



By Email

February 8, 2008

Terms of Reference Review  
OBSI  
P.O. Box 896, Station Adelaide  
Toronto, ON  
M5C 2K3

Attn: Peggy Anne Brown, Chair, Board of Directors

Dear Dr. Brown:

**Re: Proposed Amendments – Terms of Reference**

I am writing on behalf of Fidelity Retirement Services Company of Canada Limited (“FRSCo”) to provide comments with respect to the proposed revisions to the Ombudsman for Banking Services and Investments (“OBSI”) Terms of Reference (the “Terms”) published on December 3, 2007.

The goal of improving and making more efficient the service provided by the OBSI around complaint handling is laudable. FRSCo, as a member of the Mutual Fund Dealers Association of Canada (“MFDA”), is supportive of all efforts made to improve the complaint handling process. However, in doing so, it is important to ensure that the standards established by the OBSI for complaint handling are consistent and work in conjunction with the standards and requirements established by regulators such as the MFDA. In our view, some of the proposed changes to the Terms are far reaching and not consistent with MFDA requirements. As such, there is likely to be confusion for the investing public, and the goal of efficient resolution of client complaints will likely not result.

FRSCo’s comments on the proposed Terms are as follows:

OBSI’s Powers and Duties

The OBSI’s role is to be the impartial arbiter of customer complaints between customers and participating firms. Pursuant to section 3 (aa) of the proposed Terms, the OBSI will now have the power to “assist Complainants with the complaint process, including helping them articulate their complaint...”. Such assistance takes the OBSI outside the realm of impartial arbiter and into the realm of consumer advocate. How can the body which helps articulate a customer’s complaint fairly investigate that same complaint?

Pursuant to section 3(d) of the Proposed Terms the OBSI's power changes from "investigate" to "evaluate" with respect to complaints. How this will change the OBSI's powers is not clearly articulated, but it appears again that the role of the OBSI in the complaint process is moving away from that of an impartial arbiter.

### OBSI's Mandate

#### (i) Involvement in Complaint Process

The proposed Terms enable the OBSI to enter into the complaint handling process for a customer after 90 days (change from 180) have elapsed from when the firm received the complaint, even if the firm has not finished its investigation of the issue. A thorough investigation and resolution of a matter often takes longer than 90 days. By involving itself in the process after 90 days, firms may feel forced to resolve the complaint sooner which will undoubtedly lead to less than thorough investigations and resolutions of complaints. Generally, the MFDA will not become involved until after a firm has had an opportunity to investigate and resolve a complaint. The current complaint process established by the MFDA provides that a firm should review, investigate and attempt to resolve a complaint within 180 days. The OBSI's own goal is to resolve complaints within 180 days. The OBSI recognizes in its own internal processes that complaints generally take longer than 90 days to thoroughly investigate and resolve. FRSCo feels strongly that issues of a regulatory nature should first be investigated by a firm's regulator. Further, FRSCo feels that two investigations by two distinct bodies relating to the same complaint at the same time does not create efficiencies in the complaint handling process. Rather, it is likely to create confusion and make managing the process difficult. Although the MFDA does not have the power to award compensation, any conclusions reached in the course of its investigation could be used by the OBSI to assist it in its investigation.

Another concern with respect to the 90 day clock is when does it begin to run? Does it start to run when a client makes a verbal complaint to the firm or is it when the complaint is received in writing? Often a customer will complain verbally without providing much context to the complaint and then months later launch a formal complaint in writing. The OBSI needs to clarify in the proposed Terms what a complaint is and when the clock begins to run.

#### (ii) Systematic Issues

The proposed Terms grant the Ombudsman the power to identify and determine "systematic issues" when dealing with complaints, make a determination that the firm compensate all affected individuals, and make a determination that the firm adopt measures to prevent future occurrences. This type of power is far reaching and could potentially expand to issues of a regulatory nature which are in the purview of the regulators. Powers which enable the OBSI to dictate measures to be adopted by the firm to fix "systematic issues" are the function of a regulator. Any such power should be restricted to issues which are non-regulatory in nature.

(iii) Production of Information

Pursuant to Section 15 of the proposed Terms, a firm will be required, when requested, to produce “all information” to the OBSI. The Terms presently only enable the OBSI to request non-privileged information. The proposed change would enable the OBSI to request the production of privileged information. Essentially a firm will be required to produce information which may be otherwise legally protected. Although the proposed Terms provide a firm with the opportunity to demonstrate to the Ombudsman’s satisfaction that the disclosure would likely place the firm in breach of the law, the Ombudsman has the still gets to make the determination if the information should be disclosed. What if the Ombudsman compels disclosure which is not justified? What recourse does a firm have? Legal questions such as privilege should remain the purview of the courts. The disclosure of information should be limited to non-privileged information.

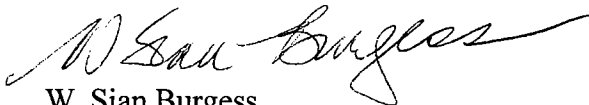
(iii) Failure to Co-operate

If a firm fails to co-operate and does not provide the information requested, or fails in the Ombudsman’s view to co-operate in the investigation of a “systematic issue”, the firm’s name and reason for failing to co-operate will be published. In effect, this mandates compliance regardless of whether the firm is justified in its position regarding the disclosure of information or in its position regarding the Ombudsman’s investigation of the “systematic issue”. Where is the opportunity for a firm to justify its position as it would get in a court of law?

In providing the foregoing comments, FRSCo’s objective is to ensure that the complaint framework is as efficient and fair as possible to both the investor and the firm, and that the complaint handling process established by the OBSI works in conjunction with the process as established by firms’ regulators.

If you have any questions please do not hesitate to contact me at 416-217-7692.

Yours truly,



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Head of Legal and Compliance  
Canada