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**Approved External Complaints Bodies (Banks and Authorized Foreign Banks)
Regulations**

<http://canadagazette.gc.ca/rp-pr/p1/2012/2012-07-14/html/reg2-eng.html>

Kenmar Associates Comment Letter

Kenmar Associates is pleased to submit comments in response the Department of Finance request for Comments. By way of introduction, Kenmar Associates is an Ontario-based not-for-profit organization focused on retail investor education and protection via on-line research papers hosted at www.canadianfundwatch.com. Kenmar also publishes **the Fund OBSERVER** on a bi-monthly basis discussing investor protection issues primarily for retail investors. Kenmar routinely submit comments and ALERTS on proposed regulatory changes that could impact Main Street.

The Government's initiative to establish a national standard for Ombuds services is most appropriate. Of course, a standard has been in place for several years that was tailored for OBSI by the Joint Forum of financial regulators (The FRAMEWORK AGREEMENT). In 2005 , the Centre for Financial Services Ombuds service also prepared complaint standards but they were not implemented and the Centre was shut down in 2006 by the CBA and the insurance industry. There is also a generic internationally recognized Ombuds standard issued by the International Standards Organization. Several countries including Australia also have standards.

Our concerns , besides the details of the standard, are that it applies only to banking and is tied to an Ombudsman concept that breaches two core features of a progressive Ombudsman service- independence and exclusivity (by allowing multiple Ombudsman for the banking industry).

The original intent of establishing a dispute settlement system in 1996 was that complaints would be heard by one body. As such, besides improving access, efficiency and consistency, it would avoid criticism that allowing competing services encourages a "race to the bottom" on standards. In 2011 , the World Bank issued a paper condemning so-called "competition" among Ombud services, identifying the "severe risks to independence and impartiality" this represents. The Government should neither ignore such warnings nor forget the important lessons of the past.

The Ombudsman for Banking Services and Investments (OBSI) is recognized as the

nation's banking and investment Ombudsman. OBSI has more than 600 participating firms (including mutual fund dealers and group scholarship providers). While imperfect, OBSI works and has continually improved over the years. Individual Canadians do not neither want nor support the proposed Government multi-Ombudsman regulatory landscape.

As for the new Regulation, we disagree with certain aspects. So do the Small Investor Protection Association, FAIR Canada, PIAC, CARP, the Consumers Council of Canada and the National Union of Public and General Employees. Other groups that oppose contracted out Ombuds services include the Investor Advisory panel of the Ontario Securities Commission, le Mouvement d'éducation et de défense des actionnaires (le MÉDAC) and the [Canadian Community Reinvestment Coalition](#). Both the Liberals and NDP have spoken out against the proposals. Media coverage has also been uniformly negative.

In the financial services sector, there is only one national Ombudsman for investments and mutual funds. There is only one Ombudsman for life and health insurance complaints at the national level (OLHI). There is only one ombudsman for general insurance complaints (GIO). The federal government has a taxpayers' ombudsman, a Canada Post ombudsman, a National Defense and Canadian forces ombudsman and an Office of procurement ombudsman. By allowing multiple ombudsmen to exist only for banking complaints, the Government is weakening OBSI's authority and financial strength by letting banks shop around for a complaints body that will need to please it to stay in business. Canadians deserve better, especially after the ABCP, Earl Jones and other banking scandals. The new standard being created for complaints bodies will not resolve the inherent conflict-of-interest when banks can hire and fire their own complaints mediators. Independence is a key attribute of a contemporary Ombuds service yet the new Regs actually encourage an Ombuds with total dependence on the bank(s).

Canadians have a critical view of the Canada's Big banks and it's not just about fees. In a March 2011 survey by Toronto-based pollster Forum Research Inc., overall, just two-thirds of Canadians, 67%, indicated they were "very satisfied" with the level of service received from the financial institution they bank with (74% of credit union members were "very satisfied"). More importantly, the banks scored poor marks in terms of the financial planning and advice offered, with only 50% of customers indicating they were "very satisfied" with such services. Of course, bad advice leads to client complaints. Lorne Bozinoff, president of Forum Research, said the results from the poll, conducted between March 1 and March 6, 2011 should signal to banks that there's plenty of room for improvement. "There's nothing world class about a number" that shows 67% are very satisfied, he said. "That means when you see three people in line at a bank, one of them is having a bad day." On this basis, it is really unclear why the banks deserve special treatment, especially in complaint handling. If the Minister simply compels the two runaway banks to return to the OBSI fold, there is no need for most of this regulation.

What is really needed is a Government standard for bank's internal handling of complaints. Too many worthy complaints are "resolved" without being exposed to a truly fair process. Our experiences over the past 10 years in assisting banking complainants suggest that the banks need to take action to improve the standard of their complaint handling and ensure they treat complainants fairly According to the 2011 OBSI Annual

Report ,nearly one in six (15%) bank decisions were reversed- others case went on to successful civil litigation. In our view ,the areas that have the most significant impact on the quality of banks' internal complaint handling include:

Culture: Banks have not embedded a culture that focused on delivering fair outcomes for complainants. The key drivers for a bad culture are a lack of senior management engagement with complaint handling, poorly conceived procedures and controls and inadequate staff training . Most consumers do not trust so-called bank Ombudsman. Branch manager and staff turnover add to our concerns.

Root cause analysis: From our perspective, the extent and quality of root cause analysis is disappointing. Responses to complainants too often skirt the main issue , are superficial and dismissive. Banks with effective root cause analysis would benefit from being able to proactively identify the root causes of consumer issues and react before they became more widespread. Better staff training would alleviate this issue . See http://en.wikipedia.org/wiki/Root_cause_analysis

Quality of front-line complaint handling:In most banks we find, the quality of complaint handling undertaken by front-line staff (where complaint handling was not the main function of their role) was poor, with superficial investigations and poor decision-making regarding both the outcome of the complaint and remedial action (often to the detriment of the complainant). In our view, the main driver of this is inadequate support to assist front-line staff in reaching the right decisions (for example, training and competence, policies and procedures, guidance and technical support). Where banks use a two-stage process, poor front-line complaint handling often acts as a barrier to the fair treatment of complainants.

Quality assurance of complaints: It appears to us that most of the quality assurance arrangements we observe are focused on administrative checking of adherence to process (such as meeting cycle time targets) rather than assessing the quality of responses to customers and whether the outcome was fair.

Thus, we urge the Government develop a common standard for bank's **internal** complaint handling standards as a priority. We recommend ISO 10002 *Quality management - Customer satisfaction - Guidelines for complaints handling in organizations* It provides guidance on the process of complaints handling related to products within an organization, including planning, design, operation, maintenance and improvement. The complaints-handling process described is suitable for use as one of the processes of an overall ISO 9000 quality management system. We note parenthetically that in May 2011 the UK Financial Services Authority , Britain's financial regulator,issued new rules for complaint handling by financial institutions. They are very robust and far more detailed than those currently proposed by the Department of Finance Re http://www.fsa.gov.uk/pubs/cp/cp11_10.pdf . **Britain does not permit banks to select their own Ombuds service-** they MUST use the national UK Financial Ombudsman Service <http://www.financial-ombudsman.org.uk/> .

The proposed regulation states that it plans to set "tough" standards for external bodies handling banking complaints that banks can't resolve on their own. We will demonstrate in fact that the initiative is regressive , is less demanding than today's practices . Under the OBSI structure, no one firm can dictate the terms of its funding so its independence is more robust. That is not true under the proposed regime. There is nothing tough about

regulations that permit a non-independent body and only require that the individual who investigates a particular complaint be impartial and independent. Under the proposed regulations, financial consumers don't get to choose an Ombuds service provider- they must use the service chosen by the bank.

A positive element of the proposals is that there will be Government standards for external dispute resolution providers and the Financial Consumer Agency of Canada (FCAC), will provide accreditation and oversight. However, the system should, at a minimum, comply with International Standard ISO 10003:Quality management - Customer satisfaction - Guidelines for dispute resolution external to organizations, the same as OBSI. In our view, as we shall demonstrate, it does not.

While the new rules set the resolution time to a maximum of 120 days (from 80 % within 180 days goal used by OBSI), we view this with caution. In its 2011 Annual report, ADR Chambers Banking Ombudsman said it took 6.6 months on average to finish an investigation. OBSI completed investigations of 87 % of its banking case files in less than 180 days. Most delays are caused by the bank's being unwilling or unable to provide investigators with key information, a point not covered in the Government proposals. It would be harmful to Canadians if investigations were cut short to meet this compressed and unsupported time line standard. For the record, OBSI opened 397 banking case files in 2011 - ADRBO did a full investigation of 32 complaints. In 2011, just \$487, 546 was awarded by OBSI as compensation for banking complaints (excludes RBC). These small numbers hardly form the basis for new regulation and bureaucracy. We note that in 2011, OBSI received the first bank refusal to compensate its customers who suffered a loss as a result of what they determined to be systemic problems with the bank's mortgage documentation.

As regards access, the rules are limited to a branch display and bank website(s). We believe that an Ombuds scheme must not only have a website, it must allow the parties to submit a complaint online, and exchange information electronically. The right to complain to the Ombudsman should be adequately publicized by the Bank and the contracted Ombudsman using a variety of vehicles and channels. Consideration should be given to requiring multiple locations, such as in customer satisfaction Codes of conduct, complaint forms, sales contracts, documents ending an internal complaint handling process and YouTube, FaceBook and Twitter.

The proposed rules take away the fundamental ability of the complaint bodies to identify and recommend a systemic remedy for all Canadian consumers impacted by a bank practice or policy, restricting judgment solely to the individual complaint. Given all the systemic issues in the banking world today, this deficiency seems particularly egregious. Further, without using an integrated multi-bank database such as OBSI's, the early detection of a national systemic problem is highly unlikely.

Though the FCAC will have to approve any external complaints bodies this still means that each bank can pick its own external complaint resolver and negotiate fees and other T&C's suitable to it. Additionally, FCAC will incur additional costs for staff and expenses related to its expanded role, all payable by taxpayers. Further, OBSI would now be subject to two independent reviews, one to comply with Federal requirements and one to satisfy the Joint Forum of Securities Regulators - this will add to their costs as well.

Any complainant should be able to utilize the Ombuds scheme after 90 days of original complaint filing if the bank has not provided a satisfactory solution to the complainant.

Recommendations by the Ombudsman shall not be binding on the complainant and shall not prevent civil litigation once a formal recommendation has been made by the Ombudsman. These points need to be included in the regulation and operating procedures.

Ombuds schemes contracted and funded by a bank to handle client complaints , if permitted, need to be beyond reproach. Such Ombuds schemes should be separately incorporated and have a board of directors , a majority of whom are independent, to provide oversight. The Board's Charter should be publicly disclosed. This should be covered in the proposed regulations as well as compensation caps (\$350, 000) , privacy/data security , records retention and many other details . We feel OBSI already meets these criteria and that allowing multiple Ombuds banking schemes is redundant, adds undue complexity and is a waste of time and money.

The standard should clearly state the appointment by a bank must not be subject to premature termination other than for incapacity, breach of contract or misconduct or other good cause. The grounds on which dismissal can be made should always be stated *a priori* .The bank subject to investigation by the Ombudsman service should not be entitled to exercise the power to terminate the Ombudsman's contract. The Government's proposals do not address this issue except to require advance notice and an orderly transfer of complainant files to another Ombuds service. In fact, the regulations are unambitious overall. Nothing about non-profit, nothing about processes, nothing about governance, nothing about remedies in the case of a bank refusal, nothing about holding banks accountable... We are also unclear if FCAC would level fines for regulatory breaches or even if they have the statutory authority to collect fines.

The contracted Ombudsman should have the right and obligation to publicly disclose via News Release any rejection of a Ombudsman recommendation by a bank . The Press Release should provide an overview of the case and name the associated bank. This feature is VERY important to Canadians and is absent from the proposed regulation.

The proposal states that the contracted Ombuds service submit an Annual Report to the Commissioner (FCAC?) . We believe the report , which should include as a minimum a narrative overview of the year's operations, key operational and comprehensive complaint statistics, a discussion of key issues and trends, the major causes and sources of complaints and a breakdown of the number of complaints by each named bank, should be made public .

ADR Chambers Banking Ombudsman, (ADRBO) an unincorporated unit of private for-profit mediation firm ADR Chambers currently handles RBC and TD banking complaints .We have pointed out a number of deficiencies in the arrangement in our published reports. ADRBO charges RBC and TD based on private undisclosed arrangements for a mandate much more limited than OBSI's. For one, ADRBO has no Public Service mandate. There is no independent board oversight, just as there is no apparent financial consumer input into ADRBO's funding models, mandate, governance,operating processes or loss calculation methodology. In fact, there is no Government or regulatory oversight of ADRBO at this time. We have prepared a research paper on this which is available on request. The Regs should be amended to include a

Public Service mandate.

As we see it ,the only supporters of these proposed Regs are the banking industry lobbyist ,the Canadian Bankers Association, the two renegade banks and possibly the legal profession who will benefit as more Ombuds recommendations are rejected by complainants and proceed to costly, stressful and time consuming civil litigation.

Why is one national Ombuds service so valuable?An Ombudsman can serve as a bulwark of financial consumer democracy in troubled times, protecting citizens and helping industry, regulators and government to improve in the face of a tough economy and fiscal constraint. See <http://www.gouvernance.ca/publications/09-06.pdf> for a review of the Ombudsman as a producer of better governance. Here is our rationale for retaining a single national Ombuds service approved by the Government :

▲ The national Ombuds service provides a one-stop point of entry for complaint resolution. Distressed consumers require simplicity in working their way through the convoluted banking industry complaint handling process. A single national Ombuds service will provide a level of consistency that a fragmented system cannot hope to achieve.

▲ OBSI is currently governed by the FRAMEWORK Agreement worked out by regulators and must comply with its specifications. This could be replaced by an world-class Government standard that would be applicable to other Ombuds services.

▲ Every three (3) years OBSI is subjected to an independent third party review providing assurance the service is functioning properly and keeping up with Best Practices around the world. In 2007 the review contained this cogent remark" *The final difference that we will note is our observation that Canada's financial services environment has noticeably lower levels of formal consumer protection by comparison with other parts of the developed world – including Australia.* " The latest report (2011) confirmed that OBSI is operating at or near world-class levels. The current Government proposal is for a 5-year review cycle which is far too long. We recommend 3 years.

▲ By its design, a single Ombuds service has a enormous treasure trove complaint database entrusted to it. This database can be mined to help develop better practices in the banking industry , not just assess individual complaints. Problem prevention will reduce complaints and make Canada a safer place to transact financial affairs.

▲ A cross- Canada complaint database can be used to identify systemic issues at the national , regional or dealer level. It could , if used properly,provide an insight into long-term industry issues. For example , excessive borrowing, dangerous products, abusive credit card practices, excessive fees etc. This cannot be achieved with multiple separate Ombudsman.

▲ We would not expect adequate transparency from a private for- profit dispute resolution service. Transparency is a hallmark of contemporary Ombuds systems.

▲ Permitting banks to retain multiple dispute resolution service providers of their choice will lead to confusion and inconsistencies in the policies,processes and methodology used in resolving client complaints.

▲ Eliminating the requirement for member firms to participate in a national Ombuds service would create an alternative complaint handling network laced with conflicts -of-interest and unhealthy competition. Retail banking clients would be at a huge disadvantage under such a regime. We are of the view that the for-profits would be more

motivated to retain business than be fair to complainants. This would further weaken consumer protection in Canada .

The Regs may have serious unintended consequences. Should other banks withdraw, OBSI will likely not survive (or its costs will become uncompetitive), despite its record of success in dealing with complaints since its inception. This would be a huge blow to all financial consumers in Canada. Having dual or multiple Ombuds structures is confusing for Canadians and will lead to inconsistent and controversial results. A firm like ADRBO is directly accountable to the banks that contract and pay it to rule on client complaints .If they do not sufficiently satisfy their client(s) – the Big banks – the contract can be terminated . A 21st century dispute resolution process needs to be **stable, credible, independent and impartial** (and perceived to be impartial) – not beholden to any one bank. Such a deficient system is wholly incompatible with a country that claims to have one of the best banking systems in the world.

A for-profit Ombuds service paid for directly by banks would never be trusted by clients. If the Government permit banks to pick their own Ombuds services , it is reasonable to postulate that some will seek greener pastures. No doubt investment dealers will ask for the same right. The contagion could spread to the OLHI and GIO. The end result could set back consumer protection at least a decade. To allow this would be nothing short of shameful and unnecessarily create a socio-economic issue if not an election issue.

One of the themes of the OCCUPY movement was that banks control the levers of Government. The proposed banking complaint rules would appear to support their argument. This is an unnecessary piece of baggage the Government does not need. By listening to consumer viewpoints , the Government can visibly demonstrate that it values public input and respects its citizens .

The arguments and facts presented here make a clear and convincing case that a single national Ombuds service is in the Public Interest. This will benefit ordinary Canadians, recent immigrants, the physically challenged as well as seniors (who make up about 40 % of complainants). Internationally, other Ombuds services are an Agency of Government established by legislation as is the case in the UK and elsewhere . By all accounts these are working very well and continually improving.

Accordingly, we recommend that the Government make a gracious retreat and instead establish a legislation-enabled Financial Ombuds service for banking and investments and possibly insurance. That would demonstrate real political leadership.

We have the highest respect for the Department of Finance and appreciate the many pro-consumer initiatives it has undertaken including the initiative for a national securities regulator to better protect investors Indeed, the primary argument for such a regulator cited by Minister Flaherty was that in today's globalized , complex world, a strong efficient single national regulator was required to best protect investors and improve our regulatory and enforcement performance. These very same arguments apply to a national Ombuds service.

We would welcome an opportunity to meet with you to discuss this critical issue. As a constructive step, our staff have put together a robust set of recognition criteria for independent Ombudsman services for your consideration. They are bench marked against global standards. See ATTACHMENT.

As this is a public consultation , we expect the public's Comment letters will be publicly disclosed on the Department of Finance website. Public disclosure demonstrates transparency and allows the public to participate in a regulatory change that has a material impact on their lives. Conversely, opaqueness and secrecy will only add to the suspicions surrounding this controversial regulatory initiative.

Permission is granted to disclose or post this letter on websites .

Sincerely,

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ATTACHMENT

Kenmar Associates

RECOGNITION CRITERIA

Bank contracted Ombudsman Service Schemes

Accessibility

Independence;

Fairness

Accountability

Efficiency/Effectiveness

Reporting



Introduction

Given the huge difference in information , knowledge and power between a bank and a complainant , Ombuds schemes contracted and funded by a bank to handle client complaints need to be beyond reproach. Such Ombuds schemes should be separately incorporated and have a board of directors , a majority of whom are independent, to provide oversight. The Board's Charter should be publicly disclosed. It is the responsibility of the principal regulator to ensure such schemes meet minimum acceptable criteria before being accredited. This document provides the basis for such recognition/accreditation. The recognition process is based on the principles of access, independence, fairness, accountability, efficiency /effectiveness and reporting.

Participation of complainants in the Ombuds scheme offered by a bank should be voluntary. Sufficient information about the dispute resolution process, the provider and its performance should be disclosed to complainants and the public so that they can make informed decisions about using the scheme .There should be systems in place to ensure proper personnel/investigator training, oversight, supervision and quality control .Information in the public domain should include a clear explanation of an Ombudsman scheme's legal constitution, governance and funding arrangements. Complainant consent to participate in the scheme should be based on full knowledge and understanding of the process , limitations and possible outcomes.

Contracted schemes must deal with the vast majority of types of consumer complaints or disputes about the financial or credit products and services offered. The compensation cap for a scheme , if any,should be such that it captures the vast majority of the complaints filed and be consistent with international benchmarks .Compensation caps apply on a 'per claim' basis i.e. separate claims by the same complainant must not be aggregated by the scheme for the purpose of determining a maximum claim. The compensation cap will be reviewed annually to consider the effects of inflation and other factors.

Any complainant should be able to utilize the Ombuds scheme after 90 days of original complaint filing if the bank has not provided a satisfactory solution to the complainant. Recommendations by the Ombudsman shall not be binding and shall not prevent civil litigation once a formal recommendation has been made by the Ombudsman.

Every effort should be made to ensure that there is a scheme harmonization so that there are no, or only minor , differences between the various contracted bank schemes.

The title of 'Ombudsman' should not be used unless the Recognition Criteria for Recognition of Ombudsman's contracted services are met. To avoid consumer confusion, contracted scheme sponsoring banks shall not use the title " Ombudsman" to characterize their internal complaint handling process.

The Ombudsman should make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law, to good practice and to any inequitable conduct or maladministration.

Accessibility

Access is critical to the success of any Ombudsman Scheme. Communications regarding access should be made by the member bank at various times, such as at the point of sale and at the time a complaint is filed with the organization. At a minimum, the organization should communicate at the end of unsuccessful internal complaint handling processes. An Ombuds scheme must have a website. This must allow the parties to submit a complaint online, and exchange information electronically. The following core elements of access should be present.

(a) Access should be on a no-charge basis

(b) The right to complain to the Ombudsman should be adequately publicized by the Bank and the Ombudsman using a variety of vehicles and channels. Consideration should be given to using multiple locations, such as in customer satisfaction codes of conduct, on bank displays, web sites, complaint forms, sales contracts , documents ending an internal complaint handling process and YouTube , FaceBook and Twitter.

(c) The contracted Ombudsman must pro-actively promote itself so bank clients become aware of the existence of the scheme, thereby improving accessibility of the scheme. There may be some classes of complainants or disputants who, for geographic, economic or other reasons, are not accessing the scheme in proportion to their use of financial or credit products and services. The scheme's outreach program should actively promote its existence, particularly to those complainants that are under-represented in the composition of people who access the scheme.

(d) Complainants should have direct access to the Ombudsman scheme via phone, FAX, and email . The complaint intake protocols must be robust to ensure the integrity of the system. This includes understanding the complainant issue, being able to offer a language of choice, assist in formulating their issue and if appropriate referring them to other areas (privacy, human rights) .

(e) A provision to assist complainants or disputants to draft and lodge their complaints or disputes should be embedded in the Terms of Reference. The assistance provided should also consider the needs of persons with disabilities or other special needs so that they may participate effectively. The schemes key materials should be available in in Braille or large font, and in audio format Complainants should also have the right to appoint INTERVENORS to support them through the complaint process.

(f) The Ombudsman must actively work with ethnic communities . In a multicultural society such as Canada's, access should be opened up to include other languages based on demographics.

(g) The Ombudsman's procedures should be straightforward for complainants to understand and use.

(h) Those complaining to the Ombudsman should be assured that their complaint will, while under investigation, stop the applicable provincial Statute of limitations time clock.

(i) Where legal proceedings that relate to debt recovery proceedings have already commenced and a complainant or disputant takes their complaint or dispute to an Ombuds scheme, the Terms of Reference must require the bank not to pursue the legal proceedings beyond the minimum necessary to preserve its legal rights.

(j) Provide information to the Recognition authority (principal regulator) relating to whether the scheme member or members have been uncooperative or otherwise failed to take appropriate remedial action.

(k) Scheme documents comply with plain language principles, ensuring that information is easy to access, user-friendly, practically relevant and disseminated at key stages of the complaint resolution process. Complainants should be able to take their dispute directly to the Ombuds scheme where the dispute involves an application for hardship variation or request for postponement of enforcement proceedings .

(l) The scheme should prioritize access in cases where consumers might be disadvantaged by having to wait longer – for example, an impending mortgage foreclosure or through financial hardship or for medical reasons.

(m) The Ombuds scheme should have processes to assess the complaint or dispute and refer part or the whole of the complaint or dispute to another relevant Ombuds scheme where appropriate, depending on the nature of the complaint or dispute (i.e. the subject matter in dispute) .

Access would be further enhanced (or not) if Case histories were posted on the website rather than embedded in multiple Annual Reports. Such a posting would be helpful for complainants to decide on accessing/using the Scheme.

Independence

Independence (and perceived independence) is crucial for a bank funded external Ombuds scheme to work. The following elements are required:

(a) The Ombudsman must be visibly, demonstrably and functionally independent from those whom the Ombudsman has the power to investigate. It should operate under Terms of Reference that have involved a public consultation and be compliant with international standards such as ISO 10003 , World Bank standards and G20 Guidelines.

(b) The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman. In particular, the operating budget should be determined by an Independent Board of Directors and be appropriate in the public

interest.

(c) The contract period should be of sufficient duration not to undermine independence. Typically, the appointment should be for a minimum of five years. It may be subject to renewal but the renewal process should not undermine or compromise the office holder's independence.

(d) The compensation of the contracted Ombudsman scheme should not be subject to suspension or reduction by the firm subject to investigation.

(e) The appointment must not be subject to premature termination other than for incapacity, breach of contract or misconduct or other good cause. The grounds on which dismissal can be made should always be stated *a priori*. Those subject to investigation by the Ombudsman should not be entitled to exercise the power to terminate the Ombudsman's contract.

(f) The Ombudsman must have the power to decide whether or not a complaint is within the Ombudsman's jurisdiction. If it is, the Ombudsman (or someone acting on his or her authority) must have the power to investigate it. The Ombudsman's determination (recommendation) should be final and should not be able to be overturned other than by the courts or an appeal route provided for by law.

(g) The Ombudsman should be accountable to a body independent of those subject to investigation (typically a Board of independent directors), That body should also be responsible for safeguarding the independence of the Ombudsman and providing oversight.

(h) the Ombudsman should have the right and obligation to publicly disclose via News Release any rejection of a Ombudsman recommendation . The Release shall provide an overview of the case and name the associated bank.

(i) Independence should be periodically validated by the principal regulator or by a third party auditor acceptable to the regulator.

Fairness

The Ombudsman should expect those banks subject to investigation to have accessible and fair internal complaints procedures. The contracted Ombudsman shall adopt conflict -of- interest policies and ethical codes of conduct for personnel, management and investigators ,and only assign qualified investigators to a case file where they can reasonably be expected to be objective and unbiased. The Ombudsman must disclose to complainants the identity of the investigator selected to resolve a complaint, along with any relationship the investigator has with the bank that might reasonably be perceived as affecting impartiality. Complainants should be allowed an opportunity to challenge the selection of any dispute resolver for good cause. The Ombudsman should reveal to the Complainant in advance the criteria used for recommendations or determinative decisions. The progress of the investigation should be tracked and the complainants informed of progress . Under no conditions should investigators be pressured to meet an arbitrary timeline for investigation completion. A scheme's complaints/disputes handling and other procedures must accord with the principles of natural justice. These include but are not limited to:

(a) In reaching a decision about a complaint or dispute, a scheme should not be entitled to rely on information that is not available to all parties.

(b) Written reasons about a scheme's recommendations clearly identify the documents or information relied on;

(c) Identified documents or information should be provided to the parties on request ;

(d) In the interests of ensuring that parties to a complaint or dispute are treated fairly, a scheme should provide written reasons for any decision made about the merits of a complaint or dispute, including when a complaint or dispute is judged to be outside the scope of the scheme's Terms of Reference.

(e) Applying advisory or determinative methods according to published procedures that are made available to the parties prior to initiation of any process. Such procedures and their application should provide all parties with full, fair and equivalent opportunities to participate in any methods, and should ensure that any recommendations or decisions are based on the evidence and arguments presented to the investigator. The method of calculating client losses shall be publicly disclosed on the Ombuds website. "Notional models " shall be used when applicable to make complainants "whole".

(e) In all cases , a recommendation :

- will be in writing;
- will include a summary of the Investigator's reasons;
- will first be provided to the parties in DRAFT;
- is not binding on either the bank or the Complainant

(f) Complainants shall be given at least 30 days to accept or reject a recommendation

(g) Complainants shall not be compelled to sign a Confidentiality Agreement as a condition for accepting a recommendation. Under no conditions should a scheme include confidentiality or similar restrictions aimed at preventing a client from initiating a complaint to regulatory authorities, self-regulatory organizations or other enforcement authorities, or continuing with any pending complaint in progress, or participating in any further proceedings by such authorities.

(h) The scheme should provide a mechanism for appeals when there is evidence of an arithmetic error, an omission of key facts or the failure to use available evidence.

(i) An Recognized Scheme must explicitly state that it will provide a substantive response in a manner that is fair, clear and not misleading and also includes an explanation of the reasoning. It should also include disclosure of options available including arbitration, civil litigation and mediation.

(j) In all cases where it is decided not to accept a complaint for investigation, the Ombudsman should notify the complainant in writing of that decision and the basis for it.

(k) The Scheme must retain complaint files for seven (7) years and be retrievable within a reasonable period of time.

(l) Information provided and collected under the scheme shall be protected by Federal and provincial privacy laws. In the case of a criminal or fraud investigation, case file files will be provided to law enforcement upon request.

(m) Provision should be made for a consumer advisory panel comprised of consumer representatives / organizations to provide overview and commentary on the scheme.

Accountability

In order to demonstrate accountability a contracted scheme must:

(a) report to the principal regulator any systemic issues and matters involving serious misconduct by a scheme member bank;

(b) report to the principal regulator and law enforcement any matters involving illegal activity or fraud by a scheme member;

(c) Collect and report statistical information to the principal regulator and the public about complaints and disputes it receives on a quarterly basis and in its annual report as defined under the section Reporting;

(d) have the means to handle disputes where the organization and complainant reside at great distance from each other, such as in inter-provincial situations; and whether the provider has processes in place to monitor, evaluate and continually improve its complaint handling services;

(e) Conduct a client satisfaction survey at least every two years and publish the results on the Ombuds website

(e) issue an Annual Report providing a narrative overview of the year's operations, key operational and complaint statistics, a discussion of key issues and trends, the major causes and sources of complaints and a breakdown of the number of complaints by each named bank.

(f) conduct tri-annual independent reviews of its operations. The results of such reviews shall be publicly disclosed on the Scheme's website.

Efficiency / Effectiveness

Requirements that relate to the principles of efficiency/effectiveness include:

(a) The adequacy of a scheme's coverage;

(b) Reducing consumer confusion where a complaint or dispute involves multi-party multi-licensees and/or credit representatives;

(c) The handling of complaints and disputes where a bank ceases to remain a member of the scheme;

(d) Adopting reasonable time limits / cycle times for complainants using the scheme. The Ombuds shall establish and publish expected time frames for the completion of an investigation. Reports on cycle time statistics shall be measured from the time a complaint is received (not from the time a file is assigned to an investigator.)

(e) Having procedures in place to ensure that a bank responds to Ombudsman

recommendations;

(f) offering remedies that are consistent with the remedies available under the Bank Act, other relevant laws; applicable rules and regulations

(g) Except as otherwise provided by law, the Ombuds have the right to require all relevant information, documents and other materials from those subject to investigation.

Reporting (Quarterly and Annual Report)

To comply with basic requirements for responsible collection, reporting and disclosure , a contracted scheme must collect and report information about:

(a) The number of complaints and inquiries received in total , the number of files opened sorted by province and sorted by bank;

(b) the demographics (e.g. age/seniors) of complainants who have lodged a complaint or dispute with the scheme;

(c) the number of complaints or disputes received that fall outside the scheme's Terms of Reference (at least 3 years back); the reasons for such "out of mandate" cases should be provided;

(d) the scheme's current caseload, including the age and status of open cases; (e) the average time taken to resolve complaints or disputes (3-year back history) and an explanation of below standard variances;

(e) A profile of complaints or disputes to enable identification of trends/issues:

(f) A summary of the underlying cause (s) of complaints or disputes with percentages

(g) Any systemic issues or other trends; and

(h) the number of complaints or disputes closed, and an indication of the outcome of each closed complaint or dispute (including percent found in favour of the complainant and complaint data on compensation paid to complainants, including totals, averages, ranges and number of complainants who received compensation) for the year and 3 prior years.

(i) complaint cycle time performance (in days) including average and range for the year and 3 prior years. A histogram of cycle time performance shall also be provided with reference made to the target cycle time and an explanation of any material variance.

(j) Public release of details of the scheme's funding arrangements, including terms of the contract and amounts received in 3 previous years

(kj) Anonymised reports of investigations or case studies should be published in the Annual Report and on its website .

Statistical information provided shall be presented in a format that is easy to read ,use and interpret.

The principal regulator may change the Recognition criteria as experience, business practices and laws change

