

**Protocol for Handling Systemic Issues
Ombudsman for Banking Services and Investment (OBSI) and
OBSI Joint Regulators Committee (JRC)**

INTRODUCTION

OBSI's Terms of Reference were amended in December 2013 to remove OBSI's systemic issue investigative powers.¹

The Amended and Restated Memorandum of Understanding concerning oversight of OBSI among the Canadian Securities Administrators (CSA) and OBSI provides that the chair of the Board of Directors (Chair) of OBSI will inform the CSA Designates (the Alberta Securities Commission, the British Columbia Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers) of issues that appear likely to have significant regulatory implications, including issues that appear to affect multiple clients of one or more registered firms.

It is in the interests of investors and registrants² that there is a process for the referral and review of these systemic issues.

The following protocol will be followed with regard to systemic issues.

DEFINITION OF SYSTEMIC ISSUES

Systemic issues as referred to in this protocol shall encompass the following:

- a) multiple complaints against one or more registered individuals about products or services provided to investors,
 - b) multiple complaints against the same registered firm about similar products or services provided to investors, or
 - c) the same complaint against multiple registered firms in a registration category and/or about similar products or services provided to investors
- which appear likely to have significant regulatory implications or to raise concerns about the registrant's fitness for registration.

OBSI PROCESS

The OBSI Chair must inform the CSA Designates, 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.

¹ Systemic Issue was defined in the TORs as a matter such as undisclosed fees or charges, misleading communications, administrative errors or product flaws discovered in the course of considering a Complaint against a Participating Firm which may have caused loss, damage or harm to one or more other Customers of the Participating Firm in a similar fashion to that experienced by the original Complainant.

² "Registrant" means a registered firm and a registered individual.

For purposes of this protocol, CSA Designates means those CSA staff representatives who are members of the JRC.

In determining whether there is a potential systemic issue, OBSI may consult with the JRC.

On request of a CSA Designate, OBSI will provide the name of the registered firm and/or the registered individual along with details of the issue. OBSI will continue to investigate and proceed with complaint(s) in the ordinary course.

RESPONSE TO OBSI NOTIFICATION

The CSA Designate which is the principal regulator for the registered firm will make the determination to investigate the systemic issue and/or refer it to the appropriate SRO for further analysis. If the principal regulator is not a CSA Designate, the CSA Designates shall advise the principal regulator of the systemic issue. If the registered firm and/or registered individual(s) are registered in more than one jurisdiction, the principal regulator will coordinate and inform the other regulators of the systemic issue and where appropriate may coordinate the analysis with the other regulators.

To determine next steps, the principal regulator, in consultation with the appropriate SRO (where applicable), will evaluate whether a systemic issue exists and assess the impact of the systemic issue on the registrant, the registrant category and/or investors.

Once the initial assessment has been completed, the principal regulator and/or the appropriate SRO may pursue a variety of responses. These may include, but are not limited to:

- initiating a compliance review or an enforcement investigation of the registered individual and/or registered firm relating to the systemic issue and/or the SRO undertaking a review of the registered individual and/or registered firm relating to the systemic issue, where this is within the jurisdiction of an SRO,
- initiating compliance reviews of the industry through sweeps on registered firm products and/or services, or
- assessing whether additional guidance and/or policy work are required to mitigate the systemic issue either at the CSA or SRO level.

If, following an initial review, the conduct at issue is the result of the acts or omissions of the registered individual and/or registered firm, the principal regulator or appropriate SRO may document the matter in the registrant's permanent registration record maintained on the National Registration Database³, and where appropriate, may take further regulatory action such as terms and conditions or suspension of registration in accordance with the appropriate regulatory requirements.

³ Recorded under the Alert category of Regulatory Notes on the National Registration Database.

If the systemic issue is referred to:

- an SRO for review, the SRO will keep the JRC and the principal regulator informed of the review
- a principal regulator that is not a CSA Designate, the principal regulator shall be asked to report back to the CSA Designates.

Each CSA Designate will advise the JRC at the next JRC meeting of any potential systemic issue brought to the CSA Designate's attention, including the steps that have been taken or will be taken to respond to the potential systemic issue by the principal regulator or an SRO.