October 31, 2013

Mr. Howard Wetston
Chair, Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, Ontario
M5H 3S8

Dear Howard,

Re: OBSI Consultation - Terms of Reference (TOR)

We consider OBSI's proposal to modify its Terms of Reference to no longer conduct systemic investigations when considering investment industry complaints; exclude Segregated Funds when considering an investor complaint; and deviate from the current fixed three year interval for independent reviews unacceptable and a major blow to investor protection. These changes will impair OBSI's ability to carry out its investor protection mandate. They will undermine OBSI's stature, scope and effectiveness as an independent, free and accessible ombudsman.

Our discussions with regulators and OBSI representatives lead us to conclude that it is unlikely that OBSI will respond positively to our concerns. We are therefore writing you to explain our concerns and to request that regulators intervene regarding these proposed changes to OBSI's Terms of Reference. In particular, we believe that it is imperative that securities industry and insurance industry regulators meet to consider the serious consequences for Canadian investors of yet another incidence of regulatory arbitrage. We appreciate that governments, not regulators, have the ability to solve these pressing issues of regulatory arbitrage and respectfully request that the Commission convey our serious concerns to the Government of Ontario.

While we do have some additional concerns with other proposed TOR changes, we will focus in this letter on these three issues.

1. SYSTEMIC ISSUES

The Panel does not agree that OBSI should abandon the investigation of systemic issues as part of its investor protection and public interest mandate. The 2007 Navigator report criticized OBSI's then inability to investigate systemic issues as "a significant gap in Canada's consumer protection framework." The Report noted that OmbudService schemes in Australia and the U.K. have this ability and concluded that "OBSI cannot risk being seen to be doing nothing when a clear flaw in the consumer protection framework exists. It is obligated to work to correct the problem." (Source: http://investorvoice.ca/PI/3409.htm) Wisely, the then OBSI Board of Directors introduced changes to the Terms of Reference which were applauded by investor advocates.

OBSI has justified these proposed changes to its investigation of investment industry complaints as necessary to ensure consistency with new Department of Finance requirements that would preclude OBSI from conducting systemic issue complaint investigations in the banking sector.

We believe that investor protection and fair treatment of investors should be OBSI's number one priority. We simply cannot understand this particular insistence upon procedural consistency between banking and investment industry practices when OBSI's Terms of Reference will in fact continue to allow inconsistent practices between banking and the investment industry sectors (e.g. the Financial Consumer Agency of Canada (FCAC) rules for banks, specifically dollar compensation caps or complaint cycle times (120 days) differ from investment industry requirements). http://www.acma.gov.au/webwr/_assets/main/lib310013/extnl_dispute_resolution_schemes-systemic_issues_(tio_rep).doc

It is important that an Ombudsman's mandate include identification and investigation of systemic issues. While OBSI is not a regulator, it can make a significant contribution to regulators' investor protection capacities. OBSI's complaint database is a powerful tool which can enhance investor protection and lead to improved investment industry rules and practices. The ability to conduct investigations into systemic issues gives OBSI the ability to not only efficiently address individual grievances but to have the potential to positively affect many Ontarians. http://www.optimumonline.ca/article.phtml?e=mesokurj&id=338

The fundamental role of the Ombudsman is to recommend (as appropriate) investor compensation when an investment dealer has previously rejected an investor complaint. As stated under paragraph 4 of Guideline No. 3 in the FSON Framework,

> *4. The terms of reference of the OmbudService should include the authority to identify and investigate systemic or widespread issues an OmbudService may find in the course of its work arising from complaints regarding an individual firm or more broadly in a sector*.

In our previous submission regarding the CSA Consultation paper on OBSI, the Panel urged the Commissions to enforce OBSI compensation recommendations in those instances where firms refused to accept OBSI's findings and compensation recommendations. Should OBSI now proceed to eliminate systemic issue investigations and compensation recommendations from its mandate, we call on the Commissions and SROs to commit to step in to fill this gap and provide compensation where warranted in the case of systemic issues. Given the Commissions' and SROs' historic reluctance to provide compensation and restitution to Canadian investors, investor advocates cannot remain silent while OBSI proposes to eliminate an important venue for restitution and compensation. http://www.osc.gov.on.ca/en/Investors_brochures_getting-help-with-your-complaint.htm

2. INSURANCE PRODUCTS

The Panel cannot support changes to the Terms of Reference which would result in complaints from clients of securities regulated firms that involve Segregated funds ("Seg Funds") being referred to the Canadian Life And Health Insurance OmbudService ("OLHI").
If Segregated Fund holdings are excluded from an investment industry client complaint being reviewed by OBSI, there will be many cases where it becomes impossible to properly and fairly assess the suitability, balance, structure and appropriateness of the portfolio without reference to the integrity of the Seg Fund allocation. Such a practice ignores the basics of portfolio construction and is manifestly unfair. In the context of a portfolio, Seg Funds clearly are primarily an investment and directly expose the client's funds to the opportunities and risks of the capital markets.

Canadian investors should be able to expect fair and easy access to complaint handling and restitution. These new proposals which force investors to file complaints to two separate and distinct entities will ensure that access is limited and confusing, particularly for the elderly, and its results unfair.

Clients of securities regulated entities should not be forced to take complaints about products within their portfolios to industry-run OmbudServices. The insurance ombudsman is an industry-run organization which does not fall under the regulatory oversight of any Canadian regulator. In fact, OLHI may not even have the mandate to review these complaints. Only insurance companies are required to participate in OLHI and other entities or individuals who distribute insurance are not required to participate. As a result, if the complaint relates to the dually licensed CSA, IIROC or MFDA registrant's activities, it will not fall within the scope of OLHI's mandate and the consumer will be left without access to any possibility of restitution. The November 2012 OLHI independent Review Report by auditor Robert Wells discusses this significant gap in redress for consumers using OLHI.

IIROC and the MFDA have required their firms to fully cooperate with OBSI, including establishing complaint handling standards regarding when and how the complaint must be submitted to OBSI for its investigation. The CSA is now proposing to impose similar requirements on firms under its jurisdiction. However, if this proposal is accepted and implemented, IIROC, the MFDA and the CSA would have no requirement for firms under their jurisdiction to submit client complaints regarding insurance products to any ombudsman service. If OBSI proceeds with this change, will the Commissions and SROs address this regulatory gap in their complaint handling rules?

This proposed change would also require IIROC and the MFDA to change their complaint handling rule to exclude Seg funds and to modify their investor protection materials (web site, brochures, client documents, including NAAFs etc) to ensure that clients are fully aware that Seg funds will not be eligible for complaint

investigation and compensation by OBSI. This will increase regulatory and industry costs and most unfortunately increase investor confusion.

This proposed change to the TOR is manifestly unfair. Paragraphs 2 and 3 of Guideline No. 3 in the Framework are especially relevant:

> *2. The terms of reference should be comprehensive enabling the OmbudsService to deal with substantially all complaints within a sector* ***except where there is a compelling policy or practical reason to exclude them from the services offered****, or the complaint exceeds a published dollar threshold set by the Board of Directors.*
>
> *3. As an operating principle, the OmbudsService should adopt a generous interpretation of its terms of reference so that,* ***if doubt exists as to jurisdiction in a particular case, the doubt would be resolved in favour of dealing with the complaint rather than rejecting it.***

We also fear that these OBSI proposals may perversely promote regulatory arbitrage as advisors who hold dual licenses may now find selling Seg Funds more attractive than products whose complaints may trigger OmbudService recommended compensation. OBSI should not encourage this behaviour.

For years, OBSI has been dealing with Segregated Funds in the normal course of business and we see no persuasive argument for change, nor has any been provided. We note that other products, such as Principal Protected Notes, continue to be handled by investment dealers and OBSI without any issue. It is the **advice** not the product per se that is the root of the complaint and advice clearly falls within the jurisdiction of securities regulators, the Ontario Securities Act and the OBSI Framework.

3. INTERVAL BETWEEN INDEPENDENT REVIEWS

The FSON Framework http://www.obsi.ca/images/Documents/Framework_with_the_Regulators/framework_with_the_regulators_en.pdf cites a three year interval but the proposed Terms of Reference permit a period as long as 5 years. This omission should be corrected; otherwise OBSI is in breach of the Framework Agreement. In light of CSA intentions to expand the scope of OBSI operations by adding Exempt Market Dealers and Portfolio Managers, it would be particularly foolhardy to wait potentially up to 7 years before an independent review of OBSI operations is made.

We would also like to take this opportunity to note our concerns regarding OBSI's inability to meet its complaint cycle time standards. Upcoming CSA and SRO reforms regarding disclosure and performance reporting may trigger more

complaints and we anticipate the inclusion of EMDs will also lead to a significant increase in workload for OBSI staff.

We urge the Commission to engage with OBSI and FSCO, reject these proposed changes to the Terms of Reference, and retain the investor protections currently in place.

We appreciate your attention to this letter.

Investor Advisory Panel