Tyler Fleming
Director, Stakeholder Relations and Communication
401 Bay St.
Suite 1505, P.O. Box 5
Toronto Ontario M5H 2Y4 July 17, 2013

Dear Mr. Fleming,

Thank-you for the invitation to respond to the proposed changes to OBSI's Terms of Reference.

With regards to Section 2(a) Definition of Participating Firm
Although OBSI's mandate is to investigate complaints about products and services in the banking sector and those that fall under the jurisdiction of securities regulators, in the past OBSI exercised common sense and flexibility in its investigation and analysis of segregated funds when it formed part of a larger portfolio and a complaint. To propose now to change this to a rigid rule of severing a complaint in the future to two different Ombudsmen is neither sensible nor prudent. One of the reasons as a client I took a complaint to OBSI was because they agreed to look at the file in its entirety. I fear that sending a client to two different Ombudsmen will make an already stressful confusing process more difficult and cumbersome for clients. The potential also for confusion and misunderstanding of professionals assessing a portfolio increases as well. The tale of The Blind Men and the Elephant comes to mind. Each man touched one part of the elephant and came to a definite, yet inaccurate conclusion as to what it was, based on their inability to see the whole. The KYC is supposed to consider the totality of a client's situation; logically it follows that a review should do the same.

Section 2(a) and former Section 11 Systemic Issues
In April 2013 the Department of Finance adopted a new policy direction stating systemic issues identified by external complaint handling bodies (such as OBSI) should be referred to FCAC for investigation. I fail to see why this should impact the investment side if there is no set body in place to pick up the ball. This appears to be reckless and a negligent course of action to consider. You state OBSI Board believes that there should be one policy on systemic issues for the entire organization but unless there is somewhere to refer these issues to, it seems premature to shirk this important responsibility.

Section 9 Firm Responsibility for Actions of their Representatives
Bravo for your firm stance that firms not their representatives are responsible for paying complainants the compensation that OBSI recommends! Unfortunately in the real world where representatives carry their own Errors and Omissions Insurance firms are incented to close their wallets and dig in their heels and clients are then held hostage. Even when a firm knows a wrong or error has occurred this battle is waged, with the client caught in the cross hairs. Someone needs to address this real issue that clients are unfairly being caught up in.

Section 14 (a) Compensation Limit

Personally I see no reason a compensation limit should even be in place. If an error or wrong has been found it should be restored.

Section 18 (c) Tolling Agreement

I agree a blanket Tolling Agreement needs to be put in place in order to put an end to wasted time involved with firms debating the wording or with OBSI staff waiting for consent letters to arrive before they can even begin their investigation. I am disappointed with regards to OBSI position and bias to consult with the industry while making no mention of consulting with investor advocates. I was caught in the loophole of not being able to approach OBSI because the firm had not provided its written substantive response for more than a year. Thankfully that loophole has been closed and clients can escalate their complaint to OBSI after 90 days even without the substantive response. After OBSI having the complaint 9 months (12 months plus 9 months =21 months, legal limitation period in Ontario =24 months) I had to serve my Statement of Claim which made OBSI close their investigation. Two separate lawyers advised me that it was unclear if the dismissed representative was captured under the existing consent letter for the "stopping of the clock" They both advised I could not risk my right to a legal claim, claiming a future judge might decide the firm was responsible for a certain percent but the advisor was also responsible for a certain percent. Could the representative then claim the legal limitation was exceeded? No individual client wants to be the test case to see how this would play out in real time. A client's legal rights must be protected and maintained. This needs to be properly and legally clarified.

Section 20 (c) Escalation Process

The name and shame appears to no longer be a sufficient tool. It is based on the premise that there is respect for the system in place and submitting to the integrity of the Ombudsman for Banking Services and Investments office and role. Clearly we have entered a new era where shame is no longer even experienced by some. OBSI during this period went to extraordinary measures in an attempt to resolve things. Discussions and negotiations cannot go on indefinitely. Time frames need to be in place and respected, then firm and decisive actions needs to happen. Once these times frames have been reached something in writing should be given to the press and released to a client. Hopefully, with that in hand, a small claims or civil action could be pursued and the matter hopefully put to rest. After this occurs a few times it might straighten wayward industry members out so they begin to tow the line and hopefully it acts as an effective deterrent for others. I fear that since our government allowed a few disgruntled banks to opt out of the system that Pandora's Box has been opened. If the government would get serious about protecting the public, then OBSI would be independent of the industry and given some real power.

Stand fast for what is right as you move forward. Permission for public posting is granted.

Respectfully submitted,

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