



**Federation of  
Mutual Fund Dealers**

August 12<sup>th</sup> 2013

VIA E-MAIL ONLY

Mr. Tyler Fleming  
Director, Stakeholder Relations and Communication  
Ombudsman for Banking Services and Investments  
[publicaffairs@obsi.ca](mailto:publicaffairs@obsi.ca)

Dear Mr. Fleming:

Re: Request for Comments on Proposed Amendments to OBSI's Terms of Reference

The Federation of Mutual Fund Dealers (the "Federation") is the only dedicated voice of Canadian mutual fund dealers. We represent dealer firms with over \$114 billion of assets under administration and 17 thousand licensed advisors that provide financial services to over 3.5 million Canadians and their families.

The Federation is writing to provide comments with respect to the above captioned Consultation on Proposed amendments.

Before we turn to specific proposed amendments we would like to say that we agree with several others who have commented; we do not believe that any changes to the Terms of Reference ("TOR") should be made until the Canadian Securities Administrators ("CSA") has completed its deliberations regarding its proposals involving the OBSI, and the CSA has not yet implemented an Accountability Framework and oversight protocols over OBSI.

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

You state that OBSI took on the mandate to investigate systemic issues at the request of financial regulators including the federal Department of Finance, this was in 2007. Then in April 2013 the Department of Finance adopted a new policy direction, systemic issues should be referred to the Financial Consumer Agency of Canada ("FCAC"). 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.

### **Firm Responsibility for Action 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

### **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.

### **Escalation Process**

In the event a participating firm disagrees with and consequently refuses to abide by a recommendation made by the OBSI, the OBSI may publish facts regarding the complainant's case as well as the OBSI's findings, but the participating firm is not provided with the same arena for their facts to be aired. Firstly, this seems to conflict with the 'fairness' mandate. 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 is told. If you are indeed independent and impartial then there should be no objection for all sides of the issue being made public. Secondly, we are curious as to why there are no privacy concerns regarding the OBSI publishing the complainant's case and the OBSI's findings, yet you cite privacy in not allowing the firm to publish their facts. Although the firm may respond publicly, they may only refer to the facts that have been released by OBSI. This is selective and detrimental to the firm's case and potentially their reputation. The OBSI's published information may not reflect compelling information supporting the firm's position, as has been evidenced by some publications to date. 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. Surely there is a solution to be found that would protect the complainant's privacy yet allow the firm to air their facts?

We note that before announcing a compensation refusal publicly, OBSI's management will first escalate the matter to the Board. 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 '2<sup>nd</sup> 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.



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We want to thank the OBSI for the opportunity to comment. Should you have any questions or wish to discuss further with the Members of the Board of the Federation or any general members, do not hesitate to contact the undersigned.

Regards,

Federation of Mutual Fund Dealers



Sandra L. Kegie  
Executive Director