

TERMS OF REFERENCE*

The **ADR Chambers Banking Ombuds Office** Terms of Reference are as follows:

PURPOSE

1. These Terms of Reference describe the scope of the mandate of the ADR Chambers Banking Ombuds Office (“ADRBO”), its process upon receiving Complaints, and the authority and responsibilities of the ADRBO Banking Ombuds and Investigators.

DEFINITIONS

2. The definitions in the Terms of Reference are as follows:
 - ▶ **ADR Chambers** means ADR Chambers Inc. and its affiliates;
 - ▶ **Banking Ombuds** means the individual designated by ADR Chambers to handle Complaints and coordinate the activities of ADRBO in accordance with these Terms of Reference;
 - ▶ **Complainant** means any small business or individual customer of a Participating Financial Institution (or their representative) who is making a Complaint to ADRBO. This would include a personal representative, guardian, trustee or executor;
 - ▶ **Complaint** means a written expression of dissatisfaction about the provision of a service provided by a Participating Financial Institution to a Customer in Canada;
 - ▶ **Customer** or **Client** means an individual who, or small business that requested or received a service from a Participating Financial Institution;
 - ▶ **Financial Services** means a financial product or service, or advice about a financial product or service;
 - ▶ **GIO** means the General Insurance OmbudService;
 - ▶ **Industry OmbudService** means any of the OBSI, the OLHI and the GIO.
 - ▶ **Initial View Letter** means a letter sent to the Complainant and the Participating Financial Institution concerned when ADRBO is of the opinion that, based on the information received during the complaint assessment stage, a full investigation would not result in a different outcome or any recommendation for compensation. An initial view letter is usually brief, includes a summary of the facts based on ADRBO’s contact with the Complainant and any documentation received from Complainant or during the complaint assessment stage, provides the Complainant with a brief explanation of why further investigation is unwarranted, and explains that the file is being closed;
 - ▶ **Investigator** means the individual performing an investigation;
 - ▶ **OBSI** means the Ombudsman for Banking Services and Investments;

*Effective November 1, 2011

- ▶ **OLHI** means the OmbudService for Life & Health Insurance;
 - ▶ **Participating Financial Institution** means a financial services provider that uses the services of ADRBO; and
 - ▶ **Standards** means any standards established by ADRBO for the conduct of the investigation and resolution of the Complaints.
3. References to the male gender include, where the context allows, the female gender and vice versa and references to the singular number include, where the context allows, the plural number and vice versa;
 4. References to sections and paragraphs are to sections and paragraphs of these Terms of Reference.

AUTHORITY AND RESPONSIBILITIES

5. ADRBO will:
 - ▶ adhere to these Terms of Reference;
 - ▶ provide information to the public about the process for submitting and commencing Complaints;
 - ▶ receive Complaints for investigation;
 - ▶ assess incoming Complaints to determine whether they are within its mandate;
 - ▶ review Complaints in order to ascertain whether a full investigation is warranted;
 - ▶ investigate Complaints with a view to their resolution by agreement or as a result of ADRBO's report (subject to the restrictions in these Terms of Reference);
 - ▶ where appropriate, make recommendations to both Participating Financial Institutions and Complainants to resolve Complaints;
 - ▶ not disclose confidential information about Complaints; and
 - ▶ not provide other professional advice in the form of legal representation or advice, nor financial representation or advice to a Complainant or a Participating Financial Institution.
6. ADRBO will act at all times in an independent and impartial manner and not advocate on behalf of the Participating Financial Institution or the Complainant.
7. The Banking Ombuds may act as Investigator and/or delegate responsibilities to other Investigators and staff of ADRBO in the investigation and processing of a Complaint.
8. ADRBO and its staff will act in compliance with privacy rules, privacy legislation and applicable codes of conduct. ADRBO will ensure that all members of its staff are aware of and comply with applicable codes of conduct, privacy policies and obligations towards both the Complainant and the Participating Financial Institution.

9. ADRBO will report to Participating Financial Institutions information regarding any threat to the Participating Financial Institution's staff or property that may become apparent during its performance of its duties.

MANDATE

10. ADRBO may investigate any Complaint received if all of the following conditions apply:

- ▶ the Complaint is submitted to ADRBO by the Complainant to whom or for whom the financial service in question was provided by a Participating Financial Institution or its representative. It is desirable that all persons with an interest in the Complaint, such as joint account holders, make the Complaint. Nevertheless, ADRBO may decide that the non-participation of a person with an interest in the Complaint does not prevent the consideration of the Complaint, provided that all necessary consents to release confidential information have been obtained.
- ▶ the Participating Financial Institution has received a Complaint and rejected the Complaint or made a recommendation for resolution of the Complaint, but the Complainant has not accepted the recommendation proposed by the Participating Financial Institution. It is anticipated that a Participating Financial Institution will usually make its recommendation within 90 days of the submission of the dispute to the Participating Financial Institution's Ombudsman's Office. ADRBO may investigate a complaint if more than 90 days has passed since the complaint was submitted to the Participating Financial Institution's Ombudsman's Office and, in the opinion of ADRBO, it is not reasonable to give the Participating Financial Institution more time to complete its investigation.
- ▶ the Complaint has been made to ADRBO within 180 days of the Participating Financial Institution's rejection of or recommendation for resolution of the Complaint. ADRBO may receive and investigate a Complaint for a period of up to 12 months after the Participating Financial Institution's rejection of or recommendation for the Complaint if it is considered fair and reasonable to do so.
- ▶ the subject matter of the Complaint by the same Complainant (or any one or more of a group of Complainants) was not previously considered by ADRBO or OBSI. Where a Complaint has been previously considered but, in the opinion of ADRBO, relevant new information is available, a Complainant may request that the Participating Financial Institution reconsider the Complaint in light of the new information. After the Participating Financial Institution considers the Complaint or if the Participating Financial Institution refuses to reconsider its recommendations, the Complainant may request that ADRBO reconsider the Complaint.
- ▶ the subject matter of the Complaint by the same Complainant (or any one or more of a group of Complainants) has not been or is not the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body, unless the Participating Financial Institution consents to the investigation in such circumstances.
- ▶ ADRBO has received appropriate consents concerning the release and treatment of confidential information from all necessary parties and any other agreements or releases that are considered appropriate in the circumstances in the Consent and Confidentiality Agreement, and

- ▶ the Complaint is being pursued reasonably by the Complainant and not in a frivolous, vexatious or threatening manner.

11. ADRBO will not investigate or shall cease to investigate Complaints:

- ▶ To the extent that their subject matter materially relates to:
 - a. The general interest rate and risk management policies and practices of the Participating Financial Institution,
 - b. The pricing of Financial Services by the Participating Financial Institution,
 - c. The scale of fees or charges generally applicable to Financial Services offered to Customers of the Participating Financial Institution in similar circumstances, or
 - d. The Commercial Judgment of the Participating Financial Institution, unless the Participating Financial Institution has made a Commercial Judgment that was biased, incomplete, or otherwise unfair.
- ▶ in the subject matter of which ADR Chambers has or may reasonably be perceived to have a material interest. In those circumstances, ADRBO will notify the Complainant and the Participating Financial Institution and will be entitled, at its discretion, to refer the Complaint to an alternative organization or to advise the Complainant of the ability to access the legal system or private arbitration.
- ▶ made by unrelated Complainants based on different facts that raise the same or similar issues with the object of making a “class action-type recommendation; or
- ▶ where ADRBO decides that there is a more appropriate place for them to be dealt with, such as a court of law, a regulator, an arbitration procedure or any other dispute resolution process.

12. ADRBO may proceed with an investigation of a Complaint that is also being investigated by any regulatory body having authority over the Participating Financial Institution. Should ADRBO defer consideration of or decline to consider the Complaint, it shall notify the Complainant and the Participating Financial Institution of its decision, any further steps that ADRBO may consider taking following the completion on the regulatory investigation, and any other dispute resolution alternatives that may be available to the Complainant.

13. ADRBO may investigate a Complaint involving a claim for any monetary amount, provided that the Complaint falls within the mandate under these Terms of Reference.

14. Where, in the opinion ADRBO, the subject matter of a Complaint (in whole or in part) is one in which the Industry OmbudService for insurance, securities or mutual funds has expertise and the Complainant and the Participating Financial Institution consent, ADRBO may cooperate with that Industry OmbudService in the investigation of the Complaint and may, if appropriate, make a recommendation jointly with the other Industry OmbudService for the resolution of the Complaint. Similarly, ADRBO may cooperate with another Industry OmbudService in the investigation and resolution of a Complaint referred to ADRBO by that Industry OmbudService. Complaints relating to a Participating Financial Institution’s insurance business should be

referred to GIO and OLHI. Complaints relating to a Participating Financial Institution's securities dealers or mutual fund subsidiaries should be referred to OBSI.

15. ADRBO shall determine the procedures for filing a Complaint and for reviewing and investigating Complaints, having regard for these Terms of Reference. ADRBO shall not be bound by the rules of evidence. ADRBO and its Investigators shall use their judgment to evaluate the quality of the evidence, the weight that should be attached to it, and its effect on the final outcome of the investigation. ADRBO will determine if a Complaint falls within its mandate under these Terms of Reference and, in reaching this decision, may consider representations from the Complainant and from the Participating Financial Institution.
16. ADRBO will make a recommendation on a Complaint within 180 days of receiving the Complaint (unless the unavailability of the information prevents ADRBO from making its recommendations within 180 days). Receipt of a Complaint will be acknowledged to the Complainant within 3 business days of ADRBO receiving the Complaint and notification to the Participating Financial Institution of the receipt of a Complaint will be given within 30 days of ADRBO receiving the Complaint.
17. Each Participating Financial Institution will appoint a final internal arbiter of unresolved customer complaints and shall:
 - ▶ fully cooperate with and assist ADRBO in the investigation of a Complaint that has been accepted by ADRBO;
 - ▶ provide all non-privileged information (such as notes, correspondence including emails and facsimiles, account statements, customer records from internal databases, transaction records, opening agreements, internal policies, etc. relating to the subject matter of the Complaint) in its possession or control, as soon as is reasonably practical, unless the Participating Financial Institution demonstrates to ADRBO's satisfaction that the disclosure of the information would likely place the Participating Financial Institution in breach of the law or its duty of confidentiality to a third party where consent to disclose has not been obtained, despite its best efforts to obtain that consent; and
 - ▶ communicate to Complainants about the Participating Financial Institution's internal Complaint handling processes and the right of escalation of an unresolved Complaint to ADRBO.
18. The ADRBO process is confidential. The discussions and correspondence of the Complainant, the Complainant's representatives, the Participating Financial Institution and ADRBO that form part of the ADRBO process will not be disclosed or used in any subsequent legal or other proceedings. The files of ADRBO are confidential and are protected from disclosure for all purposes. In addition, none of ADRBO or ADR Chambers, or their officers, employees or contractors will be called to testify in any subsequent legal or other proceedings. A Consent and Confidentiality Agreement will be signed by the Complainant when ADRBO agrees to review the Complaint.

19. If any person discloses information to ADRBO and requests that it not be disclosed to another person, ADRBO will not disclose the information to the other person except with the consent of the person who disclosed the information to ADRBO. If consent is not given and the information is prejudicial to the other party to the Complaint, ADRBO will not use that information to make a recommendation adverse to that person to whom the information is denied, except as provided in Section 20 below.
20. ADRBO may take account of a Participating Financial Institution's proprietary systems and security measures of which ADRBO has knowledge, even though no disclosure of those systems and measures has been or will be made to the Complainant.
21. If ADRBO becomes aware of systemic issues or a pattern of complaints, ADRBO will raise the issue with the Participating Financial Institution concerned so that it can be addressed and resolved.
22. As part of the exercising of its functions and responsibilities, ADRBO will have due regard to its effective, economic and efficient operation.

RECOMMENDATIONS AND REJECTIONS OF COMPLAINTS

23. ADRBO will not make a recommendation, or reject a Complaint, except in accordance with the provisions of sections 24 to 31 below.
24. ADRBO will review each complaint in order to determine whether it can be addressed on the basis of the information provided by the client and information or documentation obtained from the Participating Financial Institution. Where ADRBO is of the opinion that it is highly unlikely that an investigation would yield a different conclusion than the Participating Financial Institution's position, or would result in any compensation to the Complainant, ADRBO may issue an Initial View Letter. In cases in which the Participating Financial Institution has made a settlement offer that the complainant has found unsatisfactory, ADRBO may attempt to facilitate a settlement by discussing the matter with the Complainant and the Participating Financial Institution.
25. After the investigation of a Complaint, ADRBO may make a recommendation for compensation if it is of the opinion that the Complainant has suffered loss, damage or harm because of an act or omission by the Participating Financial Institution in the provision of Financial Services.
26. While ADRBO is investigating a Complaint, the Banking Ombuds and/or Investigator may seek to promote a resolution of the Complaint by agreement between the Complainant and the Participating Financial Institution. While ADRBO is investigating a Complaint, the Participating Financial Institution and the Complainant may continue to seek to resolve the Complaint themselves. If the Participating Financial Institution and the Complainant do not resolve the

Complaint, ADRBO will complete the investigation of the Complaint and make a recommendation for the resolution of the Complaint.

27. ADRBO's recommendation:

- ▶ will be in writing;
- ▶ will include a summary of the Investigator's reasons;
- ▶ will first be provided to the parties in draft;
- ▶ may be made jointly with another Industry OmbudService in the circumstances describe in Section 15; and
- ▶ is not binding on the Participating Financial Institution or the Complainant.

28. ADRBO will make a recommendation or reject a Complaint with reference to what is, in ADRBO's opinion, fair and reasonable in the circumstances to the Complainant and the Participating Financial Institution. In determining what is fair, the Investigator will take into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct applicable to the subject matter of the Complaint. To identify principles of good financial services and business practice, the Investigator may, where appropriate, consult within the financial services industry or elsewhere. ADRBO will not be bound by any of its previous recommendations.

29. ADRBO's recommendation should seek to achieve a resolution of a Complaint that is satisfactory to the Complainant and the Participating Financial Institution. ADRBO will not recommend compensation that would be greater than an amount that the Investigator considers to be appropriate to compensate the Complainant for loss, damage or actual harm suffered by the Complainant by reason of the acts or omissions of the Participating Financial Institution in the provision of a Financial Service.

30. If the Participating Financial Institution does not accept ADRBO's recommendation, ADRBO will post on the ADRBO website its recommendation and the Participating Financial Institution's refusal to accept it, as well as describing the Complaint in a general way without revealing any confidential information of either the Participating Financial Institution or the Complainant (except to the extent the Participating Financial Institution or the Complainant agrees to such disclosure of their respective confidential information). The Participating Financial Institution's refusal to accept the recommendations and the general circumstances of the case shall also be reported in the ADRBO annual report referred to in Section 31.

31. ADRBO will maintain a website available to the general public which describes the Complaint review process, its general mandate, contact information and other information which ADRBO deems appropriate. ADRBO will also prepare and make available to the general public an annual report containing:

- ▶ statistics and other general information of the Complaints it has processed in the year (with all personal and corporate identifiers removed), and
- ▶ any recommendations referred to in Section 30.