



Canadian Foundation *for*  
Advancement *of* Investor Rights  
Fondation canadienne *pour* l'avancement  
*des* droits *des* investisseurs

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**RE: OBSI Terms of Reference Renewal Project: Public Consultation**

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FAIR Canada is pleased to offer comments on the Ombudsman for Banking Services and Investments' ("OBSI") Terms of Reference Renewal Project.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

## **1. General Comment**

- 1.1. FAIR Canada would have preferred if OBSI was at this stage putting out revised Terms of Reference ("TOR") that incorporated its ability to bind Participating Firms if the Complainant accepted the OBSI recommendation. The approach taken will require two consultations rather than one. It will also inevitably lead stakeholders to advocate for substantive changes beyond the exercise being contemplated at the current time.

## **2. Specific Comments**

- 2.1. OBSI's Purpose – FAIR Canada believes that OBSI's purpose should explicitly state (as was set out in the previous TOR at sections 9 and 22) that OBSI's mandate is to receive, investigate and make recommendations in respect of the actions or inactions of a Participating Firm or of a Representative and OBSI shall make a recommendation for compensation or action to the Complainant and the Participating Firm if, in OBSI's opinion, the Complainant has suffered loss, damage or harm because of an act or omission of the Participating Firm or its Representative in the provision of a Financial Service (our comments on the revised definition of this is discussed below). The proposed updated purpose's reference to "seek to resolve disputes" is too vague.
- 2.2. The proposed updated definition of "Complainant" should be revised to make clear a former customer of a Participating Firm or its Representative has the right to bring a complaint to

OBSI.

- 2.3. We support the definition of “Complaint” as Complainants are often not capable of specifically identifying what has gone wrong and articulating the exact nature of their complaint and may need assistance. It is also fair and appropriate that an ombudsman include any issues that are identified during the course of its investigation as part of the Complaint rather than ignore or bury them. This is not being an advocate for the Complainant but rather is part of acting “...with integrity and objectivity and dealing with each complaint thoroughly and fairly (see OBSI Fairness Statement dated January 26, 2011).
- 2.4. We also support the definition of “Customer” clearly capturing circumstances of complaints relating to off book transactions that were sold or transacted through the Participating Firm or its Representative.
- 2.5. The proposed updated definition of “Financial Service” needs to be revised as the existing definition was clear and the new definition is not. Moreover, the existing definition includes a financial product whereas the new one does not and therefore, is more narrow in scope.
- 2.6. The definition of “Participating Firm” should reference the relevant securities regulatory provisions that require all securities dealers and their advisers (including exempt market dealers and portfolio managers) to utilize OBSI as their dispute resolution provider.
- 2.7. We suggest that the acronyms for the Ombudservice for Life and Health Insurance (“OLHI”) and the General Insurance Ombudservice (“GIO”) be included under “Industry Ombudservice”.
- 2.8. We prefer the existing definition of “Standards” as “applicable statutory or regulatory requirements for handling and resolving complaints” are legal requirements, not “standards”.
- 2.9. In Part 3, OBSI Organization and Governance Section 3.2 Membership - should also refer to the applicable NI 31-103 requirement to be a member of OBSI.
- 2.10. Any reference to OBSI’s website, should include the link to the relevant part of the website, as in Part 3, Section 3.3 on Fees.
- 2.11. Part 4, Ombudsman’s Powers and Duties – We prefer the existing language relevant to section 4.1(d), “assist Complainants with the Complaint process, including helping them articulate their Complaint to a Participating Firm where necessary;” rather than “where necessary and without advocating on their behalf, assist Complainants with the complaint process, including helping them articulate their Complaint”.
- 2.12. Part 5 – Complaints to OBSI, Section 5.1(a) – We suggest modifying the wording to “...or that OBSI can fairly consider the Complaint without the participation of a person with an interest in the Complaint”. Moreover, subsection (b) should state “...is not pursuing it in a frivolous, vexatious or threatening way” rather than “not pursuing it in an unreasonable or threatening way”. Frivolous or vexatious pursuit of a complaint is less common than a complaint being pursued in an unreasonable way. A complaint should not be barred from the outset simply because it may be perceived as being pursued in an unreasonable way.

- 2.13. Part 7, Agreement to Suspend Statutory Limitation Periods, Section 7.2 – This section should make it clear that either the Complainant or the Participating Firm reserves the right to proceed with legal remedies against the other.
- 2.14. Part 8, Execution of OBSI’s Mandate, Section 8.1 should state that “In determining what is fair to the *Complainant and the Participating Firm*, OBSI will take into account...”.
- 2.15. FAIR Canada recommends that the Terms of Reference explicitly prohibit Participating Firms from requiring that the Complainant sign a release which requires the Complainant to provide full and final settlement of all existing and future claims in respect of the matter and therefore prevents the Complainant from commencing an action for the remainder of its claim beyond the \$350,000 OBSI limit.
- 2.16. Part 11, Firms’ Complaint Handling Procedures – We suggest that Section 11.1 have added at the end, “...fair and generally equivalent to those mandated by banking or investment regulators in Canada, as applicable”, i.e. bank handling procedures for banking related claims and investment handling procedures for investment related claims.
- 2.17. Section 11.2, Fair practices – We suggest adding to subsection (e) that the Complainant does not need to wait to receive a letter from a Participating Firm that the Participating Firm has not provided a substantive response within the 90 days so that, as a result, the Complainant has a right to go to OBSI given the passage of the 90 days, in order to go to OBSI. In other words, the receipt of this letter is not required in order to go to OBSI, once 90 days have passed. In addition, Subsection (iii) should have the following words added at the end “...in light of the passage of 90 days.”
- 2.18. Part 13, Recommendations and Rejections of Complaints - FAIR Canada recommends that Section 13.2 and Section 8.1 be consistent. FAIR Canada recommends that Section 13.8(b) and (c) be reviewed and reworded as we find it confusing as it refers to “representative or the Representative at the Participating Firm”.
- 2.19. FAIR Canada recommends that Part 13 explicitly set out that a Complainant may not accept a Recommendation of OBSI, and that if the Complainant does not accept the Recommendation, the Complainant may pursue their legal rights and remedies in another forum such as the courts or through IIROC Arbitration.
- 2.20. Part 16, Confidentiality and Disclosure, Section 16.1 - Complainants should be able to disclose information to their authorized representative who may not be a “professional advisor”. The proposed undated provision is too narrowly written and prevents a Complainant from utilizing a trusted person to assist them with the process.
- 2.21. Section 16.5 – FAIR Canada recommends this wording be reviewed as a Participating Firm should be required to comply (not “may comply”) with a written request from a regulator for disclosure of information whereas Complainants have no such obligation and therefore, the “may comply” is appropriate. In addition, OBSI should be able to discuss a Complaint and the underlying facts with the regulator and not simply the Complainant and the Participating Firm.

2.22. Part 17 – Annual Reporting – We recommend that this specify that information should be reported separately for banking and investment complaint data.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Frank Allen at [647-256-6693](tel:647-256-6693)/[frank.allen@faircanada.ca](mailto:frank.allen@faircanada.ca), Marian Passmore at [647-256-6691](tel:647-256-6691)/[marian.passmore@faircanada.ca](mailto:marian.passmore@faircanada.ca) or Samreen Beg at [647-256-6692](tel:647-256-6692)/[samreen.beg@faircanada.ca](mailto:samreen.beg@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights