint referred to OBSI by that Industry OmbudService.

Procedure

17. OBSI may determine the procedures for filing a Complaint with OBSI and for investigating Complaints, having regard for these Terms of Reference and the Standards. OBSI shall not be bound by the rules of evidence.

OBSI shall also decide whether a Complaint falls within the mandate of OBSI under these Terms of Reference and, in reaching this decision, may consider representations from the Complainant and from the Participating Firm.

18. Participating Firms shall:
- (a) fully co-operate with and assist OBSI in the investigation of a Complaint accepted by OBSI, including Complaints where the Participating Firm has relevant information about a file and appropriate releases are obtained;
 - (b) provide on request all non-privileged information such as notes, correspondence including emails and facsimiles, account statements, Customer records from internal databases, transaction records, opening agreements, internal policies, internal security and investigation files or reports, and the like relating to the subject matter of the Complaint in its possession or control unless the Participating Firm demonstrates to OBSI's satisfaction that the disclosure of the information would likely place the Participating Firm or a Representative in breach of the law or its duty of confidentiality to a third party where consent to disclose has not been obtained, despite its best endeavour to obtain that consent;
 - (c) where permitted by law, enter into an agreement with OBSI and, if OBSI so requests, the Complainant, in a form determined by OBSI, to suspend the applicable limitation period while OBSI considers a Complaint (which agreement may be a blanket agreement relating to all Complaints or an agreement relating to a particular Complaint); and
 - (d) inform all customers who have made a Complaint of their right to bring their unresolved Complaint to OBSI regardless of whether the Participating Firm views the Complaint as being within its or OBSI's mandate.
19. All Participating Firms are expected to have in place an effective complaint-handling system. Participating Firms that are members of the Investment Industry Regulatory Organization of Canada (IIROC) or the Mutual Fund Dealers Association of Canada (MFDA) are required to follow complaint-handling rules established by IIROC or the MFDA, as applicable, and are not subject to this Section 19. All other Participating Firms are expected to:

- (a) appoint a senior official to act as the final internal decision-maker on unresolved Complaints;
- (b) promote their internal and external complaint-handling processes through websites, brochures, mailings, emails and other means necessary to ensure Customers have ready access to them in the event of a Complaint;
- (c) upon the receipt of a Complaint, bring clearly to the Customer's attention the details of their internal complaint-handling processes and the Customer's external options, including the right to refer unresolved Complaints to OBSI after 90 calendar days; and
- (d) within 90 calendar days of the receipt of a Complaint,
 - (i) provide to the Customer a substantive written response outlining the original Complaint, the Participating Firm's analysis of the Complaint and proposed resolution, if any, and a statement that if the Customer is not satisfied they may take the Complaint to OBSI
 - or
 - (ii) if unable to provide a substantive written response as outlined in (i) above, provide to the Customer a letter estimating when the response will be provided and a statement that the Customer has the option of taking the Complaint to OBSI.

Confidentiality and Disclosure

20. (a) The dispute resolution process is confidential to the parties to the Complaint and OBSI. The discussions and correspondence of the Complainant, the Complainant's representatives, the Participating Firm, the Participating Firm's representatives and OBSI that form part of the dispute resolution process shall not be disclosed or used in any subsequent legal or other proceedings. OBSI's files are confidential and are protected from disclosure for all purposes unless mandated by law or a regulator.
- (b) The Ombudsman and OBSI staff shall not be called to testify in any subsequent legal or other proceedings.
- (c) Notwithstanding any provisions of these Terms of Reference, if a Participating Firm refuses an OBSI recommendation, or does not cooperate in the investigation of an individual Complaint about the Participating Firm, then OBSI, but not the Participating Firm, must disclose any of the aforementioned information as well as OBSI's recommendation, if applicable, to OBSI's Board and the appropriate regulators before such information or OBSI's recommendation is disclosed publicly, as contemplated by Sections 27 and 28. If OBSI discloses such information and/or its recommendation to a regulator and the regulator contacts the Participating Firm to discuss the Complaint or the underlying facts or, if

applicable, the Participating Firm's non-cooperation, the Participating Firm shall, notwithstanding its confidentiality obligations, be permitted to discuss the Complaint and the underlying facts with the regulator. If OBSI discloses such information and/or its recommendation publicly as contemplated by Sections 27 and 28, the Participating Firm shall be permitted to refer publicly to the information publicly disclosed by OBSI;

- (d) Notwithstanding any provisions of these Terms of Reference, OBSI may disclose information to its employees, agents, advisors and consultants in the course of carrying out its activities;
- (e) Subject to Section 7, if any person discloses confidential information to OBSI and requests that it not be disclosed to another person, OBSI shall not disclose the information except with the consent of the person who disclosed the information to OBSI or as required by law or a regulator. If consent is not given and the information is prejudicial to a party to the Complaint, OBSI shall not use that information to make a recommendation adverse to any person to whom the information is denied, except as provided in Section 20 (f); and
- (f) OBSI may take into account a Participating Firm's proprietary systems and security measures of which OBSI has knowledge, even though no disclosure of those systems and measures has been or shall be made to the Complainant.

Recommendations and Rejections of Complaints

- 21. OBSI shall not make a recommendation with respect to, or reject, a Complaint, except in accordance with the provisions of Sections 22 to 27.
- 22. After investigating a Complaint, OBSI shall make a recommendation for compensation or action to the Complainant and the Participating Firm if, in OBSI's opinion, the Complainant has suffered loss, damage or harm because of an act or omission of the Participating Firm or its Representative in the provision of a Financial Service.
- 23. While OBSI is investigating a Complaint, OBSI may seek to promote a resolution of the Complaint by agreement between the Complainant and the Participating Firm. The Participating Firm and the Complainant may also continue to seek to resolve the Complaint themselves. If the Participating Firm and the Complainant do not resolve the Complaint, OBSI shall complete the investigation of the Complaint and either make a recommendation for the resolution of the Complaint or reject the Complaint.
- 24. OBSI's recommendation
 - (a) shall be in writing;
 - (b) shall include a summary of OBSI's reasons;
 - (c) may be made jointly with another Industry OmbudService in the circumstances described in Section 16;

- (d) is not binding on the Participating Firm or the Complainant; and
 - (e) is subject to the monetary limits described in Section 14
25. OBSI shall make a recommendation or reject a Complaint with reference to what is, in OBSI's opinion, fair in all the circumstances to the Complainant and the Participating Firm. In determining what is fair, OBSI shall take into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct applicable to the subject matter of the Complaint and shall otherwise act in accordance with its Fairness Statement. To identify principles of good financial services and business practice, OBSI may, where appropriate, consult within the financial services industry, including with individual firms, associations, regulators, industry entities and consumer groups, or elsewhere. OBSI shall not be bound by any previous recommendation made by OBSI.
26. Subject to Section 14, OBSI shall not recommend compensation that would be greater than an amount that OBSI considers to be appropriate to compensate the Complainant for loss, damage or harm suffered by the Complainant due to acts or omissions of the Participating Firm or its Representative in the provision of a Financial Service.
27. If a Participating Firm does not accept and act on OBSI's recommendation with respect to a Complaint, OBSI shall make public the name of the Participating Firm, the recommendation and the circumstances of the case in a manner considered appropriate by OBSI.

Co-operation

28. If a Participating Firm does not cooperate with OBSI's procedures or in the investigation of an individual Complaint about the Participating Firm OBSI shall make public the name of the Participating Firm and the circumstances of the refusal to cooperate in a manner considered appropriate by OBSI.
29. Where a Participating Firm is obliged by legislation or rules to cooperate, OBSI shall inform the regulating authority of non-cooperation by a Participating Firm.

Reporting

30. OBSI shall prepare and provide an annual report as well as other reports containing statistics, anonymized case studies of Complaints for educational purposes (with Complainant and Participating Firm identifiers removed), other information that the Board considers appropriate to the interests of interested parties and the general public, and information required by law or regulation.

Governance

31. OBSI is governed by its Board of Directors, which is responsible for overseeing OBSI and the Ombudsman and to which the Ombudsman is accountable. The Board oversees

the business and affairs of OBSI, establishes the strategies and objectives to be implemented by management, and monitors standards of performance. It also ensures that OBSI conducts its business and affairs consistent with its mission and objects. To maintain the independence and impartiality of OBSI staff, the Board of Directors does not consider specific Complaints. The final decision concerning Complaints rests with OBSI. There is no appeal to the Board, nor can the Board influence the decisions of OBSI's staff. A majority of the directors are Community Directors and must not occupy specified positions in Participating Firms or government or have occupied such positions in the two years prior to election. A minority of the directors are Industry Directors and are elected from individuals nominated for election in accordance with OBSI's By-law. Information on OBSI's governance structure can be found on OBSI's website.²

Senior Management

32. OBSI has a senior management team headed by the Ombudsman and Chief Executive Officer. Information on OBSI's senior management team can be found on OBSI's website.³

Selection and Oversight of Investigators

33. OBSI's experienced and professional staff are drawn from a variety of fields and disciplines such as financial services, law, accounting, dispute resolution and regulatory compliance. Investigators are grouped into teams, each overseen by senior managers who provide staff oversight. In instances where OBSI believes compensation is warranted but a Participating Firm does not accept and act on OBSI's recommendation, the Complaint shall be escalated to either the Ombudsman or a delegate before OBSI publishes the refusal.

Membership

34. Many types of financial services providers are eligible to be a Member of OBSI. OBSI's current membership includes but is not limited to:
- domestic and foreign owned banks;
 - credit unions;
 - IIROC member firms;
 - MFDA member firms;
 - mutual fund companies;
 - exempt market dealers;

² [URL to be inserted.]

³ [URL to be inserted.]

- portfolio managers;
- scholarship plan dealers; and
- federal trust and loan companies and other deposit-taking institutions.

A full list of Participating Firms can be found on OBSI's website.⁴

Terms and conditions governing membership are set out in OBSI's By-law.

Fees

35. OBSI levies fees on all Participating Firms in accordance with its By-law. Additional information regarding the fees charged to banks that are Members is available on OBSI's website.⁵

Third Party Evaluation

36. OBSI must submit itself to knowledgeable, independent third party evaluations of its operations at least once every five years. The outcomes of these reviews are available on OBSI's website.⁶

Code of Practice

37. OBSI has adopted a Code of Practice representing a commitment to excellence in governance and operations and covering standards in areas of accessibility, transparency, fairness and timeliness. The Code of Practice is available on OBSI's website.⁷

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