OBSI OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS
OSBI OMBUDSMAN DES SERVICES BANCAIRES ET D'INVESTISSEMENT

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Re: CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service

The Ombudsman for Banking Services and Investments (OBSI) is pleased to provide our comments to the Canadian Securities Administrators (CSA) on *CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service* (the "**Consultation Document**"), which requests public comment on a proposed regulatory framework under which a not-for-profit dispute resolution service would have the authority to issue final binding decisions (the "**Proposed Framework**").

OBSI is a national, independent, and not-for-profit organization that helps resolve and reduce disputes between consumers and over 1500 financial services firms from across Canada in both official languages. We have been providing this service for over 27 years for the banking sector and over 22 years for the investment sector. As such, we are uniquely positioned to share our views and insights for this important consultation.

As noted in the Consultation Document, access to fair, efficient and effective dispute resolution processes is internationally recognized as essential to investor confidence, supportive of industry best practices, and complementary to regulatory compliance and enforcement efforts.

As long-time advocates for a fair, effective and trusted financial services sector, we agree with the overarching premise of the proposal that Canadian investor confidence, investor protection, and the

integrity of Canada's capital markets will be enhanced by an ombudservice with the authority to issue binding final decisions. The Consultation Document provides a thorough discussion of the rationales and expected benefits of binding authority.

We acknowledge and appreciate the CSA's commitment over many years to ensuring fair redress for Canadian investors and their endorsement of OBSI as the provider of dispute resolution services for all sectors of the Canadian securities industry. The Consultation Document states that it is anticipated that OBSI would be the dispute resolution service considered for designation or recognition by securities regulators pursuant to the Proposed Framework and we would be honoured by this designation. We also appreciate the CSA working group's openness to consult with OBSI during the development of the Proposed Framework.

Overall, we believe the Proposed Framework represents a well-founded enhancement of the investor protection system in Canada and will result in a more fair, trusted and effective system for the resolution of investor disputes that all Canadian investors can have confidence in.

Overview of OBSI comments on the Proposed Framework

We agree with and support a number of the key elements of the Proposed Framework. In particular, we strongly support the following features of the Proposed Framework:

1. It is appropriate to maintain OBSI's current investigation and recommendation process. The Proposed Framework preserves OBSI's current efficient investigation and recommendation processes, the integrity and fairness of which have been reviewed and endorsed through multiple independent reviews.

2. The proposed framework recognizes and appropriately prioritizes accessibility and efficiency. Maintaining OBSI's independence and flexibility to determine the investigative approach that is appropriate and proportionate to the circumstances of each case, including with respect to questions of procedure at the binding decision stage, strikes an appropriate balance, assuring procedural fairness while preserving accessibility and efficiency.

We also make the following suggestions for change:

3. Explicit consumer acceptance should be required to make a recommendation or final decision binding on the firm. Binding recommendations or decisions should be based on consumers' explicit acceptance of the outcome as a full and final settlement of the dispute.

4. The proposed changes to the Companion Policy include guidance relating to firms registered in other sectors, such as insurance. We recommend reconsideration of this guidance. The Companion Policy guidance to inform clients that OBSI's services are "limited to complaints concerning registrable activities" should be removed or redrafted as this is too narrow a framing of the complaints that OBSI can consider.

In response to the questions posed in the Consultation Document, we provide the following comments:

5. OBSI is able to provide services that are binding in some jurisdictions and not in others for as long as necessary. If jurisdictions designate or recognize OBSI as the identified ombudservice at different

times, we do not anticipate any significant operational challenges. Effective communication to consumers will be essential.

6. Sixty days is an appropriate period for consumer and firm consideration of whether to request a review of a recommendation and for consumers to make an acceptance decision. Recommendations should become binding on the firm at the expiration of a sixty-day review request period if explicitly accepted by the investor.

7. It is appropriate for second stage reviews to be binding on consumers who request them. Consumers remain free to withdraw from the ombudservice and pursue other dispute resolution avenues throughout the complaint investigation and recommendation process. However, it is reasonable to require their commitment to complete the process if they initiate it.

8. The current $350,000 compensation limit should be maintained. We do not propose any change to the compensation limit.

9. Appeal to courts or securities tribunals is unnecessary and inappropriate for any recommendation under OBSI's compensation limit. Further formal rights of appeal to the courts or an administrative tribunal would undermine the key objectives of the ombudsman dispute resolution system.

10. Any oversight framework must respect and preserve the independence of the ombudservice. The ombudservice should be accountable to regulators on relevant matters, but the oversight framework must not infringe on the ombudservice's independence or credibility as an impartial decision maker and should be tailored accordingly.

11. The term ombudsman or ombudservice should be used only by independent dispute resolution services with a public interest mandate. We support the elimination of the term ombudsman or ombudservice in reference to offices or employees of affiliated internal dispute resolution services and note that this change is consistent with recent Bank Act amendments.

1. It is appropriate to maintain OBSI's current investigation and recommendation process

THE PROPOSED FRAMEWORK PRESERVES OBSI'S CURRENT EFFICIENT INVESTIGATION AND RECOMMENDATION PROCESSES, THE INTEGRITY AND FAIRNESS OF WHICH HAS BEEN REVIEWED AND ENDORSED THROUGH MULTIPLE INDEPENDENT REVIEWS

OBSI's process has been repeatedly reviewed and endorsed by independent experts over many years.

Expert independent external reviews of OSBI were conducted in 2007, 2011, 2016 and 2021. All of these reviews have concluded that OBSI is a professional and effective ombudservice with a fair process that meets or exceeds the standards of financial ombudservices around the world. Such reviews have also canvassed and carefully examined investment industry objections without finding justification for them. All of these reviews have also made recommendations for incremental improvement of OBSI's process and OBSI has responded transparently, adopting most recommendations and reporting publicly on progress towards these improvements.

Notably, the independent reviews in 2011, 2016 and 2021 all recommended that OBSI be granted binding authority, citing international best practices, the organization's credibility, the quality of the service, and the problem of low settlements.

OBSI has also been the subject of a range of other recent examinations which have endorsed the quality if our process.

The Financial Consumer Agency of Canada (FCAC) conducted a detailed review of OBSI in 2020, which resulted in the publication of its report, *Industry Review: The Operations of External Complaints Bodies*. The report found that OBSI's had adopted international best practices for external dispute resolution services, was accessible and accountable, and demonstrated a significant commitment to transparency and a strong commitment to effective complaint resolution.

Following a public consultation process in 2021 and a thorough application and independent selection process in 2023, Canada's Minister of Finance designated OBSI to serve as Canada's sole national external complaints body for banking.

Additionally, in annual surveys, a significant majority of financial services firms that have had a complaint handled by OBSI in the prior year report a strongly favourable view of our process, with a significant majority agreeing with the statement "OBSI added value to our firm's complaint handling process" each year.

By preserving OBSI's existing process as a first stage, the Proposed Framework maintains the integrity of this well-founded process while adding an additional review stage to ensure that any party who objects to the process or outcome of the recommendation stage has the opportunity to be heard and to have their objections considered by an impartial reviewer before a final binding decision is rendered.

Such a two-stage review resulting in a binding outcome is consistent with the process used by financial ombudsman services in comparable international jurisdictions such as the United Kingdom and Australia.

2. The proposed framework recognizes and appropriately prioritizes accessibility and efficiency

MAINTAINING OBSI'S INDEPENDENCE AND FLEXIBILITY TO DETERMINE THE INVESTIGATIVE APPROACH THAT IS APPROPRIATE AND PROPORTIONATE TO THE CIRCUMSTANCES OF EACH CASE, INCLUDING WITH RESPECT TO QUESTIONS OF PROCEDURE AT THE BINDING DECISION STAGE, STRIKES AN APPROPRIATE BALANCE, ASSURING PROCEDURAL FAIRNESS WHILE PRESERVING ACCESSIBILITY AND EFFICIENCY

Among the primary advantages of an ombudservice is to ensure that financial services dispute resolution is accessible to consumers and that disputes are resolved efficiently.

Financial ombudservices deal with an exceptional variety of complaints and parties. Of the several hundred securities complaints investigated and resolved by OBSI each year, many involve relatively modest claims, almost all involve unrepresented complainants and firms, and the matters to be investigated range from relatively

straightforward service issues to complex transfer delay or suitability cases involving multiple complainants and firms.

To preserve the advantages of accessibility and efficiency in the investigation and resolution of such a broad variety of cases, an ombudservice must have the discretion to employ processes that are proportionate to the needs of each case and use only those procedures that are necessary to ensure a fair outcome.

Many procedural tools used in adversarial dispute resolution, such formal discovery and cross-examination, require significant time to execute and are are poorly suited to an accessible ombudservice where one or both parties are typically unrepresented by legal counsel. Instead, finacial ombudservices use an inquisitorial decision making process that is accessible and efficient and also respects the principals of natural justice and procedural fairness.

The inquisitorial process used by financial ombdusmen around the world involves an expert investigator who analyses the materials presented by the parties, usually interveiws the parties, and then uses their expertise to decide what additional information they need to determine a fair outcome of the dispute. The investigator collect additional information they deem necessary by directly asking the parties to provide it or by conducting independent research, such as determining the regulatory requirements applicable at the time in question, assessing the risk profile of a security, and/or calculating financial losses.

In the inquisitorial process it is the investigator, rather than the parties or their lawyers, who tests the evidence. The investigator will present each party with the evidence of potential relevance to the case outcome and ask them to respond to it. The investigator may discuss the arguments of one party with the other party, and may independently challenge the parties on the evidence they provide.

Through this process, the fundamental principles of natural justice that require each party to have notice of the key issues in the matter, be able to meaningfully participate, be able to present their point of view and respond to facts presented by others, and have these arguments and evidence considered by an impartial decision-maker are preserved. Each party has the ability to challenge the other party's evidence through the independent decision maker, rather than directly, and neither party is disadvantaged by a lack of legal or industry-specific knowledge.

While unusual in Canada, in other common law jurisdictions inquisitorial systems are used most commonly in "mass justice" settings, where there is a public interest need for accessible tribunals and the system cannot afford the inefficiencies associated with adversarial trials.[1]

Similarly, in the context of independent Canadian financial services ombudsmanship, the public purpose drivers that led to the establishment of the ombudsman system and that require its continued existence are those that also necessitate a fair and efficient non-adversarial fact-finding system.The Proposed Framework's approach of using the essential process test to allow more adversarial procedural

[1] See: Inquisitorial Adjudication and Mass Justice in American Administrative Law in The Nature of Inquisitorial Processes in Administrative Regimes – Global Perspectives, Laverne Jacobs & Sasha Baglay (eds.) (Surrey, England: Ashgate Publishing Company) 2013. pp.93-112

processes only when the OBSI decision maker determines that the proposed procedure is essential to a fair outcome in the case is appropriately supportive of the accessiblity and efficiency imperatives of the ombudservice.

3. Explicit consumer acceptance should be required to make a recommendation or final decision binding on the firm

BINDING RECOMMENDATIONS OR DECISIONS SHOULD BE BASED ON CONSUMERS' EXPLICIT ACCEPTANCE OF THE OUTCOME AS A FULL AND FINAL SETTLEMENT OF THE DISPUTE

The Proposed Framework's approach to defining when a recommendation or final decision becomes binding on the firm relies on the passage of time as well as the *absence* of specified conduct (withdrawal or commencement of legal proceedings within specified time periods) on the part of the complainant. The Proposed Framework also alludes to the likely need for rules limiting the circumstances in which consumers would be permitted to withdraw or commence litigation.

We suggest that the overall framework would be more straightforward and administratively sound if the trigger for binding decisions was based on a requirement of explicit consumer acceptance of the recommendation or decision.

In such a process, the firm would only be obliged to pay the amount of the recommendation or decision if the consumer accepted it in full and final settlement of the dispute. With such a requirement in place:

- Recommendations from the first stage of the investigative process would become binding on the firm if a) neither party had requested a review within the specified time period, and b) the consumer had accepted the recommendation. If the complainant had not explicitly accepted the recommendation and had not requested a review, they would be free to pursue other avenues of redress.
- Final decisions following a second-stage review would become binding on the firm upon acceptance by the complainant. If the complainant had requested the review, their acceptance of the outcome would have been agreed at the outset, and both parties would be bound by the outcome. If the complainant had not requested the review, and had not explicitly accepted the recommendation, the complainant would be free to pursue other avenues of redress and the firm would not be bound.

It is reasonable that consumers be required to explicitly accept a recommendation or decision before it becomes binding on the firm, and this system would offer several benefits:

- Requiring active acceptance of a recommendation or decision ensures that the complainant remains engaged in the process and in the outcome
- An explicit acceptance would clearly indicate that the amount of the recommendation or decision is acceptable to the complainant in final settlement of the claim, foreclosing the possibility of further action

- The acceptance form could include a standard form of release of liability, limited to the subject matter of the complaint. This would have the ancillary benefit of reducing the risk that consumers may be asked by firms to execute over-broad releases and ensures that a standard balanced release is used in all cases, benefiting both parties
- The time between a recommendation or decision and the obligation to pay would be faster
- The process would be simplified and easier for all parties to understand

4. The proposed changes to the Companion Policy include guidance relating to firms registered in other sectors, such as insurance. We recommend reconsideration of this guidance.

THE COMPANION POLICY GUIDANCE TO INFORM CLIENTS THAT OBSI'S SERVICES ARE "LIMITED TO COMPLAINTS CONCERNING REGISTRABLE ACTIVITIES" SHOULD BE REMOVED OR REDRAFTED AS THIS IS TOO NARROW A FRAMING OF THE COMPLAINTS THAT OBSI CAN CONSIDER

The proposed changes to the companion policy include guidance to firms that are dually registered to inform clients that OBSI's services are "limited to complaints concerning registrable activities". We suggest removing or reframing this guidance because the limitation it outlines is too narrow a framing of the complaints that OBSI can consider.

In accordance with our Terms of Reference, OBSI will consider any complaint that relates to the provision of a financial product or service by a participating firm. In practice, we have not found the current definition of complaint in 31-103 which refers to trading or advising activities to be limiting, however, we are concerned that consumers and firms may interpret the term "registrable activities" too narrowly. If included at all, we suggest that the guidance should be to inform consumers that complaints about insurance are outside OBSI's mandate.

5. OBSI is able to provide services that are binding in some jurisdictions and not in others for as long as necessary

IF JURISDICTIONS DESIGNATE OR RECOGNIZE OBSI AS THE IDENTIFIED OMBUDSERVICE AT DIFFERENT TIMES, WE DO NOT ANTICIPATE ANY SIGNIFICANT OPERATIONAL CHALLENGES. EFFECTIVE COMMUNICATION TO CONSUMERS WILL BE ESSENTIAL

OBSI does not foresee any signficiant operational challenges arising from different CSA jurisdcitions implementing the Proposed Framework at different times. Due to the diversity of financial services sectors we serve, following the implementation of the Proposed Framework, we will inevitably be required to manage binding and non-binding complaints simultaneously because banking and credit union compliants are likely to continue to be non-binding for the foreseeable future. During the period when only some CSA jurisdictions have implemented the Proposed Framework, complaints

from those that have not will be handled in the same manner as complaints from other non-binding jurisdictions.

Procedurally, this will entail categorizing complaints at case intake as either binding jurisdiction or non-binding and ensuring that they are handled appropriately. At the conclusion of the recommendation stage, the processes for each category will diverge, with binding jurisdiction cases following the procedure outlined in the Proposed Framework, and non-binding jurisdiction cases following our current facilitated settlement and reconsideration process, leading ultimately to name-and-shame in the event of a firm refusal of a recommendation.

A key focus during this period must be on ensuring that all consumer and firm communications are clear so that all parties understand what to expect in our process. In practical terms, this will require particular care during any transitional or temporary circumstance. When divergent experiences for consumers are disclosed, natural questions are likely to arise from those whose complaints are not subject to binding jurisdiction as to why investors in other provinces have a protection that they do not.

6. Sixty days is an appropriate period for consumer and firm consideration of whether to request a review of a recommendation and for consumers to make an acceptance decision

RECOMMENDATIONS SHOULD BECOME BINDING ON THE FIRM AT THE EXPIRATION OF A SIXTY-DAY REVIEW REQUEST PERIOD IF EXPLICITLY ACCEPTED BY THE INVESTOR

Following a recommendation for compensation at the investigation stage, consumers and firms should have sixty days to decide whether to request a review of the recommendation. In our view, thirty days would be an unduly short amount of time to make a potentially significant and legally consequential decision. Both firms and consumers may wish to seek legal advice and firms may wish to consult with insurers before committing to any outcome. However, in our view ninety days is excessive for this purpose and could lead to unnecessary delays in the process.

As discussed above, we recommend that OBSI recommendations should become binding on the firm at the expiration of the review request period if explicitly accepted by the consumer. This would mean that following a recommendation, either or both parties could accept immediately (conditional upon the other's acceptance), potentially significantly expediting the process. No further waiting for the expiry of a "deeming period" would be required.

Similarly, final second-stage decisions should become binding immediately upon explicit consumer acceptance. Consumers should have sixty days to make this decision, for reasons similar to those outlined above.

7. It is appropriate for second stage reviews to be binding on consumers who request them

CONSUMERS REMAIN FREE TO WITHDRAW FROM THE OMBUDSERIVCE AND PURSUE OTHER DISPUTE RESOLUTION AVENUES THROUGHOUT THE COMPLAINT INVESTIGATION AND RECOMMENDATION PROCESS. HOWEVER, IT IS REASONABLE TO REQUIRE THEIR COMMITMENT TO COMPLETE THE PROCESS IF THEY INITIATE IT

As observed in the Consultation Document, it is unusual for a financial ombudservice to be binding on the consumer in any circumstances. The one exception is the FSPO in Ireland, which has an unusually formal process of appeal.

However, we are of the view that a second stage binding process that binds the consumer is fair in the context of OBSI's services because it means that both firm and consumer are equally committed to the outcome of the review and that the review process will provide finality and closure of the matter for both parties.

We expect that imposing a binding framework on consumers who escalate their complaints for review will have impacts in two circumstances:

- It may reduce the frequency of baseless review requests from consumers who are dissatisfied with the outcome of their complaint but do not have a relevant basis for objection
- It may deter complainants whose true intention is litigation from using the OBSI process tactically as a form of pre-litigation discovery. This is a rare, but occasional occurrence

We note that the actual prejudice to complainants is minimal, as their ability to pursue claims below the OBSI compensation limit through the courts or any other forum is practically constrained in any event.

8. The current $350,000 compensation limit should be maintained

WE DO NOT PROPOSE ANY CHANGE TO THE COMPENSATION LIMIT AMOUNT OF $350,000

OBSI's compensation limit of $350,000 has been in place for decades and is of substantially lower economic value today than when it was first introduced, because it is not subject to any form of regular inflationary increase. However, it is sufficient to allow us to make fair recommendations in the vast majority of cases that are escalated to us for resolution.

Every year, we are asked to assist with cases that appear on their face to exceed our limit and we generally will not commence an investigation of such cases unless the parties acknowledge and accept that our recommendation will not exceed $350,000 and we believe there is a sincere willingness on the part of the complainant to settle for such an amount. However, such cases represent a small minority of the hundreds of cases we investigate and resolve each year.

Among those cases where we recommend compensation, recommendation amounts below $20,000 are typical. For example, the average compensation settlement for investment complaints addressed by OBSI in 2023 was $10,199, while the median was $2,115.

Internationally, the award limit at FOS UK was increased in 2019 from £150,000 to £350,000, and all awards are binding. In Australia, where AFCA decisions are also binding, the monetary compensation limits vary depending on the subject matter of complaint. For example, the limit is AUS$250,000 for complaints relating to General Insurance Brokering and AUS$1 million for small business loans. The limit that applies for general securities complaints at AFCA is AUS$500,000 and the amount claimed by the complainant must not exceed AUS$1 million.

9. Appeal to courts or securities tribunals is unnecessary and inappropriate for any recommendation under OBSI's compensation limit

FURTHER FORMAL RIGHTS OF APPEAL TO THE COURTS OR AN ADMINISTRATIVE TRIBUNAL WOULD UNDERMINE THE KEY OBJECTIVES OF THE OMBUDSMAN DISPUTE RESOLUTION SYSTEM

The Consultation Document clearly states that one of the principal justifications for implementing a binding investment ombudservice regime in Canada is to provide retail investors and firms with "a fully effective system of redress that is final, fair and accessible." Each of these principal aims would be undermined if a formal right of appeal of the ombudservice's decisions to a court, securities tribunal or other body were added to the process.

Finality is a feature of the system that gives both consumers and firms confidence to bring their disputes to the ombudservice and invest their time and effort in the dispute resolution process, on the understanding that the outcome will be a fair resolution of their dispute, completed efficiently, that will allow them to put the dispute behind them. Appeals beyond the internal OBSI review open the door to lengthy procedural processes, motions and further appeals that would severely diminish any promise of finality of the ombudsman dispute resolution process.

As discussed above at point 2, accessibility of the ombudservice, particularly to consumers and firms without legal representation, is an essential feature of an effective ombudservice and a principal reason for financial ombudservices' ubiquity in investor protection systems worldwide. Clearly, no appeal beyond the ombudservice could be meaningfully accessed by an investor or firm without legal representation.

If binding decisions of OBSI were subject to appeal to a court or administrative tribunal, this avenue would principally be used by firms subject to decisions to pay fair redress for harms incurred due to their or their representative's error or wrongdoing. The harmed investor would be obliged to defend the merits of the decision in a legal forum in order to receive compensation for their losses. To meet this obligation would require the investor to retain legal representation and would entail a lengthy, expensive process that would entirely negate the purposes of the ombudservice system.

Harmed investors already have the option to take their complaints against financial services firms to court, and complainants and firms can jointly decide to work with an arbitrator or mediator to resolve their dispute if they wish to do so in a more legally formal manner. The advantage of an ombudservice is that it avoids the formality, time and expense of these alternatives. If all or most substantial decisions of OBSI were to be appealed to the courts or a tribunal, then this advantage would be severely diminished and eliminated in many cases.

Appeal mechanisms are generally made available in order to provide an assurance of fairness in a dispute resolution process. The fundamental principal being that an independent, senior decision maker will be able to impartially hear the concerns of the appellant and judge the fairness of the process or outcome of the original decision maker. The appeal judge will render a decision that reaffirms or corrects the original decision, ensuring that the party with the objection is provided with an additional layer of protection from an unfair original decision.

Such an assurance of fairness is the purpose of the second level review stage described in the Proposed Framework. When considering whether it is appropriate to provide yet another level of appeal, regulators should consider the stages of a complaint review that would have already taken place:

1. The investor will have complained to their primary service provider or representative who will have had the opportunity to consider the complaint and respond to it an/or escalate it to the senior complaint officer of the firm.

2. Dissatisfied with the response of their primary service provider, the investor will have escalated their complaint, usually in writing, to the senior complaint officer of their firm, participated in the firm's internal investigation of the matter, and received a substantive response from the firm.

3. Dissatisfied with the response from the firm, the investor will have escalated their complaint to OBSI in writing, provided their evidence, participated in our investigation process.

4. The OBSI investigator, after determining that the investor is entitled to compensation for the error or wrongdoing that caused them harm, will have worked with the investor and firm to facilitate a settlement.

5. Following an unsuccessful facilitated settlement process, the consumer will have received a recommendation that they are entitled to compensation for the error or wrongdoing that caused them harm.

6. The firm will have objected to the recommendation for compensation and will have escalated the matter for review to a senior OBSI decisionmaker who has not previously been involved in the matter. The OBSI decisionmaker will have conducted their review, considered the objections of the firm and likely engaged both the firm and investor in their further review and determination of a fair outcome in the case before rendering a final binding decision for an amount of compensation deemed fair in all the circumstances of the case, of less than $350,000.

Firms will have the opportunity to further contest the fairness of this decision through the judicial review process, as outlined in the Consultation Document. Providing further rights of appeal beyond this would be counter-productive and would not substantially enhance the fairness or effectiveness of the dispute resolution process. Rather, further rights of appeal would be more likely to result in investor abandonment of the process or avoidance in the first instance.

The subject of appeal beyond a potentially binding OBSI decision making framework was considered in the 2021 independent review of OBSI's securities mandate. In the context of their recommendation that OBSI be given the power to make binding decisions, the reviewers stated, "We believe that a system

with a full right of substantive appeal would effectively negate OBSI's purpose and undermine its authority and would add complexity and significantly increase cycle time to the detriment of Main Street complainants".

The promise and actuality of fairness is an essential defining feature of all ombudservices and is considered in every facet of OBSI's process. When considering the degree of procedural reaffirmation of this fairness that is appropriate for the Proposed Framework, regulators should consider how OBSI's final binding decisions will be situated in the overall context of the resolution of investor disputes and recognize that further process and rights of appeal are neither necessary nor appropriate in this context.

10. Any oversight framework must respect and preserve the independence of the ombudservice

THE OMBUDSERVICE SHOULD BE ACCOUNTABLE TO REGULATORS ON RELEVANT MATTERS, BUT THE OVERSIGHT FRAMEWORK MUST NOT INFRINGE ON THE OMBUDSERVICE'S INDEPENDENCE OR CREDIBILITY AS AN IMPARTIAL DECISION MAKER AND SHOULD BE TAILORED ACCORDINGLY

Independence is a foundational principle of financial ombudsmanship. The governance and operational structure of any public interest ombudservice should be fully independent and transparent. This is necessary to provide assurance to the public and regulators of the organization's ability to act impartially and to systematically adopt processes that are reflective of its guiding principles.

The International Network of Financial Services Ombudsman Schemes provides the following guidance on independence:

> ***Financial services ombudsman schemes should be established so that they are visibly and demonstrably independent of both the financial services industry and consumer bodies.***
>
> ***Decision-makers should be free from influence/direction — including free from influence/direction by: parties to complaints (and those representing them), regulators and governments.***

The Organization for Economic Cooperation and Development (OECD) has focused significant attention and analysis on the importance of effective dispute resolution to financial systems in recent years through the work of its Committee on Financial Markets and its Task Force on Financial Consumer Protection. This global effort has resulted in the development of the OECD High Level Principles on Financial Consumer Protection in 2011 as well as a substantial body of technical and analytical reports in the years that have followed. The OECD/G20 High Level Principles, which have been endorsed by all G20 finance ministers and central bank governors, recognize ten key principles, one of which is complaints handling and redress. The key elements of this principle include that financial services consumers should have access to complaint handling and redress mechanisms that are "accessible, affordable, independent, fair, accountable, timely and efficient."

Accountability is also important for any public service entity, especially one exercising the power of binding authority. An ombudservice requires the trust and good faith participation of all stakeholders and is therefore accountable to the public, industry participants, complainants and regulators.

Accountability and independence are not incompatible. Rather, both must be respected in any oversight framework that is developed.

The Consultation Document states that the coordinated oversight by the CSA jurisdictions is currently being developed and is expected to reflect existing oversight regimes such as those in place for SROs, clearing agencies and exchanges. The Consultation Document states that such oversight could include: harmonized orders with terms and conditions on the ombudservice; an enhanced CSA oversight program; prior CSA approval of certain identified ombudservice procedures and documents, including changes to them; legislation which could include "authorizing the securities regulatory authority to make decisions with respect to the manner in which an IDRS carries on business or any by-law, rule, regulation, policy, procedure, interpretation or practice of an IDRS" and "authorizing the securities regulatory authority to make rules regarding a recognized or designated IDRS including with respect to oversight and governance." Such oversight measures have the potential to severely infringe on OBSI's independence.

In designing an oversight framework, the CSA jurisdictions should consider the success of the current oversight framework in achieving regulatory oversight objectives, as well as the potential risks that they seek to mitigate through the oversight framework. Regulators' focus should be on how best to tailor the framework to these risks.

Presently, OBSI provides services to the investment inudstry pursuant to a memorandum of understanding with Canadian Securities Regulators (MOU), who oversee OBSI operations through a committee known as the Joint Regulators' Committee (JRC). The MOU provides an oversight framework that includes standards of governance, independence, fairness, timeliness, setting of fees and costs, appropriate resources, accessibility, systems and controls, core methodologies, information sharing and transparency. The MOU also sets out the framework of meetings and consultations, the reporting of systemic issues and independent evaluations through which the JRC conducts its oversight of OBSI operations. Overall, this framework has proven robust and effective.

OBSI's process has been repeatedly reviewed and endorsed by the CSA jurisdictions and others over many years. In these many years of highly detailed reporting, the JRC has never indicated any dissatisfaction or concern with OBSI processes or accountability. Independent reviews of both securities and banking mandates have consistently found OBSI's processes to be fair, consistent and professional, and have carefully examined industry objections to OBSI's processes without finding justification for them. After a careful and independent review, the Government of Canada has designated OBSI as Canada's exclusive national ECB for banking. Such substantial, independent validation should give the CSA confidence in OBSI's complaint handling competency, professionalism and accountability and mitigate against the need for additional substantive oversight.

One of OBSI's key strengths as a provider of ombudservices to the Canadian financial services sector is that we provide these services across a wide range of sectors and jurisdictions, engaging both provincial and federal regulators and governments as we provide services to the banking, securities and provincial credit union sectors. Combining these services is beneficial for many reasons, including reduced consumer confusion and alignment with industry representations, reduction in gaps between ombudservices, enhanced information value of aggregated data, and significant efficiencies of scale and scope. All the regulators and governments that OBSI works with in the context of providing these

services have an interest in our accountability and independence. In practical terms, the oversight frameworks implemented by the different regulators and governments to whom we are accountable cannot be structured in a manner that could interfere with one another.

In summary, in the development of the oversight framework, we would encourage the CSA jurisdictions to consider:

- The vital importance of independence for a financial ombudservice
- OBSI's long history of transparency and accountability to regulators, industry and the public
- The success of the current oversight framework in achieving regulatory oversight objectives
- The potential risks that regulators seek to mitigate through the oversight framework and how best to tailor the framework to these risks
- OBSI's accountability obligations to other regulators and governments as it provides dispute resolution services to Canadians from across the country in multiple financial services sectors

11. The term ombudsman or ombudservice should be used only by independent dispute resolution services with a public interest mandate.

WE SUPPORT THE ELIMINATION OF THE TERM OMBUDSMAN OR OMBUDSERVICE IN REFERENCE TO OFFICES OR EMPLOYEES OF AFFILIATED INTERNAL DISPUTE RESOLUTION SERVICES AND NOTE THAT THIS CHANGE IS CONSISTENT WITH RECENT BANK ACT AMENDMENTS

We are supportive of the proposal in the Proposed Framework to restrict the use of the term ombudsman or ombudservice in the context of dispute resolution services that are not independent of the industry sectors that we serve. Restricting these terms to independent, external providers of dispute resolution services will help to maintain the integrity of the term and reduce consumer and investor confusion in relation to the role of the different dispute resolution providers they will encounter in the process of escalating their complaints pursuant to the Proposed Framework.

Thank you for providing us with the opportunity to participate in this important consultation. We would be pleased to provide further feedback to the CSA jurisdictions at any time.

Sincerely,

Sarah P. Bradley
Ombudsman & CEO