PUBLIC INTEREST ADVOCACY CENTRE

LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

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VIA Fax and Mail
613-943-0938

Minister of Finance
The Honourable James M. Flaherty
Department of Finance Canada
19th Floor, East Tower
140 O'Connor Street
Ottawa, ON
K1A 0G5

Re: Toronto Dominion's Withdrawal from the Ombudsman for Banking Services and Investments

Dear Minister Flaherty:

The Public Interest Advocacy Centre (PIAC) is a non-profit organization that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services.

PIAC is deeply disappointed and alarmed by TD Bank Group's (TD) decision this week to withdraw its unresolved banking disputes from the resolution by the Ombudsman for Banking Services and Investments and instead to use a private alternative dispute resolution provider.[1] Created in 1996, the OBSI acts as a neutral, impartial dispute resolution entity in the entire financial sector (banking and investments) and has recently been reviewed and assessed to be operating "favourably with international EDR [external dispute resolution] services and we found no substantive basis for the level of local criticism" by the industry.[2] More importantly, OBSI offers Canadians a free, fair and effective way to resolve disputes with their banks and other financial institutions. Without the OBSI, many Canadians would be left without an independent, effective way to resolve their banking- and investment-related disputes.

TD Bank's decision to retain a private profit-based mediation company to resolve banking complaints is greatly troubling as it may lead to a perceived, if not real, conflict of interest. Canadians stand to be confused by the introduction of a new entity that is separate from the OBSI, an ombudsman that they increasingly know and trust. Following the Royal Bank of

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[1] See "TD Bank Group announces agreement on new independent dispute resolution process for Canadian banking customers" (October 26, 2011). Online: http://www.cnw.ca/en/story/865401/td-bank-group-announces-agreement-on-new-independent-dispute-resolution-process-for-canadian-banking-customers

[2] The Navigator Company, OBSI Report: Independent Review 2011 at p. 9. Online: http://www.obsi.ca/images/document/Independent_Review_of_OBSI_2011_2.pdf

Canada's decision to pull out of the OBSI's dispute resolution scheme for banking matters three years ago, and TD's recent decision, consumers now have to consider what bank they are with and what type of financial service or product is at the heart of the dispute before being able to determine which ombudsman has carriage of their complaint. Furthermore, with certain institutions accepting the OBSI's independent authority and others rejecting it, one may argue that there is disparity between Canadians regarding financial dispute resolution services.

PIAC notes that the recently enacted regulations to the Bank Act have not been exercised by the Minister to require financial institutions to bring their banking disputes solely to the OBSI. Now is the time for you to use this power to bring both TD and Royal back to a single, effective ombudsman by requiring them to resolve disputes with customers solely with the OBSI.

A divided arbitration process is unacceptable to consumers. As Rob Carrick noted in a recent article in the Globe and Mail, TD's unilateral decision to remove itself from OBSA oversight is a perfect illustration of the "stunted investor-protection culture in Canada".[3] Indeed, this decision has been taken in absence of any prior consultation with, and clearly against the interests of, consumers. Now more than ever, consumers need an independent streamlined, easy-to-understand and neutral course of action. Your action can return this recourse to them.

We are of the opinion, as consumer advocates, that it would be well to remind financial institutions that the OBSI was a compromise position that was meant to stave off government regulation of consumer redress in banking and investments. The industry is clearly breaching this compromise by removing itself from the OBSI scheme by degrees.

We have also grave concerns that the next "shoe to drop" will be the exiting of investment houses from the OBSI scheme. Such a move would be a disaster for retail investors. While we appreciate that the jurisdiction over this side of the OBSI's mandate is somewhat convoluted and requires the suasion of the Canadian Securities Administration, as well as IIROC and the MFDA, we are of the view that a strong message sent by you to the banking industry to rejoin the OBSI would have the effect of ensuring the investment industry did not leave the scheme. Although the proposed National Securities Regulator may eventually play a role in this equation, your steadfast support of the OBSI scheme would in the meantime be invaluable to consumers.

We note further that consumer and investor advocates have warned that even as constituted, and even with full participation, the OBSI is not truly independent nor effective in protecting consumer financial interests. In our view, in the longer run, the federal government should again consider revamping the ombudsman to provide it with statutory powers such as the ability to make orders for compensation.[4] The Union des consommateurs noted in a recent report that the independence of ombudsmen in the financial sector may be jeopardized if they are created and operate under the direction of financial institutions they are required to oversee and that

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[3] Rob Carrick, "Time for Canadians to stand up for investment ombudsman" *The Globe and Mail* (27 October 2011), online: The Globe and Mail < http://www.theglobeandmail.com/globe-investor/personal-finance/rob-carrick/time-for-canadians-to-stand-up-for-investment-ombudsman/article2214980/>.

[4] We note that the OBSI has been unable to require financial institutions to accept the OBSI's recommended compensation to complainants in 15 unresolved cases: Ellen Roseman, " Brokers battle with banking ombudsman", Toronto Star, May 24, 2011. Online:

these ombudsman should be independent from financial institutions and should not be privately retained by such institutions in exchange for profit.[5]

Finally, we noted with the Government of Canada's endorsement, through you, at the recent G20 Paris Meeting of October 15, 2011 of "the FSB report and the common principles on financial consumer protection prepared by OECD with FSB and call for further work on implementation issues." Those principles include one on "Complaints Handling and Redress" which reads:

> Jurisdictions should ensure that consumers have access to adequate complaints handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. Such mechanisms should not impose unreasonable cost, delays or burdens on consumers. In accordance with the above, financial services providers and authorised agents should have in place mechanisms for complaint handling and redress. Recourse to an independent redress process should be available to address complaints that are not efficiently resolved via the financial services providers and authorised agents internal dispute resolution mechanisms. At a minimum, aggregate information with respect to complaints and their resolutions should be made public.[6]

Given the predicament of financial consumers in Canada, we therefore call upon you as Minister of Finance to use your present regulatory powers to require financial institutions to use the OBSI as the single adjudicative body in the banking sector. Your support of OBSI on the banking side would have the likely effect of ensuring the investment sector remains likewise subject to OBSI. Longer term, we call upon your department to study and take action to ensure the true independence and effectiveness of the OBSI for consumers of both banking and investment services in Canada.

Yours truly,

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[5] Union des Consommateurs, *Le traitement des plaintes dans le secteur financier: accessibilité pour les consommateurs*, Rapport final du projet présenté au Bureau de la consummation d'Industrie Canada, juin 2009, at p. 62-63.

[6] OECD, "G20 High-level Principles on Financial Consumer Protection" (October 2011) at p. 7. Online: http://www.oecd.org/dataoecd/58/26/48892010.pdf