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**W. James Westlake**  
Group Head  
Canadian Banking

**Royal Bank of Canada**  
200 Bay Street  
Toronto, Ontario M5J 2J5

Tel: (416) 974-8084  
Fax: (416) 974-5500  
E-mail: james.westlake@rbc.com

February 1, 2008

Terms of Reference Review  
Ombudsman for Banking Services and Investments  
P.O. Box 896, Station Adelaide  
Toronto, Ontario  
M5C 2K3

Dear Sirs/Mesdames:

This letter is to provide comment on the Ombudsman for Banking Services and Investments ("OBSI") proposed amendments to its Terms of Reference. RBC appreciates the opportunity to comment on this important issue and would first like to express support for the OBSI's current mandate to independently and impartially arbitrate unresolved disputes between Participating Firms and their customers. In that regard, we have significant concerns about the proposed changes which seem to suggest a regulatory function including, in particular, the power to investigate systemic issues.

In addition to our general concerns, RBC Asset Management Inc., RBC Dominion Securities Inc., RBC Direct Investing Inc, RBC Private Counsel Inc, and Royal Mutual Funds Inc., collectively the firms under RBC Wealth Management, would like to specifically address the impact of the OBSI's revised Terms of Reference on firms that are regulated by the provincial securities commissions and/or Self-regulatory Organizations.

The Canadian investment industry is already highly regulated. The revised Terms of Reference duplicate many of the existing requirements of the regulators and we do not feel it is necessary to have an additional layer of oversight from the OBSI which is not a regulatory body. Also of concern is the overall change in tone which we feel is no longer neutral and tends to favour the Complainant. While we agree that consumer protection is a primary accountability of the OBSI, it appears that the OBSI is now an advocate for the Complainant, not an impartial arbiter of the Complaint itself.

We have detailed our concerns below by setting out and commenting on specific sections of the revised Terms of Reference.

## Purpose 1.

1. **These terms of reference describe the principal powers and duties of the Ombudsman, the duties of Participating Firms, the scope of the Ombudsman’s mandate, and the process of the OBSI for receiving, considering, investigating and seeking a resolution of a Complaint against a Participating Firm.**

We do not agree that the OBSI Terms of Reference should set out the “duties of Participating Firms”. We are concerned that the OBSI has allocated unto itself the oversight of the operations of Participating Firms. The firms under RBC Wealth Management are required to comply with securities industry rules and regulations and view this additional oversight unnecessary and beyond the authority of the OBSI.

**Definitions 2(a): “Financial Service” means a ~~retail~~ financial product or service, or advice about a ~~retail~~ financial product or service;”**

The word “retail” should not be removed from this definition as it more clearly defines the scope of the OBSI’s responsibilities. We would appreciate knowing the reasons or intent for this deletion from the Terms of Reference.

## 3. The Ombudsman’s Principal Powers and Duties

**(d) - The Ombudsman shall: subject to sections 8 to 13, evaluate investigate Complaints with a view to their resolution through appropriate dispute resolution processes;**

It is unclear why the OBSI has removed “investigate” from its Principal Powers and Duties. As an investigation is the basis for the evaluation, this change is not necessary.

**(e) if appropriate in the circumstances, make recommendations to Participating Firms and Complainants to resolve Complaints or reject Complaints on their merits;**

- **advise the public about the procedures for making a-Complaints to the OBSI, a Participating Firm or other appropriate body**

The reference to “a Participating Firm” should not be included in this section. The procedures for handling Complaints are specific to each firm and are subject to change. Firm procedures can only be accurately disclosed by informed individuals at the Participating Firm.

**(aa) assist Complainants with the Complaint process, including helping them articulate their Complaint where necessary, and**

The OBSI’s intended involvement with the Complainant to this extent is confusing. A Complainant’s first point of contact is the Participating Firm and the OBSI should not be involved in this initial process. The offer of such assistance gives the impression that the OBSI does not intend to be neutral and is acting on behalf of the Complainant.

## Ombudsman's Mandate

**8(b) ► This introduces the 90-day time frame for internal complaint-handling, part of the IDA and RRP rule changes, as a consistent standard for all Customers of OBSI participating firms. The effect of this change will be to give Customers who have a complaint with a Participating Firm a choice at the 90-day mark to bring an unresolved complaint to OBSI or continue with the firm's internal process.**

There is no benefit to OBSI's involvement at this point of the Complaint handling process, particularly for Participating Firms that are required to comply with the IDA and RRP rules changes. The OBSI's intervention may stall a Participating Firm's ongoing, internal investigation and further delay the resolution of the Complaint.

In addition, this section conflicts with proposed MFDA Policy 3 with respect to timelines for internal handling of complaints. The MFDA is the self-regulatory organization for mutual fund dealers with delegated authority under the terms of its recognition order in most provinces to regulate mutual fund dealers. MFDA members are provided with a response time of 180 days. OBSI is proposing that it be allowed to intervene halfway through the internal complaint-handling processes of firms regulated by the MFDA.

### 9. The Ombudsman shall not investigate or shall cease to investigate Complaints:

~~(c) made by unrelated Complainants based on different facts that raise the same or similar issues with the object of making a "class action-type" recommendation;~~

We have reservations about the removal of this section from the Ombudsman's Mandate. If the OBSI intends to investigate (or possibly direct) "class action type" complaints, which can be contentious and highly publicized, we would be concerned as any such participation could be considered inappropriate for an impartial arbiter of complaints.

### **NS. The Ombudsman may identify Systemic Issues in the course of dealing with individual complaints, and shall deal with them in the following manner:**

We do not support the proposal for OBSI to address systemic issues. As an arbiter the OBSI's focus should not extend beyond the specific Complaint and its remediation. We remain concerned that the OBSI may be viewed as a consumer advocate and is seeking out additional Complainants through its investigation of systemic issues within Participating Firms and the securities industry. It follows naturally that the OBSI appears to be moving away from the individual complaint resolution process and intends to move to a regulatory function by assuming oversight for the Participating Firms' operations and procedures.

## Duties of Participating Firms

### 15. Participating Firms shall:

**(c) at receipt of a Complaint, bring to the Customers' attention the details of their internal complaint-handling process and inform them they may refer an unresolved Complaint to the Ombudsman after 90 days;**

As stated previously, the 90 days conflicts with proposed MFDA Policy 3 with respect to timelines for internal handling of complaints, which provides for a response time of 180 days.

**(d) fully co-operate with and assist the Ombudsman and his designated staff in the investigation of a Complaint accepted by the Ombudsman, including:**

- i. Complaints where the Participating Firm has relevant information about a file even if the Complainant is the Customer of another firm, where appropriate releases are obtained; or**
- ii. Complaints not directly involving the Participating Firm where the Ombudsman is seeking information on general industry practice or standards;**

It is not clear how this extraneous information would help resolve a Complaint between a specific Complainant and Participating Firm. Also, there are overall privacy and confidentiality concerns related to opening our books, records or operations for any non-regulatory body.

**(e) 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 ~~as soon as is reasonably practical~~ unless the Participating Firm or its Representative demonstrates to the Ombudsman's satisfaction that the disclosure of the information would likely place the Participating Firm or its 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;**

It causes us concern that the term "non-privileged" has been removed from this section. It should not be taken for granted that privileged information will be released to the OBSI without justification and proper consideration by the Participating Firm. We request that this section not be changed.

## **Recommendations and Rejections of Complaints**

**20 After the investigation of a Complaint, the Ombudsman shall make a recommendation for compensation or action to the Complainant and the Participating Firm if, in the opinion of the Ombudsman, the Complainant has suffered loss or inconvenience, ~~damage or harm~~ because of an act or omission of the Participating Firm or its Representative in the provision of a Financial Service.**

We question the value of removing the words "damage or harm" and ask that you define the term "inconvenience" as we feel the ambiguous nature of the word "inconvenience" has the potential to generate false expectations or frivolous actions on the part of the Complainant.

**~~24 recommendation of the Ombudsman should seek to achieve a resolution of a Complaint that is satisfactory to the Complainant and the Participating Firm.~~ Subject to section 11, the Ombudsman shall not recommend compensation that would be greater than an amount that the Ombudsman considers to be**

**appropriate to compensate the Complainant for loss, ~~damage or harm or~~ inconvenience suffered by the Complainant by reason of the acts or omissions of the Participating Firm in the provision of a Financial Service.**

The requirement for OBSI to seek a resolution of a Complaint that is satisfactory to both parties is a direct reflection of its mandate to be an impartial arbiter of the issue and should not be removed.

As stated above, we are unsure of the meaning of an “inconvenience suffered by the Complainant” and also ask for details as to how compensation for an “inconvenience” shall be determined by the OBSI.

We recognize the importance of the OBSI to the investment and banking industries and support its current mandate. There are however, uncertainties as to the basis for the proposed expansion of the current OBSI mandate and the benefits of the revised Terms of Reference. We would appreciate clarification and be pleased to discuss any of the above concerns with you.

Yours truly,

A handwritten signature in cursive script, appearing to read 'Z. White', is positioned below the 'Yours truly,' text.

- c.c. Peggy-Anne Brown, Chair, OBSI
- Adrian Burns, Director, OBSI
- Len G. Flett, Director, OBSI
- Daniel F. Gallivan, Director, OBSI
- James R. Savary, Director, OBSI
- Denise Verrault, Director, OBSI
- Daniel W. Brintnell, Director, OBSI
- Wendy Hannam, Director, OBSI
- Ed Legzdins, Director, OBSI