

*Draft published for consultation purposes. Legislative amendments are required to enable the proposed framework, including the oversight framework.*

*Many CSA jurisdictions will require legislative amendments to enable the proposed framework, including the oversight framework. Any amendments to local acts would be proposed by governments. Proposed legislative amendments would only become law in a CSA jurisdiction if they are proclaimed and in force in that jurisdiction. Nothing in this document should be considered as an indication of whether such legislative amendments will be made in any jurisdiction.*

## **Annex A**

### **IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5, AS AMENDED (the Act)**

**AND**

### **IN THE MATTER OF OMBUDSMAN FOR BANKING SERVICES AND INVESTMENTS**

### **DESIGNATION ORDER**

**(Section X of Y)**

**[Appropriate recitals will be inserted to provide context relating to the memorandum of understanding]**

IT IS ORDERED, under section [TBD] of the Act that OBSI is designated as the identified ombudservice, subject to the terms and conditions set out in Appendix A to this designation order and the applicable provisions of the MOU.

Dated [insert date], effective [insert date]

[signature line]

[signature line]

## Appendix A

### TERMS AND CONDITIONS

#### Definitions

##### 1. General

Unless otherwise defined or interpreted, every term used herein has the meaning ascribed to it in subsection 1.1(3) of National Instrument 14-101 *Definitions* or subsection 13.16.01 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* as applicable.

**“Board”** means the Board of Directors of OBSI.

**“By-Laws”** means the by-laws adopted by OBSI as amended from time to time.

**“complainant”** means any client of a Registered Firm who makes a complaint to OBSI and includes the authorized representative(s) of the client, such as a personal representative, guardian, trustee or executor.

**“Designating Regulators”** means the Alberta Securities Commission; Manitoba Securities Commission; Financial and Consumer Services Commission of New Brunswick; Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; Office of the Superintendent of Securities, Northwest Territories; Nova Scotia Securities Commission; Office of the Superintendent of Securities, Nunavut; Ontario Securities Commission; Prince Edward Island Office of the Superintendent of Securities; Financial and Consumer Affairs Authority of Saskatchewan; and Office of the Yukon Superintendent of Securities.

**“Director”** means a member of the Board.

**“External Decision Makers”** means decision makers who are not OBSI employees and are retained by OBSI on a part-time basis.

**“Independent Director”** means either a Community Director or Consumer Interest Director as defined in the By-Laws.

**“Final OBSI Decision”** means an OBSI Decision delivered in writing that has become final and binding on a Registered Firm or on a Registered Firm and a complainant, in accordance with the process set out in the OBSI rules.

**“MOU”** means the Memorandum of Understanding regarding oversight of OBSI as between the Designating Regulators and those jurisdictions that have not designated or recognized OBSI as the identified ombudservice for the purposes of Division 5 of Part 13 of NI 31-103, which may be amended from time to time.

**"OBSI"** means the Ombudsman for Banking Services and Investments, including all successors and assigns.

**"OBSI Decision"** means a conclusion about a case with reasons delivered by OBSI in writing to the complainant and the Registered Firm following OBSI's review of an OBSI Recommendation.

**"OBSI Recommendation"** means a recommendation delivered by OBSI in writing to the complainant and Registered Firm following OBSI's investigation of a complaint.

**"Ombudsperson"** means the ombudsman appointed by the Board in accordance with the By-Laws.

**"Registered Firm"** means a registered firm to which Part 13, Division 5 of NI 31-103 applies.

**"Terms of Reference"** means OBSI's Terms of Reference, as amended from time to time.

## **Public interest obligation**

### **2.**

OBSI must operate in the public interest. When operating in the public interest, OBSI must, among other things,

- (a) provide independent and impartial dispute resolution services;
- (b) take reasonable steps to ensure that appropriate training is provided to its Directors, Board committee members, senior management staff, and external decision makers in interpreting OBSI's public interest mandate;
- (c) ensure that the compensation structure of its executive officers and senior management is appropriately linked to the effective delivery of OBSI's public interest mandate;
- (d) inform its stakeholders, and the public in general, of OBSI's public interest obligation;
- (e) maintain a dispute resolution process that is fair, efficient, and accessible; and
- (f) apply a standard to its investigation and review of a complaint that is fair in all the circumstances.

## **Governance**

### **3.**

## **(1) The Board**

OBSI must:

- (a) maintain a Board size of not more than 10 Directors;
- (b) not permit the Ombudsperson to be chair of the Board;
- (c) not permit the same individual to occupy the roles of CEO and chair of the Board;
- (d) not permit Directors to be involved in or influence the dispute resolution process of OBSI including but not limited to the investigation, consideration or disposition of complaints;
- (e) have a majority of the Board, including the chair, be comprised of Community Directors;
- (f) maintain appropriate term limits for the Board;
- (g) maintain a Board skills matrix;
- (h) maintain a skills matrix for External Decision Makers;
- (i) maintain a skills matrix for the Ombudsperson;
- (j) maintain a CEO skills sub-matrix;
- (k) develop, maintain and comply with diversity and inclusion policies; and
- (l) develop and maintain performance benchmarks for OBSI.

## **(2) Board committees**

OBSI must ensure that:

- (a) the governance and human resources committee of the Board is composed entirely of Independent Directors;
- (b) other Board committees are composed of a majority of Independent Directors; and
- (c) chairs of all Board committees are Independent Directors, unless the Commission otherwise approves.

## **Conflicts of Interest**

4. Subject to applicable legislation, OBSI must identify and avoid real, potential, or perceived conflicts of interest between its own interests, or the interests of its Directors, officers, employees, and External Decision Makers and the public interest.

### **Approval of changes**

#### **5.**

(1) Prior Commission approval is required for any changes to the following:

- (a) the Terms of Reference, procedural guidelines, or any other procedural rules implemented by OBSI in respect of its role as the identified ombudservice;
- (b) By-Laws or any other governing documents;
- (c) the corporate governance structure of OBSI;
- (d) the charter or mandate of the Board and each of its committees;
- (e) the assignment, transfer, delegation, or sub-contracting of the performance of all or part of OBSI functions or responsibilities;
- (f) the access criteria and process for Registered Firms to become a member of OBSI;
- (g) the loss calculation methodology used by OBSI in delivering an OBSI Recommendation, OBSI Decision or Final OBSI Decision; and
- (h) the fee model in determining membership fees for Registered Firms.

(2) Prior Commission approval is required for material changes to the following:

- (a) the Board and employee code of conduct and the written policy about managing potential conflicts of interests of Directors, External Decision Makers and employees;
- (b) OBSI's training materials for External Decision Makers and employees;
- (c) the functions OBSI performs; and
- (d) OBSI's organizational structure, including the location of OBSI's offices.

### **Non-objection to certain changes**

6. Prior Commission non-objection is required for the following, as described in Appendix A of the MOU:

- (a) nomination of each candidate for an Independent Director position;

- (b) appointment of the CEO;
- (c) appointment of the Ombudsperson;
- (d) changes to the Board's skills matrix;
- (e) changes to the External Decision Makers' skills matrix;
- (f) changes to the CEO's skills sub-matrix;
- (g) changes to the Ombudsperson's skills matrix
- (h) changes to OBSI's performance benchmarks; and
- (i) changes to OBSI's fee model.

## **Rules and rule-making**

### **7.**

- (1) OBSI must establish and maintain rules that are necessary to govern and perform all aspects of its functions and responsibilities as the identified ombudservice.
- (2) OBSI must act in accordance with the process for introducing new or amending, revoking or suspending existing by-laws, rules and other materials relevant to OBSI's obligation to operate in the public interest as outlined in Appendix C of the MOU, as amended from time to time. For any proposal to be published for public comment, OBSI must consider and clearly articulate why the proposal is in the public interest.

## **Fees**

### **8.**

- (1) OBSI must not charge a fee to a complainant.
- (2) All fees imposed by OBSI on Registered Firms must be equitably allocated and be proportionate to Registered Firms' activities.
- (3) OBSI's process for setting its fees must be fair and transparent.
- (4) OBSI must operate on a cost-recovery basis.

## **Financial Viability**

- 9. OBSI must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities as the identified ombudservice.

## **Status**

**10.**

- (1)** OBSI must operate on a not-for-profit basis.
- (2)** OBSI must comply with any terms and conditions the Commission may impose in the public interest concerning any transaction that would result in OBSI:
  - (a) ceasing to perform its functions;
  - (b) discontinuing, suspending, or winding-up all or a significant portion of its operations;
  - (c) disposing of all or substantially all of its assets; or
  - (d) terminating its agreement with an information technology service provider providing technology systems that the Commission determines are critical to the proper performance of OBSI's functions and to meet its responsibilities as the identified ombudservice.

**Membership**

**11.**

- (1)** OBSI must have written criteria, in both English and French, for membership in OBSI and that permits Registered Firms that satisfy the criteria to become members of OBSI.
- (2)** The membership criteria and process for obtaining membership must be fair and transparent.

**Record Keeping**

**12.**

- (1)** OBSI must keep records of all matters related to its investigation and resolution of complaints for an appropriate time in accordance with legal and industry standards for record retention, including but not limited to:
  - (a) documentation and records requested and obtained by OBSI during the investigation of a complaint and during the review of an OBSI Recommendation; and
  - (b) written reasons prepared for the purpose of resolving disputes, specifying the basis for the OBSI Recommendation or OBSI Decision.

**Dispute Resolution Process**

**13.**

- (1) OBSI must develop, maintain, and apply fair, transparent, and accessible processes to resolve complaints. These processes must be made available to the public.

## **Performance of OBSI's functions**

### **14.**

- (1) In investigating and reviewing complaints, OBSI must apply a fairness standard whereby OBSI will consider what would be fair to the parties in all the circumstances of a complaint, taking into account factors including but not limited to the following:
  - (a) applicable law;
  - (b) general principles of good financial services and business practice;
  - (c) regulatory policies and guidance;
  - (d) professional body standards; and
  - (e) any relevant code of practice or conduct applicable to the subject matter of the complaint.
- (2) OBSI must develop, maintain, and apply knowledge and expertise relevant to providing, independent dispute resolution services to Registered Firms and their clients including but not limited to issues related to the exempt markets. For greater certainty, this includes providing relevant training to its employees and External Decision Makers.
- (3) OBSI must share information and cooperate with the Commission, including to facilitate the Commission's effective oversight under the MOU, and provide the Commission with data, reports, documents, and information as the Commission or its staff may request in a format and manner that is acceptable to the Commission or its staff.
- (4) Subject to applicable legislation, OBSI must:
  - (a) collect, use, and disclose personal information only to the extent reasonably necessary to carry out its mandate and activities as an ombudservice; and
  - (b) protect personal information and confidential business information in its custody or under its control.
- (5) OBSI must adopt policies and procedures designed to ensure that confidential information, including personal information, related to its operations, or those of any Registered Firm or complainant, is maintained in confidence and not shared inappropriately with other persons, and must use all reasonable efforts to comply with these policies and procedures.



- (6) OBSI must ensure that it is accessible for contact by both the public and the Registered Firms for purposes relating to the performance of its functions in fulfilling its mandate as the identified ombudservice.
- (7) OBSI must maintain control over critical systems or technology systems that support OBSI's critical systems.
- (8) Documents issued to the public or generally to Registered Firms must be published concurrently in English and French. Where practical, these documents must be written in plain language.
- (9) OBSI must promote knowledge of its services, ensure that investors have convenient, well-identified means of access to information regarding its services, and provide its services at no cost to investors who have complaints.
- (10) OBSI must, at least annually, self-assess the performance of its functions, and report thereon to its Board, together with any recommendations for improvements.
- (11) OBSI must cooperate and assist with any reviews of its functions or operations by the Commission or an independent third party that is acting at the direction of the Commission. The scope of the independent third-party review, and the person or the persons that will undertake the review, will be determined by the Commission and will be at OBSI's expense, including OBSI reimbursing the Commission for any fees, when required.
- (12) OBSI must seek the Commission's input on its proposed response to any recommendations arising from a review referred to in subsection (11), including a proposed action plan to implement any recommendations before acting on the recommendations in accordance with timelines established by the Commission.
- (13) OBSI must develop, implement, and maintain adequate controls to ensure capacity, integrity requirements, and security of its technology systems.

## **Reporting Requirements**

- 15. OBSI must comply with the following reporting requirements:

### **Prior Notification**

- (1) OBSI will provide the Commission with at least 12 months' written notice prior to completing any transaction that would result in OBSI:
  - (a) ceasing to perform its functions;
  - (b) discontinuing, suspending, or winding-up all or a significant portion of its operations; or

- (c) disposing of all or substantially all of its assets.
- (2) OBSI will provide the Commission with at least three months' written notice prior to:
  - (a) terminating its agreement with an information technology service provider providing critical technology systems; or
  - (b) any intended material change to its agreement with an information technology service provider regarding its critical technology systems.
- (3) OBSI will provide the Commission with reasonable prior notice of any material changes it intends to implement to its internal procedural guidelines.
- (4) OBSI must not implement any material changes to its internal procedural guidelines referred to in subsection 15(3) until the Designating Regulators notify OBSI that they have no questions or comments regarding the implementation of the proposed changes.
- (5) OBSI will provide the Commission with reasonable prior notice of any material document that it intends to publish or issue to the public or to any class of members which could have a significant impact on:
  - (a) its members or others who use its services; or
  - (b) the capital markets generally including, for greater clarity, particular stakeholders or sectors.
- (6) OBSI must not publish or issue any document referred to in subsection 15(5) until the Designating Regulators notify OBSI that they have no questions or comments on the publication or issuance of that document.

### **Prompt Notification**

- (7) OBSI will provide the Commission notice, in writing, of any potential systemic issue identified by OBSI within 30 days of OBSI making such a determination, providing sufficient detail about why OBSI considers the matter to be a systemic issue in accordance with the protocol for handling systemic issues, as amended from time to time.
- (8) OBSI will provide the Commission with prompt notice of the following events and situations, and in each case describe the circumstances that gave rise to the reportable event or situation, and OBSI's proposed response to ensure resolution, and, if appropriate, provide timely updates:
  - (a) changes in the members of OBSI's Board and its committees;

- (b) situations that would reasonably be expected to raise concerns about OBSI's financial viability, including but not limited to, an inability to meet its expected expenses for the next quarter or the next year;
- (c) any determination by OBSI, or notification from any of the Designating Regulators, that OBSI is not or will not be in compliance with one or more of the terms and conditions of its designation in any jurisdiction;
- (d) any potential material violations of applicable securities legislation by Registered Firms, and/or rules applicable to investment dealers and mutual fund dealers, of which OBSI becomes aware in the ordinary course operation of its activities;
- (e) any material failures in the controls described in section 14 *Performance of OBSI's functions*;
- (f) any failure, malfunction, delay or material security incident, including cyber security breaches, of OBSI's critical systems or technology systems that support OBSI's critical systems; and
- (g) any breach of security safeguards involving information or data under OBSI's control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to investors, Registered Firms, other market participants, OBSI, or the capital markets.

### **Quarterly Reporting**

- (9) OBSI will file on a quarterly basis with the Commission a written report pertaining to OBSI's operations promptly after the report is reviewed or approved by the Board, Board committees, or senior management, as the case may be, containing at a minimum the following information and documents:
  - (a) summary of ongoing initiatives and emerging or key issues that arose in the previous quarter;
  - (b) summary statistics for the previous quarter regarding all complaints including, but not limited to:
    - (i) the nature of the complaints received;
    - (ii) outcome of the complaints;
    - (iii) information regarding objections to OBSI Recommendations, including the number of objections, the party who objected and reasons cited for the objection;
    - (iv) instances in which adversarial processes were used during a review;

- (v) the time taken by OBSI to resolve each complaint, including the duration of an investigation and of any review;
  - (vi) instances of non-compliance with a Final OBSI Decision, if any; and
  - (vii) instances where a Final OBSI Decision was filed with a superior court of justice for purposes of enforcement.
- (c) summary of files, if any, that were referred to any of the Designating Regulators during the previous quarter.

## **Annual Reporting**

**(10)** OBSI will file on an annual basis with the Commission a written report pertaining to OBSI's operations promptly after it has been reviewed or approved by OBSI's Board, Board committees, or senior management, as the case may be, containing at a minimum the following documents:

- (a) the self-assessment referred to in subsection 14(10), which must contain information as specified by staff of the Commission from time to time and include the following information:
  - (i) an assessment of how OBSI is meeting its mandate, including an assessment against the terms and conditions set out in this document;
  - (ii) a description of trends OBSI identifies in the course of providing dispute resolution services;
  - (iii) whether OBSI is meeting its performance benchmarks, and reasons for any benchmarks not being met;
  - (iv) a complete organizational chart;
  - (v) a description and update on significant projects undertaken by OBSI;
  - (vi) a description of issues raised by any of the Designating Regulators, external auditors, or internal audits, which are being tracked by OBSI's senior management, together with a summary of the progress made on their resolution; and
- (b) certification by OBSI's CEO and general counsel that OBSI is in compliance with the terms and conditions applicable to it as set out herein.

## **Financial Reporting**

(11) OBSI will file with the Commission unaudited quarterly financial statements, prepared in accordance with Canadian generally accepted accounting principles for not-for-profit organizations, within 60 days after the end of each financial quarter.

(12) OBSI will file with the Commission audited annual financial statements, prepared in accordance with Canadian generally accepted accounting principles for not-for-profit organizations accompanied by the report of an independent auditor, prepared in accordance with Canadian generally accepted auditing standards, within 90 days after the end of each fiscal year.

### **Other Reporting**

(13) On a timely basis, OBSI will provide the Commission with the following information, and documents after publication or completion of review and approval by the Board, Board committees, or senior management, as the case may be:

- (a) the results from any reviews referred to in subsection 14(11) in Appendix A of this designation order, if applicable, and a remediation plan or any other relevant documentation;
- (b) material changes to the Board and employee code of conduct and the written policy about managing potential conflicts of interests of Directors, External Decision Makers and employees;
- (c) the financial budget for the current year, together with the underlying assumptions, that have been approved by the Board;
- (d) the reports referred to in subsection 14(13) regarding capacity and integrity of systems;
- (e) enterprise risk management reports, and any material changes to enterprise risk management methodology;
- (f) the internal audit charter, annual internal audit plan, and internal audit reports;
- (g) the annual report for the current year; and
- (h) material changes to the dispute resolution processes or scope of work, including departmental risk assessment models.

(14) OBSI will, upon request and as soon as practicable, provide the Commission with information concerning closed complaints.