



Advancing Standards™

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RE: Request for Public Comment on the Ombudsman for Banking Services and Investments (OBSI) Governance Review

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**)¹ represents over [300 investment management firms](#) from across Canada registered with the various members of the Canadian Securities Administrators (**CSA**) as Portfolio Managers (**PMs**). PMAC's membership is comprised of firms of varying sizes and models, ranging from one-person firms to international and bank-owned firms, including more traditional models and online advisers, and manage total assets in excess of \$3 trillion, with a mix of both institutional and private client assets.

Thank you for the opportunity to provide feedback on behalf of our membership on the Request for Public Comment on the OBSI Governance Review (the **Consultation**).

KEY RECOMMENDATIONS

PMAC's key recommendations are as follows:

- **Transition OBSI's board to a fully fiduciary board of directors without designated stakeholder representatives from industry bodies and without a designated Consumer Interest Director to reduce inherent conflicts of interest.**
- **Appoint all Directors based on a skills matrix, ensuring that the board collectively has the knowledge and experience to act in the best interests of OBSI. The skills matrix should include industry and consumer perspectives.**
- **Establish advisory councils, focus groups and regular roundtables with industry organizations and consumer advocates to ensure that the interests, expertise, and needs of stakeholders are understood.**

¹ For more information about PMAC and our mandate, please visit our website at pmac.org.

- **If designated industry and consumer board positions are continued, open the nomination process beyond specific registrant groups, resulting in three industry representatives, covering both the banking and investment sectors.**
- **Transition all Directors to equal compensation (other than the board Chair) to align compensation and duties of all Directors with the best interests of OBSI.**

Additional details on our key recommendations as well as responses to the Consultation Questions are set out below.

CONSULTATION QUESTIONS

1. Should OBSI’s board continue to have designated board positions for current industry participants and/or consumer advocates, or transition to a system without such designated positions?

No, PMAC strongly believes that corporate governance best practices support a board of directors without designated industry or consumer advocate positions. PMAC believes in the primacy of Directors’ fiduciary duty to the organization; moving away from designated positions will help to minimize real and perceived conflicts of interest on the OBSI board for the benefit of all stakeholders.

We believe that OBSI can create other mechanisms to maintain and enhance board knowledge and understanding of consumer needs and financial services. This will assist OBSI in fulfilling its mandate of helping to ensure a fair, effective and trusted financial services sector while minimizing the influence of special interests at the board level. In lieu of designating industry and consumer positions, the board could establish advisory committees, working groups and ad hoc taskforces to obtain specific industry, consumer advocacy or other expertise to address unique issues as they arise.

OBSI should ensure an appropriate diversity of director expertise and backgrounds through the development of an appropriate skills matrix. The matrix should specify the expertise needed to support OBSI’s board, such as the competencies outlined in OBSI’s 2021 Annual Report at page 54, including public service, accounting, corporate governance expertise and familiarity with financial services, financial literacy, consumer protection experience, etc.

The OBSI’s nominating committee should review all director candidates against the skills matrix, taking succession planning into account, to ensure that OBSI has the depth of knowledge and experience required to support OBSI’s mandate. This may result in the OBSI board including some directors who are currently employed in the industry sectors served by the OBSI. The role of these non-independent directors would, however, be separate and distinct from their day-to-day roles in the industry, as they would be acting in the capacity of directors serving the best interests of OBSI. These directors would not meet the current OBSI board definition of independence (i.e., not part of the industry or government for 2 years); it is important for the board structure that the majority of directors be independent.

The board should continue to be an independent fiduciary board, with all directors responsible for serving the needs of the organization. We believe that responsibility will be better discharged without stakeholder representatives and the inherent risk of potentially conflicting duties between a director’s employer or regulator and the OBSI.

We further believe that OBSI should continue to be the final decision maker concerning complaints resting with the Ombudsman and that there be no appeal to the board, nor ability for the board to influence the decision of the Ombudsman².

Additionally, the financial services industry is rapidly evolving in terms of its composition, technology, products, service delivery, regulatory requirements and consumer expectations. We believe that OBSI's board should reflect the diversity of thought, background, experience and technical expertise that the organization will need to fulfill its mandate. In particular, we believe it would be helpful for the nominating committee to consider the need for any cyber security, privacy, information safety, novel and alternative products expertise and familiarity with consumer protection issues in the director skills matrix.

2. If designated industry and consumer board positions are continued, what is the appropriate composition of OBSI's board with respect to the proportion of positions designated for those with specific industry or consumer expertise or who are independent?

PMAC does not believe that the practice of designated industry and consumer board positions should be continued. Rather, OBSI's nominating process should focus on director nominees' skills, experience and expertise.

However, in the alternative, if designated industry and consumer board positions are continued, we recommend no change to the current board composition. (i.e., one consumer interest director and three industry representatives). We believe this is consistent with governance best practices of having a majority of independent directors, including the chair.

We would suggest a change to the nomination and selection process for industry directors. We recommend that OBSI publish a call for applicants to represent the industry on the board of directors. Interested parties could submit applications to the nominating committee to fill one of the three industry positions. These positions would not be designated as IIROC or MFDA but rather, as industry directors. This open process would broaden the pool of talent from which the nominating committee could select directors and lessen the real and perceived conflicts of interest of individuals representing the specific registrants of regulators. It would also allow candidates to more broadly represent the financial services community. For example, an applicant could be a senior industry leader currently employed in banking, however have a career which spanned both the investment and banking side of the industry. This broadened industry representative role would lessen some of the potential conflicts of interest with the current model and allow a larger pool of candidates from which the nominating committee could select.

In addition, certain committees of the board should be chaired by and composed of a majority of independent directors, in accordance with corporate governance best practices.

We also believe that designated industry and consumer directors should be compensated to avoid the unintended consequences of not having non-independent directors remunerated. We believe this will better align the interests of any designated directors to the organization that they are serving as directors and compensate them for their preparation and meeting time, in line with other directors.

Whether or not the practice of having designated industry positions is continued, annual board governance training should be implemented to emphasize directors' duties. There should also be training in the process of identifying, disclosing, and managing any real or perceived conflicts of interest.

² OBSI Annual Report 2021, page 54

3. If designated industry and consumer board positions are continued, should Industry Director positions continue to be nominated by specific industry organizations, or should OBSI transition to a system of more general nomination of current industry participants?

Please see the response to question 2 above. Our preference is that OBSI's nominating committee have the authority to select directors from an open nomination process and that candidates selected would not represent the new SRO but rather, serve more broadly as non-independent directors and be compensated in line with the other directors serving on OBSI's board.

4. If designated industry and consumer board positions are continued, how should Consumer Interest Director nominees be identified?

Please see our responses to questions 2 and 3, above, which apply equally to the nomination of Consumer Interest Directors. The process should be an open call for candidates from which the nominating committee would select a Consumer Interest Director with the appropriate skill set.

5. Beyond designated board representation, how should OBSI ensure that the interests and expertise of industry and consumer stakeholders are incorporated into the organization's decision-making process?

We view OBSI's governance and decision-making processes as two distinct and separate functions. We do not believe that designated board representation is necessary or desirable for OBSI to fulfill its mandate. Rather, the interest and expertise of industry and consumer stakeholders should be sourced by other means. These include by continuing to expand OBSI's stakeholder outreach and consultative processes, as well as establishing advisory councils and focus groups, as required, to support its mandate. We believe that having strong stakeholder input, leveraging the knowledge of industry and consumer experts, and reflecting the interests and needs of such stakeholders is of utmost importance to OBSI's success.

For instance, we believe that it is imperative for OBSI to understand the differences between advisers registered with the members of the Canadian Securities Administrators (**CSA**) – such as PMAC's members – in contrast with advisers that are registered under the New Canadian Self-Regulatory Organization (**SRO**). These differences are important to the investors served by both types of registrants and will inform the ways in which these consumers interact with firms, how their portfolios are constructed and managed, how suitability is determined, how loss is calculated, etc. Though portfolio managers have had limited engagement with OBSI in terms of complaint volumes as compared with other industry sectors, it is nonetheless important for OBSI to seek feedback from and be informed on the impacts of OBSI's decisions on portfolio management firms and their clients.

CONCLUDING REMARKS

We thank you again for the opportunity to participate in this Consultation and stress PMAC's support for OBSI transitioning to a truly fiduciary board of directors. Doing so in conjunction with the use of a skills matrix will help ensure that individual directors and the board as a collective have the knowledge and experience to act in the best interests of OBSI while minimizing conflicts of interest and engaging the necessary expertise.

If you have any questions regarding this letter, please do not hesitate to contact Katie Walmsley (kwalmsley@pmac.org) at (416) 504-7018 or Melissa Ghislanzoni (mghislanzoni@pmac.org) at (416) 504-1118.

Yours truly,

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