

Joint Forum of Financial Market Regulators

Forum conjoint des autorités de réglementation du marché financier

The Financial Services OmbudsNetwork – A Framework for Collaboration

August 10, 2007

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MEMORANDUM

This memorandum and its attachments describe a framework for ongoing collaboration among the regulators of the financial services industry, both federal and provincial, and the OmbudServices which make up the Financial Services OmbudsNetwork (the FSON), namely Canadian Life and Health Insurance OmbudService (CLHIO), General Insurance OmbudService (GIO) and Ombudsman for Banking Services and Investments (OBSI).

Annex A identifies the importance of effective consumer dispute resolution to the Canadian financial services market. It also sets forth the basic architecture for ongoing relationships among regulators and the OmbudServices and the premises that underline the structure.

Annex B contains Guidelines endorsed by a Dispute Resolution Committee which has been established by the Joint Forum of Financial Market Regulators (Joint Forum) and Finance Canada (the “DR Committee”) in consultation with the OmbudServices. The Guidelines identify objectives, or principles, in respect of organizational structure and operating practices which are of importance to regulators. They are designed to ensure that third party dispute resolution systems, including the OmbudServices, fulfil the public interest objectives of complaint resolution described in Annex A. The Guidelines are:

- Guideline No. 1 – Independence
- Guideline No. 2 – Accessibility
- Guideline No. 3 – Scope of Services
- Guideline No. 4 – Fairness
- Guideline No. 5 – Methods and Remedies
- Guideline No. 6 – Accountability and Transparency
- Guideline No. 7 – Third Party Evaluation

Each Guideline frames the Objective it seeks to achieve, and outlines measures that would implement that objective. The OmbudServices will be subject to external review from time to time to assess their achievement of these guidelines. The external review will include the OmbudServices’ own governance, performance measurement, complaint handling and other operating standards where appropriate for measuring their achievement of the guidelines.

The Guidelines are not intended to be exhaustive or prescriptive. However, taken together they provide an integrated best practices framework, drawing in significant

measure on the work of the International Standards Organization. While it is recognized that an OmbudService may not meet all of the Implementation Guidelines all of the time, the DR Committee expects each of the OmbudServices to be structured and function in a way which will fully achieve the Objectives stated in each Guideline.

The Guidelines will be reviewed on a periodic basis by the DR Committee in consultation with the Boards of Directors of the OmbudServices.

COMPLAINT RESOLUTION IN THE FINANCIAL SECTOR **- A STRUCTURE GOING FORWARD**

A. Premises

1. An accessible and effective complaint-management system is vital to the integrity of the Canadian financial services market and is an important public policy objective of both provincial and federal governments.
2. If consumers of regulated financial sector firms have complaints, they should have ready recourse to effective dispute resolution mechanisms both (a) within each financial sector firm and (b) in the case of unresolved disputes at the firm level, within an independent third party dispute resolution system. In both cases the dispute resolution mechanism should meet defined minimum standards.
3. Regulators consider effective complaint resolution through independent OmbudServices such as CLHIO, GIO and OBSI, collaborating as the FSON, to be an important component of a well functioning consumer protection policy framework. As impartial services, they offer an alternative to the legal system in a confidential informal setting that is free to the consumer.
4. In carrying out their overall mandate of consumer protection it is the goal of regulators to articulate the public interest objectives of complaint resolution, to define the criteria for their achievement, and to assess from time to time whether the public interest is being achieved by third party resolution systems.
5. Regulators have concluded that the FSON and its constituent entities, independent of industry and at arm's length from government, offer an appropriate foundation to achieve effective third party complaint resolution. The structure in this paper is designed to ensure the FSON continues to maintain the confidence of regulators.
6. Effective governance of each OmbudService depends upon it having a strong and committed Board of Directors. It is the responsibility of the Board of Directors to provide oversight through the adoption of transparent governance and other policies embracing best practices and through sound stewardship of the operations of the OmbudService to achieve the public interest objectives articulated by regulators.
7. Regular, candid communication amongst the OmbudServices and regulators is essential. This requires, among other things, a communications protocol between regulators (e.g., CSA, CCIR or FCAC) and each OmbudService. It also requires a structure in which there is regular communication amongst the Boards of Directors of each OmbudService and the regulators.

Premises

8. It is important to ensure that the FSON dispute resolution systems are both (a) comprehensive (i.e., all consumers from firms in a sector should have access to the system), and (b) consistent (i.e., consumers of similar financial products should receive like treatment and the services of dispute resolution systems should be equivalent in quality and meet minimum standards). This need not require that the three existing OmbudServices be integrated, or that the dispute resolution processes be identical.

B. The Basic Architecture

1. The Joint Forum and the Department of Finance will establish a Dispute Resolution Committee (the “DR Committee”) as a standing committee with the responsibilities described below.
2. The DR Committee, in consultation with FSON, will define criteria that a third party dispute resolution system should meet to achieve the public interest objectives of complaint resolution and to retain the confidence of regulators.
3. The DR Committee will work with the FSON and the Board of Directors of each OmbudService to establish and maintain a means of conducting periodic, independent assessments of the OmbudService to determine whether it achieves the objectives defined by the DR Committee.
4. The DR Committee or its representatives will meet on a regular, scheduled basis with a committee consisting of the Board Chairs and Chief Executive Officers of the three OmbudServices (the “FSON Committee”) to discuss common issues and to ensure that the new architecture works well.
5. The DR Committee or its representatives will also meet separately on a regular, scheduled basis with each of the OmbudServices. The purpose of these meetings will be to discuss:
 - (a) material operating issues which are specific to the OmbudService in question,
 - (b) the governance of the OmbudService with its Board of Directors to ensure that the Board members and the regulators have a common understanding of the public interest objectives and how well those objectives are being met,
 - (c) the maintenance of consistency of services and harmonization of best practices in dispute resolution, and
 - (d) gaps in coverage for consumers of regulated financial services products.

GUIDELINE NO. 1

Subject Matter: Independence

A. Objective of the Guideline

To assure financial sector consumers who refer complaints to the OmbudService of its independence.

B. Implementation Guidelines

For purposes of this Guideline, “independence” means the absence of relationships with the affected financial sector industry, or firms within it, which would cause a reasonable person to question whether the person can fairly and effectively resolve complaints (in the case of officers, staff or any person engaged by the OmbudService to deal with consumer complaints) or provide objective and disinterested oversight (in the case of directors).

To achieve the objective:

1. The governance structure of the OmbudService must be robust. To that end:
 - (a) The Board of Directors of the OmbudService should meet evolving best practices of organizational governance, adapted to the special nature and purposes of the OmbudService.
 - (b) The OmbudService should have a strong and committed Board of Directors a substantial majority of whose members meet the independence relationship standard. There should be an appropriate mechanism for the appointment of Board members, which ensures continued Board strength and commitment and independence from the industry.
 - (c) In accordance with good governance practice, all directors of the OmbudService need to act in the best interests of the OmbudService to achieve its public interest objectives, notwithstanding that they may not meet the independence relationship standard.
 - (d) The charter documents of the OmbudService should enshrine appropriate independence criteria.
 - (e) There should be a written mandate for the Board which clearly sets forth its responsibilities. They should include, among other things, the responsibility:

- (i) to engage, evaluate and dismiss the Ombudsperson and/or Senior Executive Officer,
- (ii) to approve standards and policies,
- (iii) to establish and monitor human resource and compensation practices,
- (iv) to approve funding levels and budgets which will provide adequate resources to the OmbudService,
- (v) to establish appropriate funding assessments to member firms, and
- (vi) to ensure sound relations with regulators and the accountability of the OmbudService,

all with a view to providing sound oversight of the activities of the OmbudService so as to achieve the public interest objectives for which the OmbudService is created.

- (f) The role of Board Chair is of special importance in fostering independence, and should be an independent director elected or appointed by the Board of Directors following a recommendation of a Nominating Committee of the Board consisting solely of independent directors.
2. To ensure independence, the OmbudService should also be appropriately funded to achieve its objectives. Budgets and mandatory assessments to member firms should be approved by the Board of Directors on the recommendation of a Committee of the Board consisting solely of independent directors.

GUIDELINE NO. 2

Subject Matter: Accessibility

A. Objectives of the Guideline

To articulate a framework in which the OmbudService will (a) take active steps to promote knowledge of its services, (b) ensure that consumers have convenient, well identified means of access to its services, and (c) provide its services at no cost to consumers.

B. Implementation Guidelines

To achieve the objectives:

1. The OmbudService should ensure that its existence, processes and the services it provides are well-known to financial services consumers within the scope of its operating mandate. To achieve this goal the OmbudService should provide the firms in the financial services sector it serves with illustrative information material for use by the firms to inform their consumers of their right to have complaints that are unresolved at the firm level considered by the OmbudService.
2. The OmbudService should provide consumers who have complaints with ready means of access including: (a) toll-free telephone; (b) email and regular mail; and (c) fax lines and internet.
3. The in-take process should provide the consumer with prompt direct personal contact with a competent staff member, whatever means of access may have been used by the consumer in the first instance.
4. Clear information on the services provided by the OmbudService should be made available through brochures and a website. The OmbudService should request the member firms to provide a clear description of the recourse available to the OmbudService for consumers and the means of access. Services should be delivered consistently across Canada.
5. The OmbudService should be fully funded by its member firms with the result that all of its services are provided to consumers at no cost.
6. All services of the OmbudService must be made available in both English and French.
7. The OmbudServices, should ensure that the FSON continues to host single-window telephone and internet services that can direct complaints to the appropriate OmbudService for attention.

GUIDELINE NO. 3

Subject Matter: Scope of Services

A. Objectives of the Guideline

To identify terms of reference to provide both participating firms and their consumers with a clear understanding of the range of activities and nature of consumer complaints which will be taken up by the OmbudService.

B. Implementation Guidelines

To achieve the objectives:

1. Each OmbudService should have terms of reference that permit access to its services by consumers of all firms which meet the OmbudService's membership criteria and which provide products of a similar nature, regardless of the jurisdiction of incorporation and regulation of the firm and regardless of its membership in a particular industry association.
2. The terms of reference should be comprehensive enabling the OmbudService 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 OmbudService 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.
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.
5. Where an OmbudService does not accept a complaint because it concludes that it is beyond its terms of reference, it should communicate that fact to the consumer, with a full explanation for its decision, where requested.
6. An OmbudService should provide assistance to consumers to help them register and, where necessary, articulate their complaint, or to guide them to services or agencies which could help them if their issue is beyond the mandate of the OmbudService.

7. Substantive changes to the terms of reference should be approved by the Board of Directors of the OmbudService after consultation with appropriate stakeholders and the DR Committee

GUIDELINE NO. 4***Subject Matter: Fairness*****A. Objectives of the Guideline**

To ensure that (a) the OmbudService approaches its work in respect of consumer complaints and makes its recommendations by reference to the standard of what is fair to both the firm and the consumer in the circumstances, and (b) that the processes employed by the OmbudService are demonstrably fair to both parties.

B. Implementation Guidelines

To achieve the objectives:

1. The OmbudService should, as it assesses complaints, guard against adopting an unduly legalistic approach to complaint resolution. The objective of complaint resolution through the OmbudService is not to provide a parallel court system, but to establish a dispute resolution framework which will encourage fair business dealings, broadly and reasonably conceived.
2. Accordingly, the OmbudService should publish a clear fairness standard it will use to assess complaints. The fairness standard should be approved by the OmbudService Board of Directors and should be harmonized across participating OmbudServices in the Financial Services OmbudsNetwork where possible.
3. The procedures employed in resolving complaints should be impartial with a clear framework which provides a fair and balanced opportunity for both the firm and the consumer to present documents and other information to the OmbudService in support of their respective positions in a non-legalistic manner. Neither the firm nor the consumer should have special access to the staff of the OmbudService.

GUIDELINE NO. 5

Subject Matter: Methods and Remedies

A. Objectives of the Guideline

To articulate (a) the nature of dispute resolution methods to be employed by the OmbudService, (b) the result to be expected by a consumer from complaint resolution work of the OmbudService, including the remedies which should be available to a consumer whose complaint is assessed by the OmbudService, and (c) the consequences which should follow from non-compliance by the firm with the remedy recommended or non-cooperation by the firm with the inquiries of the OmbudService.

B. Implementation Guidelines

To achieve the objectives:

1. The OmbudService should adopt clearly stated complaint resolution methods which are well-suited to the nature of the dispute including conciliation, mediation, investigation or non-binding adjudication. The OmbudService may employ a variety of methods in attempting to resolve the same dispute including, for example, a facilitative method (such as conciliation or mediation) followed by an assessment method (including investigation and non-binding adjudication).
2. The OmbudService should establish working protocols describing reasonable and practical time frames for the completion of relevant milestones in the dispute resolution process and should communicate these to both the firm and the consumer. Time frames should be sufficiently flexible to take into account the differences in the complexity of disputes.
3. The OmbudService's services are an alternative to recourse available through other available means such as the legal process. As such,
 - (a) the firm and the consumer should confirm in writing that the OmbudService's files and work product will be confidential and not admissible in any legal proceedings, and that staff of the OmbudService will not be required to testify in any legal proceedings.
 - (b) to promote recourse to alternative dispute resolution, where a statutory limitations period issue may arise, the firm and the consumer should agree in writing that they will suspend the application of the limitations period until the OmbudService has had an opportunity to attempt to resolve the dispute (where the law permits).

4. The complaint resolution methods employed by the OmbudService should lead either to (a) a result acceptable to both parties or (b) a written recommendation by the OmbudService for the resolution of the complaint.
5. The staff of the OmbudService and any consultants engaged by it to deal with consumers should be competent and well trained, with expertise suitable to the nature of the complaint in question.
6. If the process leads to a settlement, the OmbudService should take reasonable steps to ensure that the consumer understands it and has accepted it in an atmosphere free from any reasonable impression of coercion.
7. A recommendation of the OmbudService should specify a proposed remedy or remedies suitable to the nature of the dispute, which may include (a) a non-binding recommendation for financial restitution for direct loss and/or (b) a non-binding recommendation that the firm take a particular course of action to resolve the matter, which may include compensation for non-financial loss.
8. If a firm does not follow a recommendation within a reasonable time, or does not cooperate with an OmbudService in an inquiry or investigation within a reasonable time, the OmbudService should publicly disclose that the firm has failed to comply or cooperate. The disclosure should be made in a way that preserves the confidentiality of the consumer.
9. These methods and remedies are equally applicable to 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 an industry.

GUIDELINE NO. 6

Subject Matter: Accountability and Transparency

A. Objectives of the Guideline

To provide an appropriate framework for accountability of the OmbudService in achieving its mission including (a) accountability to the public in respect of the public interest goals which the OmbudService is established to achieve, (b) accountability to regulators in meeting their reasonable information needs in respect of consumer complaint handling, and (c) transparency in provision of information regarding its operations and structures.

B. Implementation Guidelines

To achieve the objectives:

1. The OmbudService should publish, and widely disseminate, an annual report in respect of its activities, including the dispute resolution process.
2. The OmbudService should also make periodic efforts to consult with stakeholders, including member firms and consumer organizations, to discuss its success in fulfilling its mission and to identify opportunities for improvement.
3. The OmbudService should enter into an information protocol with the regulators of its member firms describing in a mutually acceptable fashion the nature and extent of information to be provided by the OmbudService to regulators, all having regard to consumer confidentiality and privacy. The protocol should be reviewed and updated to the satisfaction of both the OmbudService and regulators on a regular basis.
4. The Board of Directors of the OmbudService should meet on a regularly scheduled basis with the DR Committee. The purpose of these meetings will be to discuss: (a) material operating issues which are specific to the OmbudService in question (b) the governance of the OmbudService (c) the maintenance of consistency of services and harmonization of best practices in dispute resolution and (d) gaps in coverage of consumers of regulated financial services products.
5. The OmbudService should publish, and make available appropriate documents regarding its operating structure, including the Terms of Reference, its governance practices and its Standards.

GUIDELINE NO. 7

Subject Matter: Third Party Evaluation

A. Objectives of the Guideline

To provide a framework in which the structure and operations of the OmbudService will be the subject of knowledgeable, independent third party evaluations on a regular basis to validate the effectiveness of the OmbudService in achieving its purpose and to identify opportunities for improvement.

B. Implementation Guidelines

To achieve the objectives:

1. At least every three years the Board of Directors of the OmbudService should appoint an independent third party evaluator to conduct a review of the operations of the OmbudService since the last evaluation (or in the case of the first evaluation, to set a baseline for future evaluations). The DR Committee should be kept informed by the OmbudService of the process of selecting and engaging the evaluator.
2. The OmbudService's governance practices and Standards should facilitate clear and meaningful assessments of its operations as required to determine that the objectives of these Guidelines are being met.
3. The evaluator should have access to all materials and personnel, including the Board of Directors and its minutes.
4. The evaluator should assess the extent to which the operations of the OmbudService (a) have achieved its public interest purpose, having reference among other things to the Guidelines of the DR Committee, and (b) the working protocols and standards of the Board of Directors of the OmbudService. Where the evaluator concludes that shortfalls exist, the evaluator should make recommendations for improvement.
5. The Board of Directors of the OmbudService and the DR Committee should, at their next meeting following the delivery of the evaluator's report, discuss the report and any response to it by the OmbudService.
6. The OmbudService should publish the evaluator's report and any response by the OmbudService.