OMBUDSMAN
for Banking Services and Investments | des Services Bancaires et d'Investissement

December 19, 2013

Approved Amendments to OBSI's Terms of Reference and Board's Response to Stakeholder Comments

OBSI's Terms of Reference embody the dispute-resolution mandate that our organization performs for the banking and investment industries. They expand on the mandate contained in our Bylaw and Articles by describing the principal powers and duties of OBSI, the duties of participating firms, the scope of the mandate, and the process of OBSI for receiving, investigating and seeking resolution of financial services customer complaints.

On June 12, 2013 OBSI issued a proposal for a revised set of Terms of Reference for a 60-day public consultation. The consultation was another step in our governance reform process, initiated in 2011, that saw, among other things, a new corporate Bylaw adopted and significant renewal of the Board of Directors, including the appointment of a new Chair.

This document outlines the changes to OBSI's Terms of Reference approved by our Board of Directors, along with a detailed rationale for the changes and the Board's response to the feedback received. The new Terms of Reference take effect immediately.

The new Terms of Reference are available on OBSI's website. A blacklined copy comparing it to the previous Terms of Reference as well as a blacklined copy comparing it to the consultation draft are also available. A table of stakeholder comments is included in Appendix 'A'.

During the consultation period we received 28 submissions from stakeholders. We thank all stakeholders who took the time and effort to provide feedback on the Terms of Reference proposals.

Approved Amendments to Terms of Reference

Significant changes to OBSI's Terms of Reference that were approved by the Board of Directors following the public consultation period are outlined in this section. Detailed reasoning and a response to stakeholder comments is found later in this document. Additional changes of a housekeeping nature are not listed.

Section 1: "Ombudsman vs. OBSI"

We are clarifying most such references in the Terms of Reference as being "OBSI" rather than "Ombudsman". These provisions should be interpreted as references to OBSI management or staff exercising the powers and performing the duties of the Ombudsman's office that have been delegated to them.

Section 2(a): Definition of Participating Firm (segregated funds issue)

To align with current regulatory expectations of OBSI's jurisdiction, the definition of a "Participating Firm" is being modified to specify that insurance affiliates of OBSI participating firms do not fall under our jurisdiction. As a result, OBSI will refer the investigation and analysis of segregated funds to the Ombudservice for Life and Health Insurance (OLHI), the ombudsman for the life and health insurance sector, which manufactures segregated funds and distributes them through licensed agents.

Section 2(a) and former Section 11: Systemic issues

To align with regulatory requirements on the banking side of OBSI's mandate, and regulatory expectations on the investment side, OBSI will no longer investigate systemic issues. These are issues that are discovered during the investigation of an individual complaint that OBSI believes may have affected or have the potential to affect a large number of consumers at the same firm and caused financial harm. OBSI will continue to report both publicly and to regulators on general trends and themes we see in the complaints we investigate. OBSI will also report to the appropriate regulators any potential systemic issues identified during the review of individual complaints, if so directed by those regulators.

Section 4: Delegation of powers and duties

The Terms of Reference are being changed to reflect the evolution of our organization. This section now more accurately describes how the powers of the office of the Ombudsman are shared throughout OBSI. OBSI's Board of Directors remains responsible for the organization's policies, while the operationalization of those Board policies is a management responsibility. The Terms of Reference are being modified to reflect the fact that the decision to further delegate this latter responsibility within the organization is more of a management decision than one of the Board.

Section 6: Code of Conduct and privacy policies

Staff have always been required to acknowledge their understanding of, and compliance with, the Code of Conduct and privacy policies and procedures upon being hired, and periodically thereafter. The language in the Terms of Reference is being modified to be explicit about this.

Section 7: Threats to participating firm staff or property

OBSI will report to a participating firm any threats to staff or property that come to light during an investigation. The Terms of Reference are being modified to make clear that participating firms must keep confidential the specific identity of the OBSI staff person who made the report from the person who made the threat.

Section 8: Fairness

Above all else, OBSI's mandate is to investigate complaints with a view to resolving them in a manner that is fair to all the parties. This key principle is being emphasized in this new section of the Terms of Reference, with readers directed to the Fairness Statement available on our website.

Section 9: Firm responsibility for actions of their representatives

Participating firms are responsible for the actions of their representatives, including advisors, by virtue of their participating in OBSI's service and the nature of OBSI's jurisdiction. This section is reinforcing the concept that firms, not their representatives, are responsible for paying complainants the compensation that OBSI recommends. Whether the firm then goes back to the representative or their insurer to try to recover any compensation paid is a business decision for the firm to make and is not part of OBSI's process.

Section 9(c): 180-day guideline for escalating complaints

OBSI has an established a 180-day guideline for individuals to bring their complaint to our office following receipt of their firm's final response to them. However, we may accept complaints beyond the 180 days if there are circumstances which make us believe it would be fair to do so. For clarity, some of the most common of these circumstances are being included in the Terms of Reference: whether, and the manner in which, the complainant was notified of the right to bring the complaint to OBSI, including information on the 180 day deadline, and whether any regulatory complaint-handling requirements have been followed in providing this information.

Notwithstanding these specific considerations, there may still be other limited circumstances where OBSI believes it would be fair to accept a complaint beyond 180 days, such as if the complainant had medical or other issues that prevented them from escalating their complaint. OBSI has adopted a generous interpretation of the Terms of Reference so that, if doubt exists as to jurisdiction in a particular case, "the doubt would be resolved in favour of dealing with the complaint rather than rejecting it."

Section 9(e) and 10(b): Regulatory proceedings

Amendments to these sections clarify that OBSI may investigate complaints about matters that are or have been the subject of regulatory hearings. As an example, many self-regulatory disciplinary hearings involve firms or advisors that are the subject of complaints brought to our office. However, the role of those hearings is not to provide compensation to the affected investors. It *is* OBSI's role, however, where the facts of the case warrant it. The two processes are not the same and the existence of a regulatory proceeding, whether in process or already-concluded, should not preclude a complaint from being brought to OBSI, assuming compliance with our time limits.

Section 10(b): Other proceedings related to the subject of a complaint

Additional revisions to Section 10(b) are meant to address circumstances around firm-initiated court proceedings. In certain types of cases (for example, a bank foreclosing on a home), a complainant will contact OBSI in an effort to stop the proceedings. The firm almost always argues that this is merely a delay tactic and OBSI should not open a file. In most instances, we agree. However, there are some cases where there is prima facie evidence that the firm may have made an error, did not follow its policies and procedures or treated the complainant unfairly. OBSI may open an investigation in such instances and this is being specified in the Terms of Reference.

For clarity, however, it is OBSI's existing practice not to open an investigation in such instances without the consent of the firm. This practice will not change with these amendments. It is our experience that, after discussion with OBSI, firms have usually agreed to a case being opened in the rare instances where OBSI believes it would be fair to do so.

Section 11: Self-imposed limitation period

OBSI has established a self-imposed limitation period for new complaints of six years from the time when a complainant knew or reasonably ought to have known of a problem. This new section of the Terms of Reference reflects the adoption of a self-imposed limitation period. OBSI's right to determine for itself whether the period has expired is also being included in this section.

Section 12: Material interest in a complaint

Given the evolution of OBSI from a one-person office, there was a need to distinguish between organizational and individual conflicts of interest. Amendments to this section outline procedures for handling complaints where OBSI, the Ombudsman, or individual investigators have a material interest.

Section 14(a): Compensation limit

OBSI's limit for recommending compensation remains $350,000. OBSI previously required that, in order to consider the complaint, complainants had to agree in advance to release a Participating Firm from liability for any amount greater than $350,000, regardless of the outcome of the our investigation. We have removed this requirement, recognizing that a complaint might begin as a claim for a larger amount, but that our recommendation will be limited to $350,000. If a complainant wishes to seek an award larger than $350,000 that complaint would be more appropriately handled by another forum, such as the courts or arbitration agreed to by the parties.

Section 18(c): Tolling agreement

All participating firms are already required, where permitted by law, to enter into an agreement with the complainant and OBSI to suspend the applicable limitation period (a "tolling agreement") while OBSI considers a complaint. Most banks have also voluntarily signed a separate blanket tolling agreement that automatically suspends the limitation period for all complaints about their banking divisions. Our Terms of Reference are being modified to make clear that all participating firms must sign a blanket tolling agreement if requested by OBSI, and that any tolling agreement be in a form determined by OBSI. OBSI will consult with stakeholders on the language of the blanket tolling agreement in the coming months.

Section 19: SRO complaint-handling rules

This section contains requirements of participating firms when handling complaints. Investment Industry Regulatory Organization of Canada (IIROC) and Mutual Fund Dealers Association of Canada (MFDA) member firms must follow the complaint-handling rules of their respective self-regulatory organization (SRO) and as such are exempt from the requirements of Section 19. The SROs were previously identified in an appendix to the Terms of Reference, but this has been brought into the main body of the document.

Section 19(d): Substantive written responses

The Terms of Reference previously stated that a participating firm should provide a complainant with a substantive response within 90 days of receipt of a complaint. This was to be in a form determined by OBSI and include information on the complainant's right to escalate the complaint to OBSI. The language is being clarified to say that the expectation is a written response.

Section 20(c): Refused recommendations

If a firm refuses an OBSI recommendation to compensate a customer, OBSI must publicize the refusal as well as our investigation's findings under Section 27 of our Terms of Reference. This power, often referred to as "name and shame", is the principal tool that OBSI has to incent firm cooperation, established by industry and regulators at the time of our office's creation. It was meant to serve as a deterrent to ensure that the non-binding nature of OBSI's recommendations would be effective.

Given that we have now entered an environment where OBSI has already announced several compensation refusals and expects that there will be more in the future, it is necessary to clarify in the TORs our process in the event of a refusal.

Section 20(d): Disclosure to third parties

OBSI will sometimes need to involve third parties such as legal counsel while investigating a complaint. This section clarifies that OBSI may disclose information not only to its employees but also agents, advisors and consultants in the course of carrying out its mandate.

Sections 31-37

The FCAC's *Application Guide for External Complaint Bodies* contained several prescriptive regulatory requirements for information that must be contained in the Terms of Reference. This has been added to our Terms of Reference in Sections 31-37, including information on:

- Governance;
- Senior management;
- Selection and oversight of investigators;
- Membership;
- Bank fees;
- Third party evaluation; and
- OBSI's Code of Practice.

Amendments to Consultation Draft

Notable changes to the consultation draft of the Terms of Reference are highlighted in this section. Additional changes to the consultation draft that are of a housekeeping nature are not listed.

Section 2(a): Definition of "Complainant"

The words "small business or individual" have been deleted in this section as the concept is incorporated elsewhere.

Section 2(a): Definition of "Participating Firm"

The wording is being clarified to specify that the definition includes only firm affiliates that provide financial products or services to customers in Canada.

Section 7: Threats to participating firm staff or property

This section is being modified to reflect the original intent, as the proposed language was too broad. As noted above, OBSI will report to a participating firm any threats to staff or property that come to light during an investigation. Participating firms must keep confidential the specific identity of the OBSI staff person who made the report from the person who made the threat, but may provide this information to the relevant authorities, if warranted.

Section 12(b): Material interest in a complaint

The consultation draft proposed a distinction between conflicts of interest of the Ombudsman, and conflicts of interest of the organization. A new subsection is being added to address conflicts of interest involving investigators.

Section 18(d): Participating firm obligation to inform customer of OBSI

We are including the 180-day general timeline for escalating complaints.

Section 20(a): Confidentiality and disclosure

This section is being clarified to say that anything produced for or by OBSI's process shall not be disclosed or used in any *ongoing or* subsequent legal proceeding.

Section 20(c): Refused recommendations

This section clarifies our process for a complaint that is headed toward a refusal to compensate by the firm. Language is being added to clarify the Board's role and to make clear they do not get involved in a consideration of the complaint.

Section 20(d): Disclosure to third parties

OBSI will sometimes need to involve third parties such as legal counsel while investigating a complaint. Additional language is being added to make clear that OBSI will only disclose information to third parties if they are subject to the same confidentiality obligations as OBSI, Participating Firms, and Complainants.

Section 30: Annual Report

This section is being clarified to say that the Annual Report must be publicly disclosed, which has been OBSI's practice.

Section 36: Third party evaluation

It has traditionally been a requirement of OBSI that we undergo rigorous, third party evaluation every three years, performed jointly for the banking and investment sides of our mandate with the oversight of both banking and securities regulators. Department of Finance regulations governing External Complaint Bodies changed the requirement for OBSI to undergo a review to once every five years.

OBSI's Terms of Reference consultation proposal stated that OBSI must submit itself to knowledgeable, independent third party evaluations of its operations *at least* once every five years. OBSI recognized that a more frequent, or different, schedule might be desirable on the investment side of our mandate (hence the use of the wording "at least"). Several stakeholders nonetheless took this to mean reviews would only be once every five years for both the banking and investment sides of our mandate. The wording of the Terms of Reference is being changed to say that reviews will be conducted "according to timelines set out by one or more regulators" to allow for a different schedule on the investment side of the mandate, if required by the appropriate regulator(s)."

Detailed Rationale and Response to Stakeholder Feedback

Section 1: "Ombudsman" vs. "OBSI"

OBSI's original Terms of Reference were created for OBSI's predecessor organization, the Canadian Banking Ombudsman (CBO), back in 1996. When it launched, the CBO consisted of only one person, the Ombudsman. Since then the organization has evolved and grown but the term "Ombudsman" has continued to be used throughout the Terms of Reference even when describing organizational roles and responsibilities.

Given the evolution of the organization, we are clarifying most such references in the Terms of Reference as being "OBSI". These provisions should be interpreted as references to OBSI management or staff exercising the powers and performing the duties of the Ombudsman's office that have been delegated to them.

No comments were received on this section other than from OBSI's Consumer and Investor Advisory Council, which supports the amendments.

Section 2(a): Definition of "Participating Firm" (including segregated funds issue)

OBSI's mandate is limited to investigating complaints about products and services in the banking sector and those that fall under the jurisdiction of securities regulators. This does not include entities whose main business is the provision of insurance products or services. The definition of a "Participating Firm" is being modified to make this clear, as well as incorporate the affiliates concept. The biggest consequence of this change is that OBSI will no longer investigate complaints involving segregated funds, which are an insurance product.

This change was made necessary after several participating firms began to object to OBSI investigating complaints involving segregated funds sold through their insurance affiliates, arguing they were outside of our jurisdiction. To determine regulatory intent, OBSI pursued the matter with securities and insurance regulators at all levels. We were told that, indeed, segregated funds are not regulated by securities regulators and could therefore not be within the scope of any rule that the securities regulators might make with respect to OBSI, necessitating a clarifying change in our Terms of Reference.

The Ombudservice for Life and Health Insurance (OLHI) is the ombudsman for the life and health insurance sector, which manufactures segregated funds and distributes them through licensed insurance agents. Along with OBSI and the General Insurance Ombudservice (GIO), it is also a member of the Financial Services OmbudsNetwork (FSON), the recognized network of complaint-handling services for the financial sector. As such, OBSI will work with OLHI to develop a protocol for the investigation of complaints concerning investment portfolios that contain both securities and segregated funds. Any recommendations for compensation, if warranted, will be made separately by OBSI and OLHI in respect of the part of the portfolio which falls under their respective jurisdiction.

Any complainant with complaints regarding both securities and segregated funds who does not wish to have their complaint investigated by two different ombudservices, or who feels the outcome of the investigations and the proposed resolutions of the complaint are unsatisfactory, retains the right to attempt to resolve the dispute through other means (in the case of court action, subject to statutory limitation periods).

Many investors and investor advocates made submissions that OBSI should continue to investigate segregated funds. We understand and acknowledge their concerns; securities and segregated funds are often recommended to clients by the same advisor, with multiple registrations or licenses under different regulatory regimes, and there will no longer be a single point of access to the dispute-resolution system for complainants with both of these products in their portfolios. However, securities regulators must operate according to the intent of their jurisdiction and OBSI must operate consistently with that.

OBSI's Consumer and Investor Advisory Council commented that customers deserve a single provider of financial consumer ombudservices and dispute resolution, but failing that "sensible structure", OBSI and OLHI should undertake a highly coordinated effort. We will work as required with OLHI to make this new process as seamless as possible, within the regulatory constraints in which we operate.

Separately, several industry associations requested the definition specify that OBSI only investigates complaints about participating firms and their affiliates that provide financial products or services to customers in Canada. This is consistent with OBSI's existing practice and so the Terms of Reference are being changed to reflect this.

Section 2(a) and former Section 11: Systemic issues

OBSI took on the mandate to investigate systemic issues in 2010 at the request of financial regulators, including the federal Department of Finance, in response to a 2007 independent review of our operations. As noted in our original consultation paper, in developing regulations concerning banking dispute resolution the Department of Finance adopted a new policy direction: any potential systemic issues identified in the investigation of an individual complaint must be referred by external complaint-handling bodies such as OBSI to the FCAC, leaving the investigation of the issues to the FCAC. In light of proposals for enhanced oversight of OBSI by securities regulators, we believe that there should be one policy on systemic issues across the entire organization and that the policy be that systemic issues are for us to report to regulators and for regulators to investigate and respond to. As a result, OBSI is removing the systemic issue investigative powers from our Terms of Reference (former Section 11), which also necessitates a change to the definitions section.

We agree with OBSI's Consumer and Investor Advisory Council that there has sometimes been an issue with people's perceptions of what the term "systemic issues" meant in the context of OBSI's mandate. In the regulatory context, the word "systemic" is often associated with risks that threaten the overall health of the financial system. Such issues are quite properly the domain of financial regulators. In the dispute resolution context, however, systemic issues were ones discovered during the investigation of an individual complaint that OBSI believed may have affected a large number of consumers at the same firm and caused them to lose money as a result (for example, a formula error that results in miscalculating mortgage payments). In most of these circumstances the consumers were unaware of the loss.

OBSI's power was to make recommendations that the firm compensate its customers in such instances. The firm was always free to refuse OBSI's recommendation and, unlike in individual complaints, such refusals were not publicly announced on a named basis. Instead, the relevant regulators were informed of the firm's refusal and the issues involved, while OBSI reported publicly on the issues on a no-names basis.

The changes to the Terms of Reference mean that OBSI will no longer investigate or make recommendations for compensation in such instances. However, we will continue to report both publicly and to regulators on general trends and themes we see in the overall complaints we investigate. Such general trends and themes are not "systemic issues" in the strict definition sense, in that we are not making compensation recommendations to individual firms.

OBSI will also report to the appropriate regulators any potential systemic issues identified during the review of individual complaints, if so directed by those regulators.

OBSI's Consumer and Investor Advisory Council and others have suggested that eliminating the power to investigate systemic issues means OBSI may no longer be, or be perceived to be, a true Ombudsman. We respectfully disagree. The power to investigate systemic issues was only granted to OBSI in 2010, and we were an Ombudsman service for many years before that. There are many things that define an Ombudsman, including but not limited to: a fairness mandate rather than a legalistic perspective; reducing the power imbalance between the financial institution and the consumer; providing a service that is as accessible as possible; and, helping the consumer articulate their complaint in terms the firm will understand, when often all they know is that something went wrong. We are proud of our integrity as an Ombudsman service, which will continue even without the ability to investigate systemic issues.

Section 4: Delegation of powers and duties

The Terms of Reference are being changed to reflect the evolution of our organization. This section now more accurately describes how the powers of the office of the Ombudsman are shared throughout OBSI. OBSI's Board of Directors remains responsible for the organization's policies, while the operationalization of those Board policies is a management responsibility. The Terms of Reference are being modified to reflect the fact that the decision to further delegate this latter responsibility within the organization is more of a management decision than one of the Board.

OBSI's Consumer and Investor Advisory Council supported these amendments. An industry association and a participating firm both requested more explanation of the delegation process. The Board is of the view that these are management decisions that will vary depending on the matter and circumstances at hand.

Section 6: Code of Conduct and privacy policies

Staff have always been required to acknowledge their understanding of, and compliance with, the Code of Conduct and privacy policies and procedures upon being hired, and periodically thereafter. The language in the Terms of Reference is being modified to be explicit about this.

The only comments received were from an industry association and OBSI's Consumer and Investor Advisory Council, both of which expressed support for this change.

Section 7: Threats to participating firm staff or property

OBSI will report to a participating firm any threats to staff or property that come to light during an investigation. The Terms of Reference are being modified to make clear that participating firms must

keep confidential the specific identity of the OBSI staff person who made the report from the person who made the threat.

The original proposal was more broadly worded, stating simply that the participating firm must keep the identity of the staff person confidential. Several industry associations recommended the language be changed to allow for the reporting of threats to relevant authorities, which may include identifying the OBSI staff person who passed along the threat. As this was OBSI's intent the language has been modified from the original proposal.

Section 8: Fairness

Above all else, OBSI's mandate is to investigate complaints with a view to resolving them in a manner that is fair to all the parties. This key principle is being emphasized in this new section of the Terms of Reference, with readers directed to the Fairness Statement available on our website.

OBSI's Consumer and Investor Advisory Council supported OBSI's fairness mandate. A participating firm recommended OBSI adopt a legal standard rather than a fairness standard. One industry association suggested fairness should never override contractual agreements. Another association suggested a change to the Fairness Statement itself: in the commitment that OBSI will "treat all parties to a complaint equitably with due respect for differences, circumstances and needs" they recommend replacing the word "equitably" with "equally".

OBSI was created to be a non-legalistic alternative to the courts, and the "fairness mandate" is an inherent feature of Ombudsman schemes. For that reason, it is also appropriate that OBSI treat the parties to a complaint equitably.

Section 9: Firm responsibility for actions of their representatives

Participating firms are responsible for the actions of their representatives, including advisors, by virtue of their participating in OBSI's service and the nature of OBSI's jurisdiction. This section is reinforcing the concept that firms, not their representatives, are responsible for paying complainants the compensation that OBSI recommends. Whether the firm then goes back to the representative or their insurer to try to recover any compensation paid is a business decision for the firm to make and is not part of OBSI's process.

In our consultation paper, we also noted that while OBSI is not a court proceeding, we believe that case law is clear that investment firms are vicariously liable for the actions of their investment advisors in regard to securities-related business.

Investor and investor advocate submissions largely agreed with this section. One lawyer who represents investors argued the issue is complex, however, with participating firms incented to refuse recommendations where the representative is at fault: by refusing an OBSI recommendation, the firm wins either because the investor goes away or because they will also name the representative in a subsequent lawsuit. In addition, he argued, the firm would shed most of its risk to the representative or their Errors and Omissions insurer through the civil litigation process.

We agree that these are real concerns that warrant the attention of financial regulators. OBSI is required by its Terms of Reference to "name and shame" firms that do not comply with our recommendations.

While this has traditionally incented firm cooperation, there are limits to its effectiveness and we have recently seen more firms refuse to pay the compensation to investors recommended by OBSI.

One industry association and participating firm wrote that the concept of firm responsibility for OBSI recommendations goes against the realities of industry including regulation, insurance, vicarious liability, and other business and legal realities.

We disagree with this assessment. It is participating firms that participate in OBSI's service, not individuals. Some firms choose to voluntarily participate, while others are required to participate by financial regulators. Either way, they agree to be bound by OBSI's rules, and OBSI is only mandated to make recommendations against firms, not individuals. We have no authority to do otherwise.

Some industry stakeholders disputed that investment firms are always vicariously liable for the actions of their representatives in regard to securities-related business. OBSI believes the case law is clear but it is even more clear in respect of OBSI's jurisdiction over participating firms. Securities regulators, including both SROs, have indicated that firms should abide by the terms of their membership agreements with OBSI, including its Terms of Reference.

OBSI's Consumer and Investor Advisory Council advises against relying on the legal sense of vicarious liability as we are not a court. We agree with the sentiment, but for the purposes of convincing firms to pay recommended compensation we find that we often need to point to legal precedent in addition to principles of fairness.

Section 9(c): 180-day guideline for escalating complaints

OBSI has an established a 180-day guideline for individuals to bring their complaint to our office following receipt of their firm's final response to them. However, we may accept complaints beyond the 180 days if there are circumstances which make us believe it would be fair to do so. For clarity, some of the most common of these circumstances are being included in the Terms of Reference: whether, and the manner in which, the complainant was notified of the right to bring the complaint to OBSI, including information on the 180 day deadline, and whether any regulatory complaint-handling requirements have been followed in providing this information.

Notwithstanding these specific considerations, there may still be other limited circumstances where OBSI believes it would be fair to accept a complaint beyond 180 days, such as if the complainant had medical or other issues that prevented them from escalating their complaint. We have adopted a generous interpretation of the Terms of Reference so that, if doubt exists as to jurisdiction in a particular case, the doubt would be resolved in favour of dealing with the complaint rather than rejecting it.

An investor advocacy organization argued the section as drafted was worded too narrowly toward complainants. OBSI's Consumer and Investor Advisory Council supported the amendment. One industry association and participating firm suggested a hard maximum twelve-month timeframe. They also asked that OBSI provide its reasons for accepting a complaint beyond 180-days in writing.

OBSI's practice is not changing with these new Terms of Reference. Rather, we have added some clarity that has often been requested by industry as to why we typically accept complaints beyond the 180-day deadline. It is our hope that this will also incent better firm communication of the 180-day deadline to

their clients. We do not believe a maximum 12-month period regardless of the circumstances is warranted, as this would effectively remove the tension on firms to properly communicate the 180-day deadline. Our reasons for accepting a complaint beyond 180-days are outlined in writing.

Section 9(e) and 10(b): Regulatory proceedings

Amendments to these sections clarify that OBSI may investigate complaints about matters that are or have been the subject of regulatory hearings. As an example, many self-regulatory disciplinary hearings involve firms or advisors that are the subject of complaints brought to our office. However, the role of those hearings is not to provide compensation to the affected investors. It *is* OBSI's role, however, where the facts of the case warrant it. The two processes are not the same and the existence of a regulatory proceeding, whether in process or already-concluded, should not preclude a complaint from being brought to OBSI, assuming compliance with our time limits.

Stakeholders did not comment on the issue of concurrent regulatory hearings. Rather, they focussed on complainant-initiated proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body, and the circumstances under which OBSI would open an investigation. One industry association submitted that complainants should *withdraw* from their action rather than just agree to suspend it. Another association argued that complainants have the choice of whether to use the courts or OBSI, and OBSI should not open a file when they've already chosen the courts. Another industry association and a participating firm wrote that in such instances a file should only be opened if the participating firm consents. A lawyer who represents firms submitted that the presence of any litigation or arbitrary proceeding in and of themselves make those proceedings a more appropriate forum.

OBSI's Consumer and Investor Advisory Council commented that the ability of tolling agreements (which OBSI requires) to stop limitation clocks is not free from doubt. It argues that the minimal filing of a Notice of Action in Ontario, or other provincial equivalent, solely to preserve a limitation period should continue to be permitted.

OBSI's process is designed to not limit the rights of complainants to pursue legal action if they do not agree with OBSI's final decision. At the same time, concurrent proceedings are not appropriate. OBSI feels that the section as drafted appropriately balances these two considerations.

Section 10(b): Other proceedings related to the subject of a complaint

Additional revisions to Section 10(b) are meant to address circumstances around firm-initiated court proceedings. In certain types of cases (for example, a bank foreclosing on a home), a complainant will contact OBSI in an effort to stop the proceedings. The firm almost always argues that this is merely a delay tactic and OBSI should not open a file. In most instances, we agree. However, there are some cases where there is prima facie evidence that the firm may have made an error, did not follow its policies and procedures or treated the complainant unfairly. OBSI may open an investigation in such instances and this is being specified in the Terms of Reference.

A couple of industry stakeholders expressed concern with this provision. For clarity, it is OBSI's existing practice to not open an investigation in such instances without the consent of the firm. This practice will not change with these amendments. It is our experience that, after discussion with OBSI, firms have usually agreed to a case being opened in the rare instances where it appears it would be fair to do so.

Section 11: Self-imposed limitation period

OBSI has established a self-imposed limitation period for new complaints of six years from the time when a complainant knew or reasonably ought to have known of a problem. This new section of the Terms of Reference reflects the adoption of the self-imposed limitation period. OBSI's right to determine for ourselves whether the period has expired is also being included in this section.

Several stakeholders commented on the length of the limitation period itself, rather than the drafting of this section of the Terms of Reference. The six-year time frame, and the manner in which it is applied, has already been determined through a previous public consultation on OBSI's Investment Suitability and Loss Assessment Process and was not a matter for this consultation. Rather, we were consulting on the language that incorporates the self-imposed limitation period into the Terms of Reference. However, we note that the six-year period was recommended by OBSI's independent reviewer in 2011 and is consistent with the limitation periods of most securities commissions in Canada.

Section 12: Material interest in a complaint

Given the earlier-noted evolution of OBSI from a one-person office, there was a need to distinguish between organizational and individual conflicts of interest. Amendments to this section outline procedures for handling complaints where OBSI, the Ombudsman, or individual investigators have a material interest.

The original consultation draft only outlined situations where the Ombudsman or the organization had a conflict. It was intended that the Terms of Reference should be read as "the Ombudsman *or their delegate"*, but this wasn't explicit. Several industry associations and one participating firm recommended that an investigator's conflict of interest should be addressed with its own section, which we have added to the final version of the Terms of Reference.

Section 14(a): Compensation limit

OBSI's limit for recommending compensation remains $350,000. OBSI previously required that, in order to consider a complaint where the amount claimed was above $350,000, complainants had to agree in advance to release a Participating Firm from liability for any amount greater than $350,000, regardless of the outcome of the our investigation. We have removed this requirement, recognizing that a complaint might begin as a claim for a larger amount, but that our recommendation will be limited to $350,000. If a complainant wishes to seek an award larger than $350,000 that complaint would be more appropriately handled by another forum, such as the courts or arbitration agreed to by the parties.

Several industry associations submitted that either the provision should remain as is, or that if it is removed, complainants either be required to signed a release or be informed that the firm will likely require one. We are aware that it is standard industry practice to require complainants to sign a release before paying an OBSI recommendation and we inform complainants of this during our process.

On the issue of the compensation limit itself, investor and investor advocate submissions recommended that either the limit be abolished or that it be increased to take account of the effects of inflation since the limit was first introduced. Some noted that claims against Exempt Market Dealers and Portfolio Managers, two registrant categories proposed by the Canadian Securities Administrators (CSA) for mandatory membership in OBSI, tend to be larger. An industry association recommended OBSI's limit be

dropped to $250,000, while a firm said the limit should not be raised unless there is an appeal process. OBSI's Consumer and Investor Advisory Council recommended that OBSI not reopen the question of the maximum amount of compensation at this time, though noted it questioned whether any cap at all was warranted.

OBSI's compensation limit was originally established when our mandate only covered small businesses, whose bank accounts and loan balances tend to be much larger than retail clients. This limit has been maintained throughout the years as it was felt sufficient for both retail banking and investor complaints: very few recommendations or settlements are in fact made for amounts that approach the $350,000 limit. OBSI was intended to be an alternative to the legal system, but at the same time claims for larger amounts are probably best settled in other forums such as the courts or, if applicable, IIROC's arbitration program, which has a limit of $500,000. We believe that OBSI's limit appropriately places us on the spectrum of options available to the clients, with the other options offering increased procedural formality for higher claims.

Section 18(c): Tolling agreement

All participating firms are already required, where permitted by law, to enter into an agreement with the complainant and OBSI to suspend the applicable limitation period (a "tolling agreement") while OBSI considers a complaint. Most banks have also voluntarily signed a separate blanket tolling agreement that automatically suspends the limitation period for all complaints about their banking divisions. Our Terms of Reference are being modified to make clear that all participating firms must sign a blanket tolling agreement if requested by OBSI, and that any tolling agreement be in a form determined by OBSI. OBSI intends to consult with stakeholders on the language of the blanket tolling agreement in the coming months.

Industry associations were supportive of a blanket agreement, provided appropriate consultations take place. One firm and one lawyer who represents participating firms were opposed to a one-size-fits-all approach. OBSI's Consumer and Investor Advisory Council supported the amendment subject to their concern that tolling agreements may not always be enforceable.

There are several reasons for adopting a blanket tolling agreement, most of them related to efficiency. Our consent letter is already a standard template used for all cases. Many firms continue to debate with us over the language of the tolling provisions of the consent letter, expending OBSI staff resources and extending the time it takes to resolve a complaint. In addition, even when there are no attempts to modify the language, firms' legal counsel may take time to review the tolling provisions based on the particular case at hand, also causing OBSI to waste staff resources repeatedly checking on the status of the consent letter. All of this also provides uncertainty to complainants, which blanket tolling agreements would solve.

This move is one of several we will be implementing in the coming months to improve the timeliness and efficiency of our process.

Section 19: SRO complaint-handling rules

This section contains requirements of participating firms when handling complaints. Investment Industry Regulatory Organization of Canada (IIROC) and Mutual Fund Dealers Association of Canada (MFDA) member firms must follow the complaint-handling rules of their respective SRO and as such are exempt

from the requirements of Section 19. The SROs were previously identified in an appendix to the Terms of Reference, but this has been brought into the main body of the document.

OBSI's Consumer and Investor Advisory Council supported the amendment. The banking industry association commented that since federally regulated financial institutions (FRFIs) are subject to the FCAC's Commissioner's Guidance on complaint handling (CG-12), they too should be exempt from the requirements of Section 19.

We note the difference between regulatory guidance and regulatory requirements. Should the advice contained in the Commissioner's Guidance be elevated to the level of regulatory requirement, OBSI is open to making FRFIs exempt from Section 19 along with SRO member firms.

Section 19(d): Substantive written responses

The Terms of Reference previously stated that a participating firm should provide a complainant with a substantive response within 90 days of receipt of a complaint. This was to be in a form determined by OBSI and include information on the complainant's right to escalate the complaint to OBSI. The language is being clarified to say that the expectation is a written response.

OBSI's Consumer and Investor Advisory Council supported the amendment. No other comments were received.

Section 20(c): Refused recommendations

If a firm refuses an OBSI recommendation to compensate a customer, OBSI must publicize the refusal as well as our investigation's findings under Section 27 of our Terms of Reference. This power, often referred to as "name and shame", is the principal tool that OBSI has to incent firm cooperation, established by industry and regulators at the time of our office's creation. It was meant to serve as a deterrent to ensure that the non-binding nature of OBSI's recommendations would be effective.

Given that we have now entered an environment where OBSI has already announced several compensation refusals, it is necessary for the Terms of Reference to clarify our process in the event of a refusal.

Before announcing a compensation refusal publicly, OBSI's management will advise the relevant financial regulator(s) as well as inform the Board that the refusal will be made public. In such an event, if contacted by a regulator the firm is free to discuss the matter with them, sharing any details it wishes. Once OBSI goes public with a refusal the firm may respond publicly as well, referring only to the facts that have been released publicly by OBSI. Except for these scenarios, the confidentiality of the process otherwise remains in place and must be respected by the parties.

Industry associations were generally of the view that firms should be able to refer to any facts they wish once OBSI has made a refusal public, subject to privacy laws. One association termed it as only telling "half the story." We feel this is a misunderstanding of OBSI's role. The "two halves" of the story are those of the complainant and the firm, not OBSI and the firm. OBSI's role is to assess the evidence and come to a conclusion as to what is fair and reasonable to the parties in all the circumstances. When we announce a refusal we are revealing that conclusion. To allow both sides to tell their story would in fact

mean bringing the complainant into the picture, and they too would no doubt have additional facts they would like to share about the firm and the way they handled their complaint.

With regard to discussions with regulators, OBSI is not proposing that firms be limited in what they can share. The limiting provision in our Terms of Reference is intended for other public communications.

Some stakeholders commented on the apparent contradiction in the Terms of Reference when it is stated that the Board does not get involved in individual complaints, yet in the process outlined in Section 20(c) we also state that complaints headed toward refusals to compensate are brought to the Board. We feel it is appropriate that the Board is notified when a refusal is likely to be announced shortly, but agree some readers could be confused by these two provisions. Language is being added to clarify the Board's role, which is strictly to be informed prior to a refusal announcement, and to make clear they do not get involved in a consideration of the complaint.

An industry association and participating firm wrote that participating firms should have the right to review and comment on information proposed for public disclosure. We note that the firm has already had significant time and opportunity to comment on our investigation findings, which form the basis of the public disclosure.

A couple of investor advocacy organizations recommended that securities regulators take disciplinary action against firms that refuse OBSI recommendations, if no legitimate reason for refusing the recommendation is found. Other stakeholders commented on the limits of the "name and shame" power, preferring OBSI be granted binding powers. These are matters for financial regulators to consider and are not within OBSI's control.

Section 20(d): Disclosure to third parties

OBSI will sometimes need to involve third parties such as legal counsel while investigating a complaint. This section clarifies that OBSI may disclose information not only to its employees but also agents, advisors and consultants in the course of carrying out its mandate.

Industry associations suggested adding language to the effect that information only be shared with third parties provided they are subject to the same confidentiality obligations as OBSI. We agree this is necessary and so additional language is being added to make this clear.

Section 30: Annual Report

An investor advocate recommended that it be made explicit that OBSI's Annual Report be publicly disclosed. This is OBSI's practice so we agree to clarify the Terms of Reference.

Section 35: Fees

This is a new section of the Terms of Reference that reflects FCAC requirements that the fees paid by member banks are publicly available and identified via the Terms of Reference.
A participating firm and an industry association recommended that the fees charged to all Participating Firms, not only banks that are members, be made public. Information on bank fees will be made public following OBSI's approval as an External Complaint Body because it is a regulatory requirement; there is no similar requirement for other participating firms, whether banking services (credit unions) or

investment firms. OBSI is not aware of any other comparable Canadian Ombudsman organization that breaks out the fees paid by each of its members. Similarly, nor do other financial sector organizations whose budgets are paid for by levies on firms, such as the securities commissions, SROs, and the FCAC. Finally, given some efforts to open up financial sector dispute resolution to multiple providers, the Board considers this to be competitive and commercially-sensitive information and not appropriate for public release.

Section 36: Third party evaluation

It has traditionally been a requirement of OBSI that we undergo independent third-party evaluation every three years, performed jointly for the banking and investment sides of our mandate with the oversight of both banking and securities regulators.

Department of Finance regulations governing External Complaint Bodies changed the requirement for OBSI to undergo a review to once every five years. This is a prescriptive requirement that OBSI is not able to change.

OBSI's Terms of Reference consultation proposal stated that OBSI must submit itself to independent third-party evaluations *at least* once every five years. This reflected the FCAC requirement that third-party evaluation must be included in the Terms of Reference.

At the same time, OBSI recognized that a more frequent, or different, schedule might be desirable on the investment side of our mandate (hence the use of the wording "at least"). Several stakeholders nonetheless took this to mean reviews would be conducted only once every five years for both the banking and investment sides of our mandate. All stakeholders, both industry and investor, recommended the three-year review cycle be maintained. The wording of the Terms of Reference is being changed to say that reviews will be conducted "according to timelines set out by one or more regulators" to allow for a different schedule on the investment side of the mandate, if required by the appropriate regulator(s)."

Section 37: Code of Practice

This is a new section of the Terms of Reference that makes reference to the Code of Practice available on OBSI's website. It is being introduced to comply with FCAC requirements.

A participating firm and an industry association recommended that OBSI publish all of its decisions in line with the *Transparency* principle of the Code of Practice. The Board does not believe that hiring the necessary staff to do so is justified at this time, given the associated increases in participating firm membership fees that would be required.

Other issues

Some stakeholders recommended that OBSI's Consumer and Investor Advisory Council be provided with a pre-vetting opportunity for any Board consultation, such as on our Terms of Reference, and that its existence be embedded in the Terms of Reference. The Consumer and Investor Advisory Council itself recommended the latter.

OBSI's Consumer and Investor Advisory Council was created to provide the input of consumers and investors into OBSI's governance and operations, complementing the input OBSI regularly receives from industry stakeholders as well as regulatory and government officials. The Board greatly values their counsel on the important issues facing OBSI, and carefully considers their feedback provided as part of consultation processes. Just as with the Ontario Securities Commission's Investor Advisory Panel, which makes public submissions on issues as part of the standard consultation period, the Board believes the appropriate time to receive the Council's input is during the public consultation, not before. The Board also believes the Council has been functioning well and providing valuable feedback to the Board and management in its current form. As a result, change is not necessary at this time.

The Council itself had recommended that only those changes to the Terms of Reference that are housekeeping or necessary for FCAC approval be made at this juncture. We understand that some of the changes to the Terms of Reference are controversial among investor advocates (e.g. systemic issues, segregated funds) but as noted earlier they reflect our understanding of what is consistent with securities regulatory jurisdiction.

One participating firm recommended that the FCAC requirement to annually consult with members be included in the Terms of Reference. An investor advocacy organization recommended that OBSI perform an annual complainant satisfaction survey and publicly disclose the results.

The annual consultation with members is a regulatory requirement that OBSI will meet. However, it was not included by the FCAC as a requirement for the Terms of Reference. Regarding the survey of complainants, OBSI already conducts a satisfaction survey of all complainants, and the results are disclosed in our Annual Report. The Board does not feel any further changes to the Terms of Reference are required to address these issues.

Some investor advocates recommended that timeliness standards be included in the Terms of Reference. OBSI publicly discloses our timeliness standards as well as our performance, and as such the Board does not feel it is necessary to include these in the Terms of Reference.

Several commenters also submitted proposals on other issues that fall outside of the consultation paper or are beyond OBSI's ability to change. Comments not directly related to this consultation have not been included in this summary but have been taken under advisement by OBSI's Board of Directors and management.

APPENDIX 'A': STAKEHOLDER COMMENTS

In response to OBSI's consultation on proposed changes to our Terms of Reference that began June 12, 2013, 28 comment letters were submitted from stakeholders. All comment letters have been posted on OBSI's website.

The following is a reference chart highlighting the issues raised during the comment period.

Proposed Changes	Stakeholder Comments
Section 1: "Ombudsman" vs. "OBSI"	We support the amendments. –OBSI Consumer and Investor Advisory Council
Section 2(a): Definition of "Participating Firm" (Segregated funds issue)	Propose amendment to make clear that the affiliated entity is providing financial products or services to customers in Canada. –CBA FAIR Canada does not support the modification that will result in OBSI referring the investigation and analysis of segregated fund complaints to the Ombudsman for Life and Health Insurance ("OLHI"). FAIR Canada does not believe that it makes sense to review one collective investment fund in isolation from the rest of the consumer's investment portfolio. –FAIR Canada Consumers do not want to have to take the segregated fund aspect of their investment complaint to a different ombudservice – i.e. OLHI. The extra burden this would place on consumers is unwarranted. The use of two dispute resolution processes is more burdensome, time consuming, inefficient, confusing to consumers and creates greater barriers to access to redress than a single process. –FAIR Canada If the fact situation involves an independent insurance agent or a managing general agency, OLHI may not have the mandate to review the complaint as only insurance companies are required to participate in OLHI. Entities or individuals who distribute insurance are not required to participate. For example, if the complaint relates to the insurance agent's activities it will not fall within the scope of OLHI's mandate and the consumer will be left without any form of redress through OLHI and will have to resort to the court system. The second (and recent) independent review of OLHI discusses this serious gap in redress for consumers using OLHI. OBSI does not suffer from this flaw. –FAIR Canada Some CSA members have one provincial regulator that is responsible for pensions, insurance, financial planning, securities, consumer affairs, credit unions and loan and trust companies (for example, in Quebec, New Brunswick and Saskatchewan). The integrated approach to the regulation of consumer financial products and services should be encouraged and enhanced rather than lessened in order to strengthen investor protection. –FAIR Canada A consumer's complaint is about the advice or recommendations that were made by the registered representative and his or her investment firm. OBSI should be given the power to deal with the complaint including that portion of the complaint that involved the advice to purchase a segregated fund. –FAIR Canada

	The OBSI in its unique role uncovers potential systemic issues of concern to unwitting consumers. The OBSI should be required to either directly expose the potential systemic issues to the public or refer the issues to regulators for investigation. The potential harm to existing consumer and potential consumers of like products and/or services as a result of systemic issues is far greater public importance than the interest of a participating firm in avoiding potential liability. The consumer and the industry benefit from bringing attention to and remedying systemic issues. –Harold Geller A Segregated fund is an investment and impacts the portfolio structure to a much greater extent than a straightforward mutual fund. If you have Seg fund holdings and have to exclude them, you will have many cases where it becomes impossible to properly assess the balance, structure and appropriateness of the portfolio without reference to the integrity of the Seg fund allocation. If the OBSI Board want to treat these as individual products with no consideration of the portfolio whole, it is going against the basics of portfolio construction - this is quackery. –Stan Gourley "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 in Canada 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. -IFIC The language should be refined to clarify that in order to be subject to OBSI jurisdiction, the affiliated entity of the Member must also be providing financial products or services to customers in Canada. –IIAC In order to look at things fairly the whole portfolio has to be examined to get an understanding of the financial plan/objectives/risk tolerance and to determine if it is suitable or not. It is illogical to just look at select securities in isolation and not evaluate if the parts come together to make a well-designed portfolio or a fiasco. When a dealer evaluates a complaint, it considers the whole portfolio including the Seg funds. How can they then be split off into two different streams when a complaint is made to OBSI? The investment dealer complaint process is confusing and stressful enough without having investors deal with two Ombuds services. This is just the kind of move that is 180 degrees away from the goals of a single point of contact for retail financial consumers and consistent practices and is inconsistent with the FAIRNESS STATEMENT. Split access is never in the investor's best interests. Our limited research on OHLI in the past raised a few issues Re effectiveness, governance , regulatory oversight , depth of reporting and accountability as an Ombudsman service.–Kenmar Associates 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. –Debra McFadden The OBSI proposals to sever segregated funds from its mandate and the public commentary relating to the functional equivalence of mutual funds and segregated funds point to a need for further coordinated discussion among insurance, banking and securities regulators around complaints and disputes related to regarding segregated funds. –OBSI Consumer and Investor Advisory Council To the average investor the mutual fund prospectus looks and reads identically to the segregated fund's contract of life insurance. Both now use an identical "Fund Facts" document at point of sale. The insurers' website disclosure around segregated funds is couched in the language of investment. In many cases the customer's human contact is a dually licensed salesperson, or an employee of a conglomerate that markets both investments. In our view, customers who respond to these messages deserve a single provider of financial consumer ombudservices and dispute resolution. Failing that sensible structure, at least a highly co-coordinated effort between OBSI and the Ombudservice for Life and Health Insurance (OLHI). –OBSI Consumer and Investor Advisory Council From the investors' perspective the ombudservice should be portfolio based, in line with consumers' reasonable expectations, not based on subtle legal and regulatory distinctions that consumers do not appreciate. Particularly on the securities side, it is trite to note the complexity of issues that fuel disputes as compared to the general financial literacy level of retail investors. To add further complexity to disputes or complaints through arcane distinctions does not serve the interests of consumers. –OBSI Consumer and Investor Advisory Council It is a daunting task to legally challenge a large financial institution that has wronged you. To now ask individual investors to navigate separate Ombudsman offices is a hurdle many will not jump. The objectives of a portfolio may be met by many products falling under different regulatory regimes. Bad advice for the portfolio as a whole is best met by one Ombudsman. A better solution to this problem would be to have the OBSI and the Ombudservice for Life and Health Insurance (OLHI) liaise with one office taking the lead, depending on the portfolio and the nature of the complaint. –Portfolio Audit OBSI must continue to act as a one-stop shop including complaints related to segregated funds. Not only would the proposed change increase the hurdle that mistreated seniors would have to jump over, but it will also open the door to regulatory arbitrage by 'advisors' who are already threatening to switch from mutual to segregated funds. – RetirementAction Advocis has said "Even though insurance and securities products are offered to clients at one uniform point of sale, in most provinces, they are regulated by different entities. Consumers are generally unaware of this distinction and do not think of their investments as being in different "silos"". Advocis' observations seem valid. It would be potentially unfair to firms, where advisors are developing "Comprehensive plans", where as part of that plan a segregated fund may be suitable, but viewed alone may be considered unsuitable. It would be best for OBSI to retain primary responsibility for the oversight of complaints involving segregated products and to work with OLHI jointly to resolve any complaint. –Robertson-Devir

	Do not make investors deal with OLHI for segregated funds-work out a protocol with OBSI handling the overall complaint. –Arthur Ross Requiring a complainant to bring insurance products to another Ombuds service is problematical. By the time an investor brings a complaint to OBSI he /she has suffered through a nasty dealer complaint handling process. Many are frustrated and angry. To now be told he/she must deal with two Ombuds services is enough to drive them over the bend. Just as importantly, this wacky approach is defective in theory since portfolios cannot be designed one way for investment purposes and evaluated another way for loss calculation purposes. This is irresponsible and unfair. The CSA, in conjunction with other regulators, should establish, a collaborative protocol between Ombuds services for mixed asset portfolios to avoid this situation. –William Schalle SIPA does not support the process of having complainants referred to OLHI for insurance products like Segregated funds. We believe that single point entry to a dispute resolution service is in the best interests of financial consumers. Splitting the complaint resolution process adds an unnecessary burden to already frustrated complainants especially retirees and seniors and facilitates regulatory arbitrage. We recommend that OBSI work out a collaboration Agreement with OLHI that would allow OBSI to handle the complaint in an integrated manner. –SIPA Separating out the analysis of segregated funds from a "strategy", account or portfolio of assets, would not be in the advisor's, the investor's or the public's best interests. Separating out the segregated fund from a wider portfolio for assessment by two separate Ombudsman, operating under possibly two different sets of standards, is nonsensical. It is virtually impossible to objectively assess the validity of the advice concerning the whole when a large or significant part of that whole is excluded. –Andrew Teasdale As a retiree who has experienced a dealer's frustrating and adversarial complaint process, I definitely would not be willing to then have to split my complaint between two Ombudsman services. Do not make investors deal with OLHI for segregated funds - It is the advice that is being complained about - who regulates the product is irrelevant. – Peter Whitehouse
Section 2(a) and former Section 11: Systemic issues	We do not agree with OBSI's view that this limitation on the banking side, "…eliminates OBSI's ability to investigate systemic issues on the investment side of our mandate as well."9 OBSI explains that its Board believes that there should be one policy on systemic issues for the entire organization. It does not provide an explanation as to why it reached this decision. FAIR Canada suggests that it could continue to investigate systemic issues that may potentially arise on the investment side. –FAIR Canada FAIR Canada, therefore, recommends that the revised Terms of Reference explicitly specify that OBSI has an obligation to identify and report any potential systemic issue to the appropriate regulator(s), both in respect of banking-related complaints to the FCAC and investment-related complaints to the appropriate provincial securities regulators. –FAIR Canada FAIR Canada further recommends that OBSI set out in its Annual Review the number of potential systemic issues it has identified in the previous year, both in respect of securities and banking complaints, and provide a generic description of the type of issues identified. We do not suggest that OBSI should identify the firms involved, but simply indicate the number of potential systemic issues it reported. –FAIR Canada

	FAIR Canada also recommends that the revised Terms of Reference specify an obligation for OBSI to refer matters which may involve regulatory, criminal, fraudulent or other wrongdoing to the appropriate regulatory or other law enforcement agencies. –FAIR Canada While these issues will be referred to FCAC it is unclear why this should trigger an elimination of any review on the part of OBSI or how FCAC will report findings to entities such as OBSI. –Federation of Mutual Fund Dealers I do not agree that OBSI should vacate this part of its public policy mission. In response to the 2007 Navigator report, the Board made changes to the Terms of Reference which were hailed by investors. The new Board appears to want to unwind the progress made in order to be consistent with rules that favour banks devised by the Department of Finance. I would rather see the Board have OBSI give up on dealing with banking disputes than accept such a backward step for investments. Trying to match up with FCAC specs for banking complaints is a loser's game. It's like trying to put a square peg into a round hole. Why not just focus on investments where the real action is? –Stan Gourley Support the proposed elimination of OBSI's ability to investigate systemic issues in respect of investment investigations. This function properly resides with the relevant regulators. –IIAC The comment that "OBSI's board believes that there should be one policy on systemic issues for the entire organization, and the decision by the Department of Finance has necessitated this policy change" goes against every recommendation by SIPA, FAIR Canada, Kenmar Associates , the OSC Investor Advisory Panel , and PIAC as well as recommendations from a Third party Reviewer. This is exactly the race to the bottom feared by investor advocates when Finance allowed Banks to choose their own Dispute Resolution Body. As for linking changes to Banking dispute resolution, we disagree with OBSI being harmonized with them. –Kenmar Associates Our banks and their securities dealers who now control 65% of Canada's mutual fund marketplace with their in-house proprietary funds know that OBSI has been identifying significant systemic abuses that can cost them tens upon tens of centi-millions in damages versus the probability of the class action law suits being certified and cents on the dollar deflated damages eventually being awarded years later. –Joe Killoran 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. –Debra McFadden There is a significant lack of guidance in the federal regulations and FCAC material as to what the phrase "systemic risk" encompasses, nor is there any clear direction as to what aspects of OBSI's mandate as an ombudservice would prompt the FCAC to reject its application for approval as an External Complaint Body (ECB) on this score. We recommend that, rather than anticipate the FCAC's response, that OBSI restricts its mandate only to the extent necessary to conform to a reasonable public policy interpretation of which "systemic" banking issues must be referred to the FCAC for investigation. The current proposal goes too far. –OBSI Consumer and Investor Advisory Council

	It is not clear therefore that the FCAC would be entitled to refuse approval of OBSI as an ECB so long as OBSI's terms of reference comply with s. 7 of the regulations, i.e. include a provision for referring some "systemic issues" to the FCAC and undertake to deal with banking complaints in manner that only affects the parties. This would not seem to preclude OBSI dealing with an issue that affected multiple parties on a collective basis. – OBSI Consumer and Investor Advisory Council There was considerable public commentary on the subject, but there does not appear to be a common understanding of what the phrase "systemic issues" used in the federal regulations encompasses. –OBSI Consumer and Investor Advisory Council There is little federal analysis of the effect and extent of the carve-out on OBSI in particular or on ECBs in general. We have yet to see a clear rationale for removing it for banking complaints while purporting to maintain an ombudservice for financial consumers. From a consumer perspective, this is a fundamental flaw in the federal regime and in OBSI's response in the ToR to the FCAC approval criteria. If a conforming change is made to the OBSI ToR for complaints against securities firms, there is no concomitant regime for responding to OBSI referrals. It is another matter that calls for discussion beyond the limits of OBSI and the FCAC ECB approval process. –OBSI Consumer and Investor Advisory Council We do not dispute that issues OBSI identifies which are "systemic" in the sense they are properly the concern of financial sector regulators or government officials should be referred outside of OBSI. –OBSI Consumer and Investor Advisory Council In our view, OBSI's terms of reference can be adjusted to meet the FCAC requirements by replacing the term "systemic issues" with "collective issues" for all complaints, referring specifically to s. 7 and making any conforming drafting changes. –OBSI Consumer and Investor Advisory Council There is no formal national means to deal with systemic issues raised by securities complaints, so it is premature to make conforming changes that would erode OBSI's role as an ombudsman. –OBSI Consumer and Investor Advisory Council I find this to be the most slippery of changes. You are proposing to off load your responsibilities to identify systemic investment issues and set to resolve these issues because of a change in banking complaint handling. Considering that banking issues as measured by dollars are minor in comparison to investment issues, I simply cannot comprehend your actions to "eliminate(s) OBSI's ability to investigate systemic issues on the investment side of our mandate as well". No explanation is offered as to why you must cease to protect individual investors in this manner. Given my preamble, it should be quite clear that I view this shirking of your responsibility as completely contrary to the best interest of the investing public and strongly urge the OBSI to stand up for investors by continuing to identify systemic issues that hurt the investing public. –Portfolio Audit Any changes to OBSI's governing documents should apply consistently to all participating firms, including securities registrants. On this note, we support OBSI's adoption of a uniform policy on the removal of its powers to investigate systemic issues. –RBC OBSI has a unique perspective of financial complaints and must continue to investigate systemic issues that it comes across. – RetirementAction

	The proposal to discontinue the investigation of systemic issues on the investment side of OBSI's mandate should be reconsidered. This information could be useful to regulators, firms and investors. At a minimum, OBSI should retain the same responsibility it is proposing to retain on the banking side, which is to identify and report systemic issues. –Robertson-Devir Retain the obligation to investigate systemic issues. It is a major factor in my continuing support of OBSI –Arthur Ross The Directors of OBSI are backtracking on the core OBSI public policy question of "Systemic issues". By backtracking, the Board is effectively saying OBSI should be willfully blind and knowingly silent on what its complaint statistics reveal. A case by case approach leaves non-complainants with identical complaints exposed to abuse and financial loss. How can this backtracking be good for investor protection? We should be clear-OBSI, while it is not a regulator, is an integral part of the regulatory system. –William Schalle Retention of the Systemic issues identification obligation, a critical feature for a 21st century Ombuds service. On systemic issues, the terms now have a provision under which OBSI will be following up on potential systemic issues that arise out of individual complaint files by contacting the firm and asking it to undertake an investigation. Should a systemic issue be found, OBSI will offer to work with the firm to arrange compensation for affected clients and to fix the problem. If there is disagreement between OBSI and the firm on the nature of problem, or the remedy, the file will be referred to the appropriate regulator for review. What is so wrong with this that it should be amended into neverland? –SIPA The ability of the Ombudsman to investigate systemic issues is of critical importance where a) the opportunity for redress through the regulators is limited or non-existent, b) where the structures and procedures for dealing with systemic issues of the type likely to be addressed by the Ombudsman, in a timely manner, may be undeveloped or non-existent, and c) where it is reasonable that there are material risks to investors. –Andrew Teasdale Absolutely retain the obligation to investigate systemic issues. OBSI has an overview of financial consumer issues that no single regulator has. Data mining this precious data can help improve investor protection and spot trends early. –Peter Whitehouse
Section 4: Delegation of powers and duties	The provision should clarify the procedures for the delegation of the Ombudsman's powers and duties. Based on the proposed amendments, it appears that the Board or the Chair of the Board will not be involved in the delegation process and that the Ombudsman may be able to select its delegate. –IFIC We support the amendment. –OBSI Consumer and Investor Advisory Council We suggest that the procedures for the delegation of the Ombudsman's powers and duties under section 4 be clearly outlined, including identifying the person(s) who would nominate and select the Ombudsman's delegate and the considerations involved. –RBC
Section 6: Code of Conduct and privacy policies	The IIAC supports the inclusion of the Code of Conduct and privacy policies in the Terms of Reference. We believe this reinforces the importance of such policies and provides a form of public accountability in respect of compliance with the Code and policies. –IIAC We support the amendment. –OBSI Consumer and Investor Advisory Council

Section 7: Threats to participating firm staff or property	We agree that a Participating Firm should not reveal to the client the identity of the person who conveyed the information, but a broad requirement could preclude the Firm from providing such information to authorities who may need to investigate the threat. An exception should be added for lawful authorities. –CBA Consideration should also be given to adding the ability for OBSI to discontinue reviewing a complaint if threats are made about either the Firm or OBSI. –CBA When OBSI becomes aware of any threat to a Participating Firm's staff or property and reports such threats to the Participating Firm, we suggest that the Participating Firm have the option to report such information to the appropriate authorities. –IFIC The provision requiring OBSI to report information about threats to the firm's staff or property is appropriate to allow firms to take steps to ensure the safety of their staff and property. However, the requirement that the firm keep the identity of the person who made the report confidential should be subject to exceptions, such as where there is legal or regulatory action compelling the disclosure of the name of such person or circumstances where such disclosure is required to ensure that people or assets are protected. In addition, in a case where such threats have been made, OBSI should have the discretion to report the case to law enforcement authorities, and to discontinue the review of the case. –IIAC We're not sure why this is in the Terms of Reference. –Kenmar Associates We support the amendment. –OBSI Consumer and Investor Advisory Council
Section 8: Fairness	We support the concept of fairness where the interests of all parties are balanced. We need to ensure, however, that this does not override contractual agreements entered into by both parties. –CBA We seek clarification in respect of the provision in the Fairness Statement that OBSI will "Treat all parties to a complaint *equitably* with due respect for differences circumstances and needs." It would be helpful if examples were provided to illustrate what sort of differences, circumstances and needs would be considered in making an assessment. We question whether these factors apply solely to the complainant, or if the size of the firm in question would be factored into differences and circumstances in making an assessment of fairness. We are concerned that the use of this provision may result inconsistency and unpredictability in OBSI recommendations. We are also concerned that the word "equitably" as opposed to "equally" may also introduce increased uncertainty as to what can be expected in similar fact situations. –IIAC We support OBSI's fairness mandate being articulated in the ToR. More consideration should be given to the significance of OBSI's overriding mandate as an Ombudservice to apply fairness in resolving disputes and complaints, as well as process followed on a file, in particular since "fairness" is not listed as one of the published ECB decision-making criteria that meet with FCAC approval. –OBSI Consumer and Investor Advisory Council Complaints should be evaluated using the legal standard applied by the courts regarding whether liability exists and, if so, in what amount. The legal standard is appropriate because any liability is created by the legal relationship between the parties. It is more objective because court decisions are subject to review and refinement upon appeal to superior levels of the courts. It will be more consistent because it applies both to complaints submitted to OBSI as well as to complaints that are litigated. –Portfolio Strategies

Section 9: Firm responsibility for actions of their representatives	The OBSI is "reinforcing the concept that firms, not their representatives, are responsible for paying complainants the compensation that OBSI recommends." Not only does this concept not reflect the realities of the industry including regulation, insurance, vicarious liability etc., there are business and legal realities that the OBSI should not ignore; to do so may in fact disadvantage the investing public they are providing a service to. More consideration should be given to this section. –Federation of Mutual Fund Dealers OBSI claims that the case law surrounding the theory of vicarious liability is clear. We respectfully disagree with this assessment and encourage OBSI to recognize that, although recent years have witnessed a dramatic broadening of the scope of vicarious liability principles with respect to the investment industry, the waters in this area of the law are still quite murky. Deciding whether or not to impose vicarious liability on a participating firm is a highly fact-specific exercise that depends to a great degree on the strength of the causal link between the advisor and the wrongful conduct in question. To this end, in certain situations, OBSI might be better served to leave liability attribution to the courts, which will take a more holistic view of the issues presented and contemplate the various nuances of the fact scenario. –FundEX For OBSI to take the stance that participating firms, rather than advisors, are solely accountable to investors for their conduct appears to be inconsistent with our current regulatory landscape. In a climate where regulatory bodies are seeking to hold advisors more accountable for their actions, OBSI's mandate would result in the misapplication of responsibility exclusively to the firm, resulting in little deterrent to advisors in preventing wrongful conduct. –FundEX This issue is complex. Based on the present rules, participating firms are incented to refuse OBSI recommendations where the representative is primarily negligent or fraudulent. In refusing the OBSI recommendation the participating firm either wins because the consumer goes away or because the consumer will also name the representative in subsequent lawsuits. Through the litigation process the firm would shed most of its risk to the representative or the representative's E & O insurer. Through the OBSI process, the participating firm can only commence an action as against the representative and then assert that the OBSI resolution was reasonable – few firms would bother as the outcome of this litigation is assured high legal costs and an uncertain court ruling. The end result is that the present situation and proposal effectively gives the so-called "participating firms" another reason for not participating, that is, to ignore the OBSI. This is a serious dynamic which further erodes the credibility and viability of the present OBSI. This issue calls out for public consultation beyond the "usual industry suspects" who have insider or preferred advocacy relationships with the OBSI. –Harold Geller We seek clarification as to the scope of the activities for which firms would be responsible for the actions of their representatives. While it is clear that firms would be responsible for actions of their investment advisors in regard to securities related business, it is unclear if this responsibility extends to "Outside Business Activities" undertaken by the representative. It should be made clear that firms are not responsible for activities that would not be undertaken in the course of the representatives' employment with the firm. – IIAC This section is most appropriate. It reinforces the principle that dealers, not their representatives, are responsible for paying complainants the compensation that OBSI recommends. Participating firms are responsible for the actions of their representatives, including dealer Representatives /agents, by virtue of their participating in OBSI's service and the nature of OBSI's jurisdiction. This is entirely consistent with the views of the

	advocacy community. –Kenmar Associates 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. –Debra McFadden This should not be treated as a question of employer or principal vicarious liability in the legal sense. The Ombudsman is not a court. –OBSI Consumer and Investor Advisory Council The Consultation Paper refers to the practice of firms extracting OBSI-recommended compensation from the responsible employee. This is not conducive to a speedy resolution of the complaint and thus not in the interests of consumers. The responsible representative has a significant incentive to dismiss the complaint and obstruct the investigation process. While it is a firm's right to discipline its employee, this should not take a form that disadvantages the complainants. –OBSI Consumer and Investor Advisory Council I applaud this. My review of legal results confirm that this is consistent with judgements being rendered in courts. –Portfolio Audit While a Participating Firm may often, even typically, have vicarious liability for the actions of its representatives, PSC believes that the TOR should recognize that vicarious liability will not exist 100% of the time to allow for the instances where the courts would find that it does not exist. For the process to be genuinely fair to all parties involved, PSC also believes that OBSI's process should not create unnecessary obstacles to the recovery from representatives of any amounts owed to clients, which will also need to allow for recovery from the representatives' errors and omissions insurance where applicable. Section 9 should be reconsidered in both respects. –Portfolio Strategies Not only does this concept not reflect the realities of the industry including regulation, insurance, vicarious liability, etc., there are business and legal realities that the OBSI should not ignore. –Queensbury Strategies
Section 9(c): 180-day guideline for escalating complaints	The section may read better if the initial word "if" is removed. –CBA Recommend that it be made explicit that OBSI reserves the right to accept a complaint beyond 180 days "if it is fair to do so, in all of the circumstances" and then specify that this includes the manner in which the complainant was notified of the right to bring the complaint to OBSI. The language appears to be broadly worded in terms of fairness to the Participating Firm and narrowly worded in respect of the consumer. –FAIR Canada Where OBSI has received and investigated a complaint made more than 180 days after the Participating Firm provided a written rejection or offer for resolution to the complainant, we suggest OBSI establish a maximum 12 month investigation period that would apply in such circumstances and provide Participating Firm with written reasons for its decision to investigate the complaint in such circumstances. –IFIC It should be made clear that, except where the firm has not provided notification to the complainants of their right to bring a complaint to OBSI, it is only under rare and

	extenuating circumstances that OBSI would l receive and investigate a complaint after 180 days from the rejection or proposed resolution by a firm. In such cases, OBSI should provide the Participating Firms with reasons, in writing, for its decision to investigate the complaint. –IIAC We support the amendment. –OBSI Consumer and Investor Advisory Council Deviation from the requirement should only be made in exceptional circumstances and subject to a timeframe of 12-months following the receipt of final response. –RBC Circumstances that OBSI would consider should be clearly outlined in the ToR, such as where the Participating Firm has not notified the complainant of the 180-day requirement in writing or if the complainant experienced medical or other extenuating personal issues. Where OBSI decides to accept and investigate a complaint in such circumstances, the Participating Firms should be provided with written reasons for the decision. –RBC
Section 9(e) and 10(b): Other proceedings related to the subject of a complaint	We suggest that the last phrase in 9(e) be amended to read "….a regulator), <u>the Complainant has withdrawn from the action</u>." If that course of action is not turning out the way they wanted, they should not be able to suspend that action to see if the other would be more favourable. Moreover, there is a very real potential for the duplicate and parallel process to end with conflicting or at least inconsistent results. –CBA We strongly disagree that OBSI should become involved in a Complaint that is already before the courts (section 10(b)), whether initiated by the Customer of the Participating Firm. If the Participating Firm made an error, did not follow its policies and procedures or treated the Complainant unfairly, a Court will be able to determine that and make a decision. A concurrent review by OBSI could be disruptive and may even be prejudicial. –CBA We suggest that section 10(b) be expanded to provide that OBSI shall not investigate or shall cease to investigate complaints where the subject matter of the complaint by the same complainant has been the subject of a settlement agreement entered into between the Participant Firm and the complainant. –IFIC Where the subject matter of a complaint by the same complainant has been or is the subject of any proceedings (in or before any court of law, tribunal or arbitrator, any other independent dispute resolution body) or a settlement agreement between the Participating Firm and complainant that have not concluded with a binding decision or finding on the merits of the complaint, we strongly believe that OBSI should not be entitled to investigate such complaint unless the Participating Firm first consents. –IFIC We believe it is inappropriate for OBSI to open a file on a complaint where litigation has been initiated by either the complainant or the firm, as it could lead to duplicative or inconsistent decisions. A complainant has a choice whether to use the courts or the OBSI for dispute resolution. –IIAC Where the courts have made a judicial determination, the matter should be considered res judicata and the same fact pattern should not then later be investigated by the OBSI. –IIAC We support the amendment. We note that the ability of tolling agreements to stop limitation clocks running is not free from doubt. –OBSI Consumer and Investor Advisory Council

	Where the subject matter of the complaint by the same complainant is the subject of complainant-initiated proceedings in or before any court of law, tribunal or arbitrator or any other independent dispute resolution body, the OBSI should, for the purposes of clarity, consistency and fairness to all, be unwilling to accept the complaint. By way of example, a civil proceeding may well have proceeded to examinations for discovery whereby sworn evidence has been produced by all parties in turn subject to an implied undertaking and not producible to the OBSI. The complainant agreeing to "hold" that litigation does not resolve the complications that would arise. –Laura Paglia OBSI's non-involvement should not be limited to circumstances where a binding decision on the merits has been made. Rather the presence of other litigation or arbitrary proceedings in and of themselves render those proceedings a more appropriate forum. –Laura Paglia Maintaining multiple ongoing proceedings in order to resolve the same complaint negatively impacts the efficiency and effectiveness of the dispute resolution process, thus appears contrary to the Regulations which require an external complaints body to perform their activities in an effective and cooperative manner. Consequently, in support of IFIC's recommendation, OBSI should not investigate a complaint that is part of an ongoing legal proceeding or arbitration without written consent of both Participating Firm and complainant. Likewise, OBSI should cease to be involved in a complaint where a settlement agreement is being negotiated or has been reached between the Participating Firm and the complainant for the complaint. –RBC
Section 11: Self-imposed limitation period	We appreciate the increased certainty of having a stated time limit but have two concerns. First, given that most commercial retention policies require organizations to keep records for no longer than seven years, we are concerned the six-year time frame may results in banks not having the necessary records to properly investigate a Complaint. A shorter time frame like the two-year limitation period in effect in several provinces would be more appropriate. Second, the wording does not make it clear when the period applies. The starting point is when the Complainant first discovers the problem, but it is not clear whether the Complainant must bring the Complaint to the Participating Firm or to OBSI within six years. The current wording should be clarified to state the Complainant must bring the Complaint to OBSI within the six-year time frame. –CBA FAIR Canada recommends that the wording be revised as follows: "…the Complainant knew or ought to have known of the problem…." and should specify that the characteristics of the complainant will be taken into account (such as age, knowledge, degree of reliance on the advisor) as specified by OBSI in its November 2012 News Release. –FAIR Canada Given that OBSI's process is not a court proceeding, and it is not subject to statutory limitation periods, FAIR Canada recommends that OBSI explicitly provide in its revised Terms of Reference that it "reserves the right to waive the limitation period in exceptional cases where it is fair and reasonable to do so." –FAIR Canada The time limit on complaints should more closely resemble the statutory limitation period in most provinces, which is two (2) years. Incongruent application of limitation periods does not provide sufficient and certain notice to potential parties to allow them to bring about a timely claim, crossclaim or counterclaim, if necessary, thereby potentially denying them an opportunity to seek fair and appropriate resolution. –FundEX The limitation period should coincide with the statutory limitation period applicable in the

	investor's jurisdiction of residence (e.g. two years in Ontario). Additionally, we believe that it would be more appropriate if the limitation period applicable to complaints commenced at the time the related trading or advising activity occurred. –IFIC Strongly believes that client claims for financial loss should be subject to a two year statute of limitations period, commencing from the date that the client knew, or reasonably ought to have known of the trading or advising activity giving rise to the complaint. Extending this period to six years can amount to granting a client the opportunity to observe and unfairly benefit from market conditions, rather than taking action to mitigate their losses when they became aware of them. –IIAC OBSI should retain the current 6 year limitation period which runs from the time a consumer knew or ought to have known that there was a problem. With fairness rather than an adjudication mandate, the question of timeliness in bringing a complaint forward should be a matter of fairness between the parties rather than a strict deadline. –OBSI Consumer and Investor Advisory Council The wide scale six year limitation period runs contrary to various provincial statutes. All individuals are subject to statutory limitation periods and exemptions from the law cannot apply on a self-imposed or self-proclaimed basis. –Laura Paglia Recommend that OBSI apply the statutory limitation period based on the client's jurisdiction of residence. –Portfolio Strategies OBSI should recognize the statutory limitation period applicable in the investor's jurisdiction of residence. –RBC Registered firms are subject to a 7-year record retention requirement from the date the record is created, hence may not be able to produce evidence required for the cases past the applicable record retention period. The test of determining when a limitation period commences should be objective. Given that records of trading or advising activity are generally documented and available to clients, it would be appropriate if the limitation period applicable to an investor commences at the time the related trading or advising activity occurred. –RBC No disagreement here, although a rationale for the 6 year period should be provided. – Andrew Teasdale
Section 12: OBSI/Ombudsman has a material interest in a complaint	We support this provision, though it should be expanded to included investigators as well. – CBA This provision should be expanded to address situations where an OBSI investigator assigned to a complaint may have a material conflict of interest in the complaint. In such circumstances, the OBSI investigator should no longer be involved in the investigation or resolution of the complaint. –IFIC This section should state that any OBSI staff member that has or may reasonably be perceived to have a material interest in a complaint should cease to be involved in the complaint. –IIAC We support the amendment. –OBSI Consumer and Investor Advisory Council

	Should be expanded to clarify that any OBSI staff assigned to a complaint, such as an investigator, who may have or be perceived to have a conflict of interest in a complaint should immediately disengage from the file. –RBC
Section 14: Compensation limit	OBSI and its predecessor were established to provide a free redress process as an alternative to the more costly court system. The monetary limit was established, recognizing that sophisticated Customers with higher-value Complaints have the resources to pursue their Complaints through the court process. OBSI also has provisions that the results of OBSI's deliberations and its recommendations are confidential and cannot be used in any subsequent litigation. We therefore question why OBSI would want to investigate Complaints where the amount claimed by the Complainant exceeds the $350k limit. Most Complainants, notwithstanding the consent agreement, would want to use the OBSI finding in their favour to support subsequent legal proceedings. OBSI's time and legal expenses spent fighting involvement in legal proceedings could significantly increase. –CBA If OBSI moves forward with this change, OBSI should ensure it advises Complainants with claims exceeding $350k that, should a Participating Firm agree to an OBSI recommendation of any amount up to $350k, a Participating Firm may ask for a full and final release before paying the settlement. –CBA FAIR Canada recommends that the compensation limit for any ECB, including OBSI, should not be lower than the current OBSI limit of $350,000. –FAIR Canada We recommend that claims investigated by OBSI be limited to claims not exceeding $250,000. –IFIC Further, we are of the view that the current provision, which provides that the OBSI will not investigate a complaint that exceeds the compensation limit set out in section 14(a) unless the Participating Firm is released from liability for any amount greater than the stated limit, should continue to be in effect. –IFIC Recommend the original language restricting the client from making claims above the $350,000 in another legal forum be reinstated. This removal of this restriction is contrary to the objective of having a compensation limit, which is to provide an expedited and less formal mechanism to settle client disputes. If the possibility of further action on a settled claim is possible, firms are unfairly exposed to defending themselves multiple times on the same complaint. –IIAC The terms of reference should mandate that a complainant is required to sign a release where they and the firm accept an OBSI recommended settlement. –IIAC The retention of OBSI's $350,000 limit has no commitment for periodic reviews. The $350,000 limit has been in place since 2002, in effect cutting it by the ravages of inflation. This is particularly important as boomers enter retirement and seniors begin significant annual withdrawals from RIFF accounts. –Kenmar Associates We note that the banking rules do not include a cap on compensation; if the Board is to be seen as consistent in harmonization, it should remove the $350,00 cap so as to be "harmonized" and consistent . –Kenmar Associates The language should be specific that OBSI does not limit the rights of complainants to pursue claims in other forums for amounts over and above OBSI's $350,000 limit should

	they so choose. –Kenmar Associates 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. –Debra McFadden This is more of an issue for securities complaints that may relate to significant losses. It is the Council's view that OBSI should not undertake a review of the maximum amount of compensation OBSI can recommend. It is hard to see why compensation caps are warranted at all if both parties are in agreement that they want their dispute to be settled by a third party on fairness principles. –OBSI Consumer and Investor Advisory Council It should be noted that, among other concerned jurists, the Chief Justice of the Supreme Court of Canada has observed that the high cost of civil litigation has restricted access to justice for middle class individuals. The very elements of the litigation process that ensures neutrality, fairness, finality and enforcement can also be lengthy, complex and expensive, especially for an individual who has sustained losses confronting a deep pocket financial firm. The plaintiff always has the burden of moving the matter forward with motions, discovery and so on. The plaintiff will bear the other side's legal costs and their own with no recovery if they lose. Litigation counsel are expensive and do not typically act on contingency as with personal injury cases. Even a fairly straightforward civil claim against a broker can run up counsel and expert fees of $40,000 fairly quickly, sums which must be paid by a client who may have lost most of their savings. For claims that could realistically settle at under $300,000, litigation is not feasible. Investors need to be able to rely on OBSI as an alternative. In fact it is not clear that any limits should be prescribed for losses sustained by an individual. –OBSI Consumer and Investor Advisory Council Within the $350k threshold, OBSI should consider and endorse different processes for the resolution of different complaints. Complaints of a certain threshold within the $350k may well be better resolved other than through the OBSI's current investigation process. In particular, where a dealer offers to mediate a complaint at its own costs, the OBSI should invariably be highly supportive of the offer which has the possibility of providing the investor with more expedient and satisfactory redress. –Laura Paglia The limit of $350,000 was set in 2002. Today's limit would be $431,795.39 to compensate for inflation according to the Bank of Canada. This an effective reduction in the limit of almost 19%. The compensation limit should be adjusted for inflation and reviewed on a regular basis, contrary to your current proposed changes. –Portfolio Audit Recommend that the limit be maintained and that it not be increased unless and until there is an acceptable independent appeal process to review OBSI recommendations. –Portfolio Strategies It is inappropriate to permit clients to access the OBSI process to obtain restitution up to $350,000 without releasing the firm from future liability for any further amounts that they may pursue in other forums. The terms of reference should mandate that Customers be required to sign a release where they and the firm accept an OBSI recommended settlement. Failure to require that diminishes the efficiency OBSI as a dispute resolution service. –Portfolio Strategies The $350,000 limit should be raised or eliminated. –RetirementAction Consider increasing the $350,000 limit as complaints involving Portfolio Managers and Exempt Market Dealers tend to be much larger. Perhaps matching IIROC's $500,000 is a

	reasonable number. –Arthur Ross Increase the compensation limit to $500,000 to compensate for 12 years of inflation. –SIPA I can see a need for a compensation limit, but I think this limit needs to be argued and reason provided for the limit itself. –Andrew Teasdale Increase the $350,000 limit as complaints involving Portfolio Managers and Exempt Market Dealers will tend to be much larger. Utilizing IIROC's $500,000 number for arbitration is not an unreasonable figure. –Peter Whitehouse
Section 18(c): Tolling agreement	As has been done in the past, OBSI should consult with Participating Firm on the form of tolling agreement that suspends the limitation period during OBSI's investigation of the Complaint. We suggest that the wording be "enter into an agreement with OBSI and,…in a form determined by OBSI <u>in consultation with Participating Firms,</u> to suspend…" As noted above, the banks already have in place a blanket tolling agreement. If newer versions are being considered for other Participating Firms that are not substantially similar to those already executed by the banks, OBSI should provide the banks with the option of executing a new tolling agreement. –CBA FundEX cautions OBSI against the implementation of a *one size fits* all blanket tolling agreement, for in some instances it may be tactical to allow parties to consider the unique features of their particular circumstances and decide on procedures to most equitably govern resolution of the dispute, and to draft accordingly. –FundEX Agrees that a uniform tolling agreement will provide for a more efficient process. It is critical, however, that the development of the standardized agreement be done with appropriate industry consultation and be subject to the publication and comment process. –IIAC 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. –Debra McFadden We support the amendment. –OBSI Consumer and Investor Advisory Council Tolling agreements should be requested and considered on the facts of any given case with a a view to whether they are necessary as a matter of fairness to the investor only. It is highly unclear why a dealer should invariably be required to enter into a blanket tolling agreement relating to all complaints. –Laura Paglia
Section 19: SRO complaint-handling rules	Since federally regulated financial institutions (FRFIs) as of September 2, 2013 must follow the federal requirements in the FCAC's Commissioner's Guidance CG-12, we recommended that the TORs exempt FRFIs from Section 19. Otherwise, should the provisions in CG-12 ever change, there may be an unnecessary conflict between OBSI's and the FCAC's requirements, leaving FRFIs in a difficult situation that would likely result in non-adherence to OBSI's TORs. [Alternate wording proposed]. –CBA We support the amendment. –OBSI Consumer and Investor Advisory Council

Section 19(d): Substantive written responses	We support the amendment. –OBSI Consumer and Investor Advisory Council
Section 20(c): Escalation process	We understand and support the provision that precludes the Participating Firm from disclosing information to the OBSI Board, given its impartial role in decisions. With respect to disclosure to its Regulator, however, the Participating Firm should have the same ability as OBSI to discuss and defend to the Regulator its position on the Complaint in advance of OBSI's publication. –CBA Once OBSI has publicly released the information about the Participating Firm's refusal, the Participating Firm should have the ability to disclose to the public information about the file – subject to privacy laws – that supports its position. Alternatively, OBSI may wish to consider giving the Firm the option of including its response as part of the OBSI publication of the Firm's refusal to cooperate. –CBA We suggest the provisions allowing the Participating Firm to disclose information in response to a request by a Regulator are unnecessary. With respect, any requests for information by a Regulator will supersede confidentiality provisions in the OBSI TORs. –CBA Refusal by an OBSI Participating Firm to accept a recommendation without a legitimate justification should be considered to be a failure to participate in the dispute resolution system in good faith, and, therefore, should be considered to be an act in violation of the securities rules. The relevant securities regulator should review the matter to determine whether or not the Participating Firm had a legitimate reason for not accepting the recommendation. If there was no legitimate reason and the securities regulator determines that the firm is acting not in good faith, then the regulator should take disciplinary action against the firm for not acting in good faith in its participation in OBSI. For a Participating Firm to be in compliance with the requirement that it participate in OBSI, it cannot be sufficient for the Participating Firm to do so in name only. –FAIR Canada This publication of findings is meant to motivate the participating firm to accept the OBSI's recommendation but we would argue that with the firm unable to publish their response to the complainant, the opposite is achieved if only half the story it told. If you are indeed independent and impartial then there should be no objection for all sides of the issue being made public. We believe that if this 'name and shame' is to be fair to all parties, then all parties' information should be available in a public domain and privacy should not be a concern if the OBSI is allowed to publish their case. –Federation of Mutual Fund Dealers We suggest that a participating firm should be allowed to appear before the OBSI's Board or a committee of the Board in cases where the firm disagrees with the recommendations made by the OBSI; or the Board should be empowered to invite a firm to come before it as part of the final review process prior to publishing. This '2nd tier' of review would work towards the OBSI fulfilling its mandate of making decisions that are just, unbiased, equitable and in accordance with its TOR. –Federation of Mutual Fund Dealers While FundEX agrees with the basic concept and spirit of OBSI's Proposed Changes to its escalation process, it advances the argument that, to prevent the unfair and biased portrayal of any party to a dispute, all facts and facets of the complaint should be accurately presented to the public. It is further incumbent on all parties to ensure the legitimacy and validity of all facts reported. –FundEX Prior to OBSI's publication of a firm's refusal to compensate a customer, the Participating

	Firm should have the right to review and comment on the information proposed for public disclosure. –IFIC This section is very problematic, as it does not permit a firm to provide facts that it considers relevant to OBSI's Board or the regulators in the event that it disagrees with OBSI's findings on an investigation. This denial of a firm's ability to make a proper response to OBSI's findings is contrary to any concept of impartiality and fairness. It is likely in many cases that firms will dispute certain findings of "fact" by investigators or have different views on the importance of certain information. In order to ensure the recommendation is balanced, it is critical that the Board and regulators be provided with such information from the Participating Firm prior to OBSI making a public recommendation about the liability of a firm, and potentially making damaging allegations in a news release. –IIAC In formalizing its process for "naming and shaming" firms that refuse its recommendations it appears OBSI may be adding even more time , adding to investor stress and anxiety . It is a question mark whether the Board of Directors should get involved. In any event, the Board of Directors should have a set limited time constraint after which the process should immediately default to Name and Shame. –Kenmar Associates 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. –Debra McFadden The real question here is whether there should be binding decisions. The name and shame remedy is evidently ineffective in many cases, so OBSI and regulators mandating use of OBSI's services should consider a more effective approach for consumers' complaints. Once it is used broadly and the named entities have an opportunity to respond in the press, there is no more shame. –OBSI Consumer and Investor Advisory Council Disagreement with an OBSI recommendation is not tantamount to non-cooperation. The OBSI is not a regulatory body and as such the applicable regulator's view of any underlying circumstances or complaint where applicable should take precedence. In other words, where a regulator has issued a closing letter or taken a view of a particular fact scenario, the OBSI should not be permitted to override that view. –Laura Paglia OBSI cannot sanction a firm's (in)ability to refer publicly to a client's confidential information which remains subject to a participating firm's legal obligations to that client. –Laura Paglia Decisions should be binding on all parties. However, since 'name and shame' is your only enforcement tool ineffective as it may be, then financial firms should not be allowed to 'explain' their position and thus undermine the effectiveness of this strategy. Additionally, it appears that more delay is being added to the process by your proposed changes increasing the stress and anxiety of the victimized investment complainant. If the firm refuses to pay, then the reasons for judgement should be made public post haste. –Portfolio Audit

	The proposal to prohibit Participating Firms from responding to OBSI's version of a complaint is patently unfair and calls into question whether OBSI itself is committed to being just, reasonable, and unbiased. –Portfolio Strategies Each instance of publication regarding a refusal PSC recommends that the Board must approve the case summary before OBSI publishes it, and that the Participating Firm must be allowed to appear before the Board or a committee of the Board before the Board can approve the case summary. –Portfolio Strategies Not providing participating firms with the same arena for facts to be expressed appears to conflict with the "fairness" mandate. –Queensbury Strategies We suggest that a participating firm be allowed to appear before the OBSI's Board or a committee of the Board in cases where the firm disagrees with the recommendations made by OBSI, or the Board should be empowered to invite a firm to come before it as part of the final review process prior to publishing. –Queensbury Strategies The proposed escalation process to the OBSI Board to determine whether to publicize select information of a case appears to conflict with proposed section 31 which emphasizes that the OBSI Board does not consider specific complaints nor can the Board influence the decisions of OBSI staff. –RBC We are concerned with the lack of ability for Participating Firms to review, comment and agree on the information to be announced by OBSI and to escalate the matter further if the situation warrants. It is uncertain how the proposed procedures as drafted would align with the Application Guide which expects an external complaints body to demonstrate how it will cooperate and resolve disputes with members. –RBC When an OBSI recommendation is rejected by a dealer, the applicable regulator should be required to promptly follow up, investigate and apply any sanctions that may be applicable and order investor compensation by the dealer as appropriate. This will help alleviate the "stuck case "problem which has caused so much anguish for complainants. The Board has a fiduciary duty to help provide closure on stuck cases rather than leave investors hanging. This should be contained in the TOR. –SIPA
Section 20(d): Disclosure to third parties	We suggest adding to the end of this section, "<u>provided such bodies are subject to the same confidentiality obligations as OBSI.</u>" –CBA We recommend that before OBSI discloses information related to complaints to its employees, agents, advisors and consultants, such persons must be subject to confidentiality obligations and enter into confidentiality agreements, as applicable. –IFIC In situations where OBSI elects to involve third parties when investigating a complaint, such parties should be required to sign a confidentiality agreement. –IIAC We support the amendment. –OBSI Consumer and Investor Advisory Council
Section 31: Governance	The statement that the Board of Directors does not consider specific complaints runs contrary to paragraph 20(c) regarding OBSI's wish to go to the Board in the event that a firm refuses an OBSI recommendation or does not cooperate in an investigation. –Laura Paglia

	Although there may be valid reasons for the Board not to involve itself with specific Complaints prior to the conclusion of the Complaint, it is difficult to see how the Board can exercise appropriate oversight of OBSI staff if it never considers or reviews how staff handled specific Complaints once the files are concluded. The Board will have no basis on which to assess how well senior management, investigators, and other staff are carrying out their duties and responsibilities. –Portfolio Strategies
Section 33: Investigators	In the third sentence, we suggest specifying individual investigators: "In instances where an OBSI investigator believes compensation is warranted…the investigator shall escalate the Complaint to either the Ombudsman or…" –CBA
Section 35: Fees	Information regarding the fees charged to all Participating Firms, not only banks that are Members, should be made available on OBSI's website. –IFIC Should be expanded to provide that information regarding the fees charged to all Participating Firms, not only banks that are Members, be made available on OBSI's website. –RBC
Section 36: Third party evaluation	We disagree with the proposal to extend the current three year review to five years. We do not think that a five year review would be in the best interests of all stakeholders. – Federation of Mutual Fund Dealers The Framework with the Regulators cites a three year interval but the proposed Terms of Reference do not. This omission should be corrected otherwise OBSI is in breach of the FRAMEWORK Agreement. –Stan Gourley OBSI is now proposing that it must submit itself to knowledgeable, independent third party evaluations of its operations at least once every five years. This was previously three years. Given the unprecedented turmoil and change facing the dispute resolution system and the possibility of an enlarged mandate, it is a mystery why the OBSI Board would extend the Review interval. –Kenmar Associates A process for the selection of a knowledgeable independent third-party evaluator should be put in place which preserves the integrity of that process and ensures the evaluator is not selected solely by OBSI. –Laura Paglia The Three year independent review cycle should be maintained. –Portfolio Audit Our experience indicates that more frequent, not less frequent, evaluation of the work of OBSI would be appropriate. The additional responsibilities that the CSA is proposing to add to OBSI's current mandate further indicate that the review cycle should not be extended. If Section 31 provides that the Board cannot review individual files, it would be irresponsible for the Board to allow the review cycle to be any longer than three years since the independent review would be the Board's only insight into OBSI's operations, other than information provided by management. –Portfolio Strategies We disagree with the proposal to extend the current three year review to five years. We do not think that a five year review would be in the best interests of all stakeholders. – Queensbury Strategies The proposed extension of the three year evaluation period to five years should be reconsidered. Given the frequent changes in the industry and to OBSI's mandate, a

	minimum three year evaluation period should continue to be implemented. Consideration should be given to mandating that a different evaluator be used each cycle, to avoid the appearance of conflict of interest. –Robertson-Devir Retain the three year independent review cycle. Too many things can happen in five years. Many CSA reforms regarding disclosure will trigger more complaints as investors come to understand how they have been dealt with and exploited. –Arthur Ross The three- year independent review cycle should be reduced to two years not the increase to five years as proposed by the Board. Consideration should also be given to rotating Independent Review agencies to ensure independence. –SIPA I can see many reasons why it would be fortuitous to extend the timeframe for independent reviews from 3 to 5 years, in this case. I have no personal preference between 3 or 5 years, or insight that would provide such, save that in instances where the mandate of the OBSI is about to undergo significant change, that an independent review is requested in some shape or form. I think a 5 year review time frame should be adequate for most time frames. I would very much like to see an authoritative independent review of the current proposed changes especially since they appear to be at odds with the main recommendations of prior independent reviews. –Andrew Teasdale Increase the $350,000 limit as complaints involving Portfolio Managers and Exempt Market Dealers will tend to be much larger. Utilizing IIROC's $500,000 number for arbitration is not an unreasonable figure. –Peter Whitehouse
Section 37: Code of Practice	In line with Section 8 - *Transparency* of the Code of Practice, we strongly recommend that the OBSI publish its decisions on a no-names basis on its website. –IFIC We suggest that OBSI further this mandate by publishing its past decisions and recommendations on its website on an anonymous basis, similar to the process adopted by the Offices of the Information and Privacy Commissioner. –RBC

Other TOR Sections	Stakeholder Comments
Section 2(a): Definition of "Complainant"	Since Customer is already defined as "an individual who, or small business that, applied for or received a Financial Service from a Participating Firm", there is no need for the words "small business or individual" in the definition of Complainant, so they should be removed. – CBA
Section 2(a): Definition of "Financial Service"	"Financial Service": means a financial product or service <u>offered by a Member in Canada</u> about a financial product or service <u>sold by a Member in Canada</u>. –IFIC
Section 2(a): Definition of "Industry OmbudService"	Industry OmbudService": means any of OBSI, the OLHI, the GIO <u>and any dispute resolution service provider approved or recognized by a Regulator</u>. –IFIC The language should be revised to clarify that the term includes any dispute resolution service provider approved or recognized by a Regulator. –IIAC

Section 9(a): Non-participating of interested parties	We are concerned that in some cases the non-participation of an interested party to the Complaint might prejudice OBSI's consideration of the Complaint, so we suggest that a second proviso be added to this subsection to specify that OBSI can proceed to consider the Complaint only if the non-participation of the interested party does not prejudice either the investigation or finding. –CBA
Section 9(b)(i): Complaint not resolve by firm	This paragraph could address the issue more clearly by merely saying "(i) the Participating Firm has completed its examination of the Complaint, informed the Complainant of its final conclusion, and the Complainant is not satisfied with the outcome." Use of the word "offer" implies a resolution to the Complaint that is monetary in nature, but some Complaints may be resolved with a non-monetary solution, such as a letter of apology or correction of an error. –CBA
Section 9(b)(II): 90-day internal time limit	For clarity, we suggest that the first part of the sentence include a description of when the 90-day limit starts, by inserting wording as follows: "90 calendar days have elapsed since the Complaint was received <u>at the second level of complaint resolution within the Participating Firm...</u>" –CBA
Section 9(g): Frivolous and vexatious complaints	We support this section, but suggest that the concept of "abusive" also be included. OBSI and Participating Firms should not have to deal with such treatment. –CBA
Section 10(a): Exceptions for certain subject matters	We would like to see this exception expanded to included business decisions of the Participating Firm. –CBA
Section 10(c): More appropriate forum	The use of the word "decides" could be interpreted to mean that OBSI would have the ability to direct the Complainant and Participating Firm. We suggestion that this subsection could more appropriately be phrased "where OBSI <u>believes</u> that there is a more appropriate place…" –CBA
Section 16: Cooperation with another Ombudservice	This section needs greater clarification. It seems that while OBSI may "refer the investigation and analysis" of the segregated fund to OLHI, OBSI intends to retain principal oversight of any complaint. –Robertson-Devir
Section 18(d): Informing customers of OBSI	Capitalize "customers" as it is a defined term. –CBA It bears repeating in this section that Customers have 180 days to bring their Complaint to OBSI. We recommend that the wording be "inform all Customers who have made a Complaint of their right to bring their unresolved Complaint to OBSI <u>within 180 days…</u>" –CBA
Section 20(a) and (b): Ongoing legal proceedings	If OBSI investigates a Complaint concurrently with an ongoing legal or other proceeding, then both these subsections' references should be amended to "any <u>ongoing or</u> subsequent legal or other proceedings." –CBA
Section 23: Facilitated Settlements	The OBSI should actively encourage the participating firm and complainant to continue to seek to resolve the complaints wherever the firm expresses a desire and willingness to do so. –Laura Paglia

Section 27: Publicizing refusals to compensate	The manner in which public statements are made, the contents of those statements and the OBSI's use of the media in making those statement should be reviewed for appropriateness. By way of analogy, any regulatory infraction by participating firms are also publicly available but the regulators, who have higher authority than OBSI, use very different processes and content in their public statements. –Laura Paglia This section still remains vague. It is often the process of negotiating the proposed recommendation with the firm and sometimes the client, or waiting for comments from the firm, that creates the significant delays. Even after the final recommendation is rendered, the process for publishing a "refused" recommendation seems to take a long time. A definitive process and timeline needs to be indicated in the Terms of Reference for the benefit of both firms and clients. –Robertson-Devir
Section 30: Annual Report	We recommend that language be added that the Annual Report be publicly disclosed. – Kenmar Associates
Board obligations	Add to the TOR a requirement that each member of the Board of Directors to sign, upon appointment and on an annual basis thereafter, a Conflict- of- Interest and Confidentiality letter which includes the obligation to act in the best interests of OBSI. –SIPA
Consultation	*The Bank Act* regulations require an external complaints body to consult at least once a year with its members and with persons who have made complaints since the previous consultation with respect to the discharge of its functions as an external complaints body. In our view, this element could be incorporated into the ToR to ensure and enhance direct dialogue between OBSI and Participating Firms. –RBC Perform an annual complainant satisfaction survey and publicly disclose the results and action plans. This is one key element in demonstrating accountability to stakeholders for a sole- source provider of dispute resolution services. –SIPA
Consumer and Investor Advisory Council	FAIR Canada recommends that OBSI include the mandate and structure of its Consumer and Investor Advisory Panel in its revised Terms of Reference. FAIR Canada believes that while industry has the resources to make it views on policy issues known to OBSI, consumers are far less equipped and motivated to do so. The proper functioning of the Consumer and Investor Advisory Panel allow OBSI's Board of Directors to obtain the consumer/investor perspective and its role should be formally recognized and explained in the Terms of Reference. –FAIR Canada There is no mention of the OBSI Consumer and Investor Advisory Council in the Terms of Reference . We recommend that this important Council be encapsulated in the Terms of Reference to prevent arbitrary limits placed on it or arbitrary termination of its mandate/operations. –Kenmar Associates We suggest that the CIAC be specifically identified as an element of OBSI governance, establishing it as permanent body. –OBSI Consumer and Investor Advisory Council The OBSI Consumer and Investor Advisory Council's continued existence should be entrenched in OBSI's Terms of Reference. That said, it seems strange that I do not have their thoughts on your proposed changes prior to them being made public. –Portfolio Audit The OBSI Consumer and Investor Advisory Council's continued existence should be entrenched in OBSI's Terms of Reference. – SIPA

ISO 10003	In the past ,OBSI has made reference to ISO 10003 Quality management — Customer satisfaction — Guidelines for dispute resolution external to organizations. Is there any reason why the Board is not taking the opportunity to hard wire this standard into the Terms of Reference? –Kenmar Associates
Time Period for Resolution of Complaints	Recommend that OBSI specify in its revised Terms of Reference any time limits for making a recommendation to resolve a complaint. Investment complaints do no need to be subject to same time limit as banking complaints. A number of factors are stated to have contributed to these long cycle times including delays in obtaining consents, delays in obtaining documentation, insufficient staff resourcing, and delays associated with "stuck cases". If the recommendations made by FAIR Canada in this submission are implemented by the securities regulators, cycle times should improve. –FAIR Canada Former Chair Peggy-Anne Brown is quoted saying "when a firm is part of a voluntary scheme and is not compelled to remain with and/ or cooperate with an Ombudsman service, there is constant tension on the resourcing decisions given the ever-present threat of withdrawal. Notwithstanding that the independent reviewer found that OBSI was maintaining its fairness and consistency of decisions in the face of industry pressure, the threat of withdrawal is always there in a voluntary scheme." This is clear and convincing evidence that retaining banking dispute resolution is detrimental to OBSI and the service level it is able to provide. For investment complaints, the average investigation time frame is indicative of a severe resource constraint. The Terms of Reference should have provisions that prevent and/or promptly respond to deteriorating performance. –Stan Gourley We recommend all timelines be included in the Terms of Reference. –Kenmar Associates The TOR should contain the time standard for resolving complaints and finding a complaint if out-of-mandate. –Peter Whitehouse

Other Issues	Stakeholder Comments
Appeal mechanism	We urge OBSI to establish an appeal mechanism for its decisions, as recommended under the 2011 Independent Review Report conducted by the Navigator Company. –RBC
Banking mandate	It is very evident that the OBSI Directors are altering established standards to harmonize with controversial Department of Finance standards designed for bank disputes. One doesn't need to be a rocket scientist to see where this is headed. Accordingly, we are using this Consultation to publicly ask the OBSI Board to consider ending its banking complaint role. We believe this would be in investors' best interests. Removal of banks might have the collateral benefit of casting a bright light on the weak standards adopted by the Department of Finance for the BIG banks.–Kenmar Associates Trying to match up with FCAC specs for banking complaints is a loser's game. It's like trying to put a square into a round whole. Why not just focus on investments where the real action is? –Arthur Ross The OBSI Board wants to lower its standards to a level that its own management feels is deficient in order to retain the banks that remain participating members within the OBSI fold. For me, the price is too high. It is one thing to deal with wrong debits on a credit card and the like but it is a different story when you are trying to settle a case that impacts your life's savings. The dollar amount given out in bank restitution is trivial compared to the numbers

	on the investment side. I say either the remaining banks play by world class Ombudsman rules or they be asked to leave. I have no doubt they will jump at the chance to depart. –William Schalle It appears to us that OBSI's Board is tailoring the TOR to reflect the Finance/FCAC requirements for banking that are so uniformly regarded as deficient and pro-bank. OBSI may need to split into two Branches or cede its role for investigating banking disputes. Given the relatively small dollars involved with banking complaints, that might be good thing. It is not a good idea to mix voluntary Member firms with non-voluntary firms because it inevitably leads to lower standards as voluntary firms continually use the veiled threat of resignation as a tool to achieve their end goals. –SIPA Some of these proposals stem from trying to match up with FCAC standards for banking complaints - a standard vigorously opposed by investor advocates. OBSI should focus on investments where the big financial losses are being incurred. –Peter Whitehouse
Binding decisions	As discussed in our submission to the CSA dated January 25, 2013, we recommend that OBSI's accountability be strengthened in the public interest through a more formal recognition of OBSI, through recognition orders issued by CSA members, and that steps be taken to have one single, national statutory ombudservice that has the power to make binding decisions. –FAIR Canada FAIR Canada strongly recommends that OBSI be given the power to make binding decisions over all participating firms. In the UK, Australia and New Zealand, decisions are binding if the consumer accepts the recommendation. We see no reason for a less consumer-friendly system in Canada. FAIR Canada strongly believes that binding decision-making authority over investment cases should be given to OBSI prior to or concurrently with the expansion of the types of firms that are required to participate in OBSI, which will include all registered dealers and registered advisers outside of Quebec. Reputational risk is less likely to have a deterrent effect with less well-known and smaller firms who operate in markets such as the exempt market that are not well-understood by many financial consumers. Many of the non-SRO registrants that would be required to offer OBSI's services to their clients would fit into this category. In the absence of binding decision-making authority, OBSI's credibility may be further weakened through increased refusals of its recommendations. –FAIR Canada Name and Shame is ineffective. We have instead recommended, as have FAIR Canada, that OBSI recommendations be binding which is not addressed or discussed in the Consultation. –Kenmar Associates The subject matter of OBSI complaints does not necessarily lend itself to a name and shame remedy. Publication of a refusal to pay with the response of both sides may be not be comprehensible enough to the average consumer to confer shame. The remedy becomes ineffective for compensating the individual consumer. The real question here is whether there should be binding decisions. The name and shame remedy is evidently ineffective in many cases, so OBSI and regulators mandating use of OBSI's services should consider a more effective approach for consumers' complaints. Once it is used broadly and the named entities have an opportunity to respond in the press, there is no more shame. –OBSI Consumer and Investor Advisory Council Name and shame can be effective where the potential damage to reputation exceeds the dollar amount of the compensation proposed, which would generally be the case for large

	banks and dealers but not so much for smaller dealers, Exempt Market Dealers and Portfolio Managers that will soon be members of OBSI. –OBSI Consumer and Investor Advisory Council Decisions should be binding on all parties. –Portfolio Audit The 2011 Navigator report provided recommendations that would have dealt more effectively with this issue and I ask why there is no mention of bringing in binding decisions. Again, I strenuously recommend that reasons for not following up on this and other recommendations made should be disclosed as a matter of public interest. –Andrew Teasdale OBSI decisions should be binding on the Financial Institution. With this prior understanding by the Financial Institution, this in turn would reduce the number of legitimate complaints that arrive at OBSI after being rejected by the Financial Institution. Having the presence of OBSI binding decisions would also be the incentive for the Financial Institution make a better effort to settle legitimate investor complaints. –Peter Whitehouse
Compensation Limit	FAIR Canada recommends that the compensation limit for any ECB, including OBSI, should not be lower than the current OBSI limit of $350,000. If the compensation limit is not mandated and ECBs are allowed to set their own compensation limit, firms may choose to join the ECB with the lowest cap, which would encourage a race to the bottom that is not in the interest of consumers. –FAIR Canada
Complaint Statistics	Publish Complaint statistics quarterly. This is necessary for investor advocates, media, regulators etc. to spot trends/patterns and emerging issues. –SIPA
Funding formula	We believe that the most equitable funding formula is one based on a pay-per-use system. A pay-per-use system may incent Participating Firms to resolve a complaint without escalation to the OBSI, thereby promoting efficiency and causing less distress to the complainant, being goals common to both OBSI and Participating Firms. Second, Participating Firms will not be required to subsidize investigation and other costs for complaints to which they are not a party. While we acknowledge possible preference for stable funding and have certain management and administration costs allocated to all sectors of the membership, we recommend that OBSI consider adopting a pay-peruse system. –RBC
Funding levels	Former Chair Peggy-Anne Brown is quoted saying “when a firm is part of a voluntary scheme and is not compelled to remain with and/ or cooperate with an Ombudsman service, there is constant tension on the resourcing decisions given the ever-present threat of withdrawal. Notwithstanding that the independent reviewer found that OBSI was maintaining its fairness and consistency of decisions in the face of industry pressure, the threat of withdrawal is always there in a voluntary scheme.“ This is clear and convincing evidence that retaining banking dispute resolution is detrimental to OBSI and the service level it is able to provide. For investment complaints, the average investigation time frame is indicative of a severe resource constraint. The Terms of Reference should have provisions that prevent and/or promptly respond to deteriorating performance. –Stan Gourley Investor Advocates are concerned that the OBSI's Board has approved a budget for the year ahead that will decline slightly to just under $7.8 million for 2013 despite (a) unacceptably poor cycle time performance (For investment complaints, the average resolution time frame in 2012 was 290 days vs. a standard of 180 days) , (b) every indication that industry wrongdoing is on the increase and (c) industry complaint handling irresponsible and

	dismissive. Perhaps the T of R should have language compelling the Board to provide adequate funding so that OBSI can fulfill its commitments and comply with acceptable standards. –Kenmar Associates The OBSI Board should provide sufficient resources to OBSI Management to allow it to meet the complaint resolution cycle time of 80% within 180 days and 100% within 365 days; in addition, adequate resources must be provided so that should a complaint be considered outside of OBSI's Terms of Reference, OBSI must notify complainant with 30 days of receipt of complaint. –RetirementAction Ensure the Board provides adequate staffing so that complaint cycle time at OBSI is equal to or less than standard (it is way off standard right now!). –Arthur Ross Providing financial and human resources to management so that the cycle time target of 80%/180 days is met (or better) and current chronic underperformance is rectified quickly, certainly ahead of taking on PM's and EMD's. –SIPA I would like to see the Board provide adequate resources to management so that complaint cycle time at OBSI is equal to or less than standard (80% /180 days).The performance is an embarrassment. –Peter Whitehouse The OBSI should not be optionally funded by the financial services industry. The OBSI dispute resolution operations should be independently funded with no budget pressures from depending on financing from the financial services industry. Under present system, the Financial Institutions have the ability to directly or indirectly limit their financial support for the OBSI operations related to the investor dispute resolution process. –Peter Whitehouse
Institutional design flaws	We also believe that the present exercise raises fundamental issues that are beyond OBSI's capacity to resolve effectively through this comment process, although they materially affect its relationship with consumers. The industry and investor comments alike highlight the institutional design flaws and ambiguities that confuse OBSI's members and disappoint complainants. As OBSI looks to take on much-needed responsibility for complaints from clients of provincially licensed Exempt Market Dealers (EMDs) and Portfolio Managers (PMs) as well as adapt to the new federal regime for handling banking complaints, it is more important than ever that these matters be addressed on a comprehensive, multi-sector basis. –OBSI Consumer and Investor Advisory Council
Nature of an "Ombudsman"	The use of the "Ombudsman" designation cannot be a mere public relations exercise. It connotes to consumers certain powers and responsibilities that go beyond the more limited mandate of a dispute resolution service, whether a court, regulatory tribunal or private arbitrator. –OBSI Consumer and Investor Advisory Council Do the federal regulations permit an ECB to be an ombudservice? OBSI's interpretation of the FCAC approval criteria as calling for the wholesale elimination of so-called "systemic issues" from OBSI's mandate for both securities and banking complaints, the lack of any specific reference to an ombudservice under the federal ECB regime and the omission of a duty of fairness from the federal list of approved ECB features raises a real question of whether these changes could erode OBSI's mandate to such an extent that there will cease to be any true Ombudservice for consumers in the banking sector. –OBSI Consumer and Investor Advisory Council If it is the intention of regulators that OBSI cease to be an ombudservice in the generally

	recognized sense of the word as a condition of approval to deal with consumer complaints, then its title becomes misleading to consumers and should be changed. –OBSI Consumer and Investor Advisory Council
NI 31-103	Addition of these dealer sectors [EMDs and PMs] may be a good move in the long run but we urge the OBSI Board to plan and prepare for the disruptive effects on performance and cycle time and reputational risk such a move will have in the short and intermediate term. – Kenmar Associates The EMD market sector lacks the disciplines of the traditional IIROC dealers. We recommend the CSA delay mandating OBSI as the sole approved dispute resolver for EMD's until EMD's clean up their act. If EMDs are foisted upon OBSI before they are under better control, the impact on OBSI's already unacceptable cycle time performance will alienate investors further. Once stabilized, we agree that EMD's should fall under OBSI's domain with the proviso that OBSI maintain Terms of Reference acceptable and fair to retail investors. – William Schalle We believe that the CSA should either (a) formally establish a discrete compliance/enforcement equivalent to an SRO or (b) require the establishment of a EMD-PM SRO BEFORE listing OBSI as the exclusive Ombuds service to be offered as an option to investor complainants. –SIPA
Seniors Issues	The Board should take this opportunity to address the maximum limit and any special provisions that may be needed to cope with retiree, seniors and pensioner issues .Some issues we have previously identified include assistance with complaints filing, setting investigation priorities , special training for investigators and use of personal visits to gather information. –Kenmar Associates Publish OBSI's approach to resolving complaints from the elderly/retirees. Loss calculation Models used to resolve complaints for investors in the accumulation part of their life cycle are decidedly different from those in the distribution mode e.g. RRIF accounts –SIPA
Suitability and Loss Assessment Methodology	Establish a plain language standard clarifying what suitability is and how OBSI applies it in resolving complaints. –Arthur Ross Establish a plain language standard clarifying what suitability is and how OBSI applies it in resolving complaints. –Peter Whitehouse
Timing of Terms of Reference changes	Our overall recommendation is that only those changes to OBSI's ToR that are either purely housekeeping or are necessary to achieve FCAC approval should be made at this juncture. – OBSI Consumer and Investor Advisory Council The proposed changes to the Terms of Reference ("TOR") are premature and that no changes to the TOR should be made until the Canadian Securities Administrators ("CSA") has completed its deliberations regarding its proposals regarding OBSI and implemented an accountability framework and oversight protocols over OBSI. –Portfolio Strategies We do not believe that any changes to the Terms of Reference should be made until the CSA has completed its deliberations regarding its proposals involving OBSI. –Queensbury Strategies SIPA does not believe any changes to the TOR involving Investments should be made until the CSA has completed its deliberations regarding its own proposals involving OBSI. –SIPA

By reference to other submissions:

- I stand with and in support of the comments and submission by SIPA, the Small Investor Protection Association of Canada. –Larry Elford
- I would like to support the practical and constructive recommendations made by Kenmar Associates in their Comment letter to you. –Millie Jagdeo
- I am writing to affirm my support for the serious concerns raised in the submissions of Andrew Teasdale and SIPA, the Small Investor Protection Association of Canada. –James MacDonald
- We support the comments submitted by IIAC and IFIC. –RBC
- I fully support the comments of the submission by Mr Ken Kevenko of Kenmar and Associates. These proposed amendments are not good for the elderly and retirees of whom I am one. –Jillian Roos-Markowitz