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Ombudsman for Banking Services and Investments  
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Dear Sirs/Mesdames:

**Re: Response to OBSI Governance Review – request for public comment**

The Private Capital Markets Association of Canada (“**PCMA**”) welcomes the opportunity to provide our comments in connection with the Governance Review Proposal (the “**Proposal**”) published by the Ombudsman for Banking Services and Investments (“**OBSI**”).

**About the PCMA**

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (“**EMDs**”), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealers and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada.
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at [www.pcmacanada.com](http://www.pcmacanada.com).

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The PCMA supports the decision by OBSI's board to undertake a strategic review of its governance structure to determine how best to ensure that key stakeholder interests are most effectively considered in board oversight and decision making.

PCMA's responses are set out below for your review and consideration.

## **GENERAL CONCERNS WITH OBSI'S CURRENT GOVERNANCE STRUCTURE**

The PCMA has concerns involving the current structure of OBSI's board. OBSI serves two distinct and vastly different constituencies:

1. the banking services industry (*i.e.*, financial institutions, such as banks, trust companies and credit unions) and their customers; and
2. the investment industry (*i.e.*, exempt market dealers, investment dealers, portfolio managers and other registrants) and their investor clients.

These two constituencies have different needs, regulations, and objectives, making it challenging to reconcile them on a single board, as discussed below.

### **i. Different Industries**

OBSI provides ombudsman services to the **banking services industry**, which is a broad and complex sector that involves a wide range of financial services and products. It includes institutions such as banks, credit unions, and trust companies whose services may include the following:

- Depository services: This includes accepting deposits from customers, such as savings accounts, checking accounts, and certificates of deposit, and providing customers with ATM access, debit cards, and online banking services.
- Lending services: This includes providing loans to customers, such as mortgages, personal loans, and business loans. Certain financial institutions also provide credit cards, lines of credit, and other forms of credit.
- Foreign exchange services: This includes buying and selling foreign currencies, providing foreign currency accounts, and offering international wire transfer services.
- Trust and estate services: This includes providing trust and estate services, such as managing assets on behalf of individuals or organizations, administering estates, and handling estate planning and probate services.
- Digital banking services: This includes providing online and mobile banking services, digital wallets, and various other digital platforms to help customers manage their accounts and make transactions.
- Other services: This includes providing specialized services for small businesses, agricultural loans, student loans and other services.

OBSI also provides ombudsman services to the **investment industry**, which is also a broad and diverse sector that consists of a wide range of financial services and products. It includes exempt market dealers, investment dealers, portfolio managers, and other registrants whose services may include the following:

- Investment advice and distribution of securities: This includes providing investment advice and recommending investment portfolios and executing securities transactions upon direction from investors.
- Capital Raising: This includes raising capital for public and private issuers, including small and medium sized enterprises.
- Portfolio management: This includes managing the investments of investors on a discretionary and an ongoing basis, such as adjusting the portfolio to meet investors' changing goals and risk profile, and monitoring performance.
- Investment research: This includes analyzing and evaluating securities, industries, and markets to identify investment opportunities and potential risks.
- Digital investing services: This includes providing online and mobile platforms for investors to manage their investments and make trades.
- Other services: This includes providing services such as financial planning, wealth management, and other specialized services for high net-worth individuals and institutional investors.

## ii. Other Differences

In addition to providing different services, the PCMA believes having a single OBSI board that provides oversight over two different constituencies is problematic for the following reasons:

- Different regulators - Banks and certain other financial institutions in the banking industry are regulated by OFSI (Office of the Superintendent of Financial Institutions) or provincial financial regulators. Registered dealers and advisors are regulated by various provincial and territorial securities commissions or a self-regulatory organization (SRO). Banking is a federal constitutional power while securities is a provincial or territorial power under the Canadian Constitution.
- Different regulations - This difference in regulation creates different compliance requirements and oversight for these two industries. For example, banks must comply with banking laws and regulations, while dealers and advisors must comply with applicable Canadian securities and corporate laws, and stock exchange requirements, as applicable.
- Different types of products: The banking industry typically offers a wide range of financial products such as mortgages, personal loans, and credit cards, while the investment industry provides investment products such as mutual funds, stocks, and bonds.

- *Different client bases and expectations*: The banking industry primarily serves retail customers, while the investment industry serves both retail and institutional investors. Banking clients expect a high level of security, while the investment industry's clients are more focused on returns.
- *Different compensation models*: The banking industry typically has a more straightforward compensation model, such as charging interest on loans and fees for certain services, while the investment industry has varying compensation models, such as charging management fees, performance fees, and commissions on investment products.
- *Different roles in the economy*: The banking industry plays a crucial role in the economy by providing essential financial services, such as lending, and facilitating financial transactions, while the investment industry plays a more speculative role in the economy, by providing investment opportunities for clients to grow their wealth and issuers to grow their business.
- *Different types of accounts*: The banking industry typically offers a wide range of accounts such as savings, chequing, and certificates of deposit, while investment industry providers may offer investment accounts such as margin accounts, Registered Retirement Savings Plans (RRSPs) and Tax-Free Savings Accounts (TFSA).

### iii. PCMA Recommendation – Create Two Separate Ombudsmen

To put the problem into perspective, having one OBSI board serving two different constituencies is like having one board oversee both the National Hockey League and National Football League; both are sports leagues, but vastly different from one another.

As a solution to the two constituencies problem, the PCMA recommends that OBSI restructure itself into two separate ombudsmen, one for banking services (*e.g.*, the Ombudsman for Banking Services) and one for the investment industry (*e.g.*, the Ombudsman for Investment Services). Creating two separate boards provides more effective oversight with an improved governance model.

Such a restructuring is akin to the recent restructuring of the Ontario Securities Commission (the OSC) where the OSC Tribunal was created to separate the OSC's enforcement responsibilities from its regulation and policy-making roles that remain with the OSC. Creating policy and enforcing rules is different than adjudicating violations of securities law.

If there are economies to be shared by having a single ombudsman, then OBSI may consider creating two wholly-owned subsidiaries where the Ombudsman for Banking Services and the Ombudsman for Investment Services would have their own boards and more effectively deal with their constituencies. Accordingly, there could be a single OBSI holding company board and one board for each of its wholly-owned ombudsmen (*i.e.*, the Ombudsman for Banking Services and the Ombudsman for Investment Services).

This approach would allow for shared resources and expertise between the subsidiaries, while still maintaining a specialized focus on each industry. It would also ensure that the respective boards have the necessary representation and skills matrix to effectively govern each industry.

The PCMA believes this fundamental restructuring is a critical part of OBSI's governance review. We note that OBSI's most recent review of its mandate published in 2022 did not examine this fundamental

structural problem and limited its review to board composition of individual members and skills. The PCMA believes this dichotomy must be addressed as part of OBSI's current governance review. OBSI's failure to review such matters or take the view that it is outside of its current review mandate is, in the PCMA's opinion, detrimental to this process. The PCMA recommends that the OBSI board considers this matter as part of its current review governance mandate or alternatively, submit a further proposal for comment by all stakeholders.

The PCMA believes this structural problem will be further exacerbated since OBSI seeks to obtain adjudicative authority to make binding decisions with compensation limits of up to \$500,000. This is a fundamental shift from being an ombudsman to adjudicator with binding decision-making powers like a court of law. This requires OBSI to change from a consumer advocate investigating and seeking to resolve complaints to an impartial arbitrator.

The PCMA hopes OBSI considers this important structural issue and the PCMA's specific responses to OBSI's questions are set out below for your review and consideration.

### **PCMA'S RESPONSE TO SPECIFIC GOVERNANCE QUESTIONS**

<b>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?</b>
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PCMA Response:

The PCMA believes that OBSI's board should continue to have designated board positions for industry participants and consumer/investor advocates, and should not transition to a system without such designated positions for the reasons set out below.

- a) Conflict of interest: Having industry participants, such as a representative from the PCMA and consumer/investor advocates serve on OBSI's board allows for different perspectives and helps to ensure that the interests of all constituencies are properly represented. Without these designated board positions, there may be a risk of a conflict of interest, as the board may be more inclined to prioritize the interests of consumers/investors over that of industry.
- b) Lack of constituent member diversity: Removing designated board positions for industry participants, such as a representative from the PCMA, and consumer/investor advocates, may result in a lack of constituent member diversity on OBSI's board. This could result in no representation for certain groups, such as EMDs and a lack of understanding of the needs and concerns of EMDs and their dealing representatives. EMDs are different than investment dealers and, although both engaged in private placements, they serve different segments of the capital markets and are regulated differently.
- c) Decreased accountability: Industry participants, such as a representative from the PCMA, and consumer/investor advocates, would serve as a check and balance on OBSI's board, holding the other members accountable for their actions and decisions. There may be less oversight and fewer checks on the board's actions as they relate to EMDs and their dealing representatives and the private capital market generally. As a result, without these designated board positions, there could be a decrease in accountability.

- d) Decreased transparency: Designated board positions for industry participants, such as a representative from the PCMA, and consumer/investor advocates, would help to ensure that OBSI's board is transparent in its decision-making process. Without these positions, there may be a lack of transparency, as the interests of certain groups, such as EMDs, may not be as clearly represented which may be reflected in unfair policies and mandates reflected in unfair decisions adverse to EMDs and their dealing representatives.
- e) Decreased public trust: OBSI's board plays a critical role in maintaining the public's trust in the financial sector. Removing designated board positions for industry participants, such as a representative from the PCMA, and consumer/investor advocates, may undermine this trust, as the public may perceive that the board is not adequately representing the interests of all stakeholders.
- f) Decreased effectiveness: OBSI's board is responsible for resolving disputes between consumers and financial firms, such as EMDs. Having industry participants, such as a representative of the PCMA, and consumer/investor advocates serve on the board allows for a more comprehensive understanding of the issues and can lead to more effective dispute resolution at the operational level.
- g) Decreased credibility: The credibility of OBSI board may be compromised if it does not have designated board positions for industry participants, such as a representative of the PCMA, and consumer/investor advocates. Without these positions, the public and industry may view OBSI's board as lacking objectivity and impartiality, which could diminish its credibility and effectiveness. The current perception is that 7 out of 10 board position is unfairly skewed in favour of consumer interests at the board level.

Overall, transitioning to a system without designated board positions for industry participants, such as the PCMA, and consumer/investor advocates, may have negative consequences for OBSI's governance structure, including a potential conflict of interest, lack of constituent member diversity and representation, decreased accountability and transparency, decreased public trust and credibility, and decreased effectiveness.

As previously stated, if the provincial and territorial governments give OBSI the power to make binding decision-making powers of up to \$500,000, the lack of industry participation will further erode industry confidence in OBSI and its function. In addition, the PCMA believes such structural issues may challenge OBSI's jurisdiction and the constitutionality of its proposed structure in the future if such matters are not fully considered.

**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?**

PCMA Response:

OBSI's board consists of 10 members as follows:

- three are industry directors nominated by MFDA, IIROC and CBA respectively;
- one is a Consumer Interest Director; and
- six are Community Directors.

The PCMA believes that the composition OBSI should be restructured to properly represent the constituencies it is meant to serve, the banking services industry and the investment industry. See above “PCMA General Concerns with OBSI’s Current Governance Structure”.

The PCMA believes a properly constituted board for an Ombudsman for Investment Services would have equal representation from industry and investors. This is vital for proper governance where both interests are represented, especially if OBSI seeks binding decision-making powers of up to \$500,000.

The PCMA notes that currently there are three industry representatives on OBSI’s board nominated by IIROC, the MFDA and CBA. The PCMA’s comments are limited to the investment industry. The PCMA does not consider representatives from two SROs (now merged) to be industry representation. The SROs are regulators and not true industry representation. Industry representation would be representatives of registrant industry associations, including the PCMA, the Portfolio Managers Association of Canada (PMAC), the Investment Industry Association of Canada (IIAC) and the Federation of Mutual Fund Dealers (FMFD).

An IIROC representative does not represent EMDs as IIROC by-laws do not allow its members to have affiliated EMDs. Similarly, IIROC and the MFDA do not represent portfolio managers. The four main categories of securities registrants (*i.e.*, EMDs, portfolio managers, investment dealers and mutual fund dealers) provide services for different parts of the Canadian investment industry. EMDs are part of the capital-raising ecosystem in Canada, which is vital for the Canadian economy, and their views require appropriate representation on OBSI’s board. The PCMA submits that OBSI’s board would benefit from the knowledge, experience and understanding of an OBSI board representative who would properly represent the private capital market, such as one or more PCMA nominees and other industry associations; not SRO nominees.

**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?**

PCMA Response:

The PCMA believes that if OBSI decides to continue with designated board positions for industry and consumer representatives, then Industry Director positions should continue to be nominated by specific industry organizations, including the PCMA. The PCMA has previously requested a position on OBSI’s board which has been rejected since OBSI’s by-laws do not allow an investment industry representative other than from IIROC or the MFDA. This is concerning when, for example, over \$174.9 billion of capital was raised in the Ontario private capital market in 2021.<sup>1</sup>

Having Industry Directors nominated by specific industry organizations, such as the PCMA, helps to ensure that the interests and concerns of the members of such organizations are represented on OBSI’s board for the following reasons:

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<sup>1</sup> See OSC Staff Notice 45-718 - *Ontario’s Exempt Market* dated Fall 2022 at: [https://www.osc.ca/sites/default/files/2022-12/sn\\_20221207\\_45-718\\_ontario-exempt-market.pdf](https://www.osc.ca/sites/default/files/2022-12/sn_20221207_45-718_ontario-exempt-market.pdf)

- a) Industry expertise: Industry organizations are typically composed of professionals who have expertise and experience in their respective fields. By nominating Industry Directors from these organizations, OBSI can help ensure that its board has access to a broad range of industry knowledge and insights.
- b) Industry representation: Industry organizations often have a direct stake in the decisions and policies of OBSI, and nominating Industry Directors from these organizations can help ensure that the perspectives and experiences of the industry are taken into account in OBSI's decision-making processes.
- c) Stakeholder input: Industry organizations can provide input and feedback on the selection of Industry Director nominees, which could help ensure that the nominated candidates are well-suited to representing the interests of the industry. An industry organization could put forward a list of recommended candidates for review and consideration for a board position rather than making a single recommendation.
- d) Industry engagement: Nominating Industry Directors from specific industry organizations can help foster engagement and collaboration between OBSI and the industry. This could help to build trust and improve the effectiveness of the organization.

As stated, the lack of industry representation on OBSI, especially if it is granted binding decision making powers of up to \$500,000, will result in industry questioning OBSI's overall fairness, especially when it seeks to expand its nominee qualification criteria, without including the very constituents it is meant to serve.

<b>4. If designated industry and consumer board positions are continued, how should Consumer Interest Director nominees be identified?</b>
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PCMA Response:

The PCMA submits that the position of a "Consumer Interest" Director for the investment industry is an incorrect label. It should be an "Investor" Director nominee and there are various investor advocacy groups that OBSI could approach to seek board nominees for investor representation on its board. The concept of a "Consumer Interest" Director is more appropriate for the banking industry and the right candidate would be different for one being nominated for the investment services industry.

In response to the question, OBSI could identify Consumer Interest Director nominees by establishing a public nomination process to allow any interested individuals to submit their names for consideration as a Consumer Interest Director nominee. This could involve an online nomination form or a nomination by a recognized industry or consumer group such as the Consumer and Investor Advisory Council (CIAC).

OBSI could also consider establishing an external committee, such as a panel of experts or a group of industry and consumer representatives, to review and select Consumer Interest Director nominees.

It is important for OBSI to set out clear guidelines on what constitutes a "Consumer Interest" or "Investor" Director so it is fully transparent to all stakeholders.



**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?**

PCMA Response:

OBSI can ensure that the interests and expertise of industry, such as the PCMA, and consumer/investor stakeholders, are incorporated into the organization's decision-making process beyond designated board representation, include the following:

- (a) Consultation: OBSI can engage in regular consultation with industry and consumer stakeholders to gather input and feedback on key issues and decisions. This could involve holding focus groups, surveys, or public forums to allow stakeholders to share their views and concerns. This needs to be more than an annual or bi-annual 1-2 hour meeting by OBSI's board with all stakeholders since this does not allow for meaningful consultation as there are many groups in attendance at the same time.
- (b) Advisory committees: OBSI could also consider establishing advisory committees or working groups that bring together representatives from industry and consumer/investor groups to provide input and advice on specific issues or projects. OBSI has done so already with CAIC and should also do so with the private capital market through the PCMA.
- (c) Stakeholder input in policy development: OBSI could involve industry and consumer stakeholders in the development of policies and procedures, such as through public consultation or by seeking input from stakeholder representatives during policy development. The PCMA believes that OBSI's decisions do not necessarily reflect those of the CSA members in its decision-making process. Stakeholder input from the PCMA, PMAC, IIAC and FMFD would be helpful with understanding the perspectives of the different investment industry participants.
- (d) Regular communication: OBSI can maintain regular communication with industry and consumer stakeholders through various channels, such as newsletters, social media, or public presentations, to keep stakeholders informed about the organization's activities and decisions. As OBSI is located in Ontario, it should consider establishing a Western office to provide greater access and communication which can be achieved, in part, by having a physical presence in Western Ontario.

Overall, it is important for OBSI to adopt a transparent and inclusive approach to decision-making that allows for the meaningful participation and input of industry participants, such as the PCMA, and consumer stakeholders.

## OTHER MATTERS

### (i) PCMA Circulation of OBSI Survey

In order to solicit PCMA member input, we have circulated OBSI's corporate governance survey<sup>2</sup> to all our members to encourage participation as part of OBSI's public consultation process. The PCMA appreciates the opportunity for allowing the banking services and investment industry to provide their views, albeit in a different survey format, since some individuals do not have the time to write a formal response letter.

### (ii) Insufficient OBSI Stakeholder Engagement with the Exempt Market Dealers

The PCMA believes that OBSI should enhance its stakeholder engagement in the private capital markets. As stated above, while an annual or bi-annual meeting with various industry groups is beneficial, it primarily serves as an update rather than providing a platform for specific industry groups to raise their issues and concerns and engage in a constructive dialogue.

In this regard, the PCMA raises two examples of areas where greater stakeholder engagement is needed and would be valued by its members:

1. The PCMA is not aware of any **private market loss calculation methodology** that has been developed by OBSI and widely circulated for public comment. This remains a concern for PCMA members. While OBSI has attempted to address this issue with the PCMA board, it has not yet prepared any policy paper or document to effectively engage the PCMA or the private capital market industry in discussions on this topic. This needs to be public and transparent with appropriate commentary of how each aspect of the calculation methodology is determined.
2. The PCMA believes that there has been insufficient stakeholder engagement regarding the effectiveness of OBSI's "**name and shame system**". The 2022 Evaluation Report on OBSI<sup>3</sup> concluded that the system was not working effectively, citing refusals to pay by registrants as a significant issue. However, the report did not investigate or discuss industry's specific views and concerns on why there may be a refusal to pay. OBSI is seen by some as more of an investor advocate than an impartial body. We understand that OBSI's investigation process as ombudsman is meant to be informal, however, the consequences are serious, both from a reputational and financial perspective. The impact from the industry point of view was not explored and the reasons for not paying were not discussed.

Notwithstanding the foregoing, both of the above issues are worthy of further discussion, and the PCMA encourages OBSI's board and OBSI staff to engage more closely with EMDs to better understand their unique business models and the ways in which they differ from those of other industry participants. The public interest is best served through open dialogue and engagement with the industry.

Additionally, the PCMA suggests that OBSI could benefit from increased engagement with EMDs through targeted outreach efforts and targeted stakeholder consultation. This could include targeted focus

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<sup>2</sup> OBSI survey link at: <https://www.surveymonkey.com/r/H3NXR36>

<sup>3</sup> Report at: [https://www.obsi.ca/en/about-us/resources/Documents/Independent-External-Review---OBSI-Investments-Mandate\\_EN.pdf](https://www.obsi.ca/en/about-us/resources/Documents/Independent-External-Review---OBSI-Investments-Mandate_EN.pdf)

groups, roundtable discussions, or other forms of direct engagement that would allow EMDs to share their perspectives and concerns in a more meaningful way.

Furthermore, we suggest that OBSI consider additional forms of stakeholder engagement such as regular workshops or webinars to discuss industry-specific issues and concerns. This could be a great opportunity for OBSI to gain a deeper understanding of the unique challenges and opportunities faced by EMDs, and for EMDs to learn more about OBSI's perspective and approach to these issues.

The PCMA believes that greater stakeholder engagement with EMDs is vital to the effective functioning of OBSI and the protection of the public interest. As reported in recent OSC Staff Notices, the private capital market is significant from a dollar raised perspective and the number of participating retail investors. We encourage OBSI to take a more active role in engaging with EMDs and other industry participants to better understand their needs and concerns, and to work together to develop effective solutions.

The PCMA would be happy to facilitate such discussions and help bring together industry representatives and OBSI representatives to explore these issues in more depth.

### (iii) **Skills and Qualification Matrix**

#### **Need for Greater Transparency on Skills Matrix and Qualifications and Weighting Methodology**

The PCMA notes that the 2022 OBSI report and the current Proposal do not provide substantive information on the skills matrix and qualifications for OBSI director nominees. This is required so the public has full transparency on how the criteria forming the skills matrix and qualifications are weighted. For example, is a nominee's industry experience given greater weight than financial knowledge and how are all criteria judged and weighted in consideration of a nominee's overall score.

The PCMA acknowledges that adding criteria such as diversity and inclusiveness are in line with best practices, however, the public and industry needs to understand how criteria is weighted among the many criteria being considered in the matrix.

It would have been valuable for stakeholders to view the existing and proposed changes to OBSI's skills matrix and criteria and how they are weighted and practically applied so we understand what is being proposed. In its absence, the PCMA would like to contribute to the discussion on improving OBSI's corporate governance processes by providing a potential methodology for consideration for OBSI's nomination process as set out below.

#### **Rational for Skills Matrix Policy**

The PCMA believes that a component of OBSI's Director Recruitment Policy should include detailed information on its skills matrix and qualifications for the following reasons:

- (a) **Transparency**: A skills matrix policy provides transparency in the director nomination process. It allows stakeholders to understand the qualifications and skills that are required for the role of a director, as well as the evaluation criteria used to assess nominees. This promotes accountability and helps ensure that the nominee selection process is fair and unbiased.

- (b) *Governance*: A skills matrix policy helps to ensure that OBSI's board is composed of individuals with the right mix of skills, expertise, and experience to effectively govern the organization. This promotes good governance and helps to protect the interests of shareholders and other stakeholders. It also helps to align with best practices in corporate governance and promotes the capital markets while balancing investor protection and the public interest.
- (c) *Continuous improvement*: A regularly reviewed and updated skills matrix and qualification policy allows for continuous improvement of the nomination process and helps ensure that the board is composed of well-suited individuals.
- (d) *Representation*: A skills matrix policy that includes diversity and inclusion criteria ensures that the board represents the different stakeholders of the organization and that the board has a balance of different perspectives and skills.

### **Elements of a Skills Matrix Policy**

The PCMA believes that a skills matrix and qualification policy should be fully transparent and measurable for director nominations and include the following:

#### *Defined skills and qualifications:*

The skills matrix should clearly define the skills and qualifications that are deemed necessary for the role of a director.

For example, some technical skills that may be required for a director include:

- (a) *Financial expertise*: This includes knowledge of financial reporting, budgeting, and forecasting as well as an understanding of financial instruments and markets.
- (b) *Industry expertise*: This includes industry specific knowledge (i.e., banking, portfolio management, and investment dealer in the public markets and the private capital markets) as well as an understanding of the trends and challenges facing the specific industry.
- (c) *Technical expertise*: This includes knowledge and experience in specific areas such as technology, engineering or operations, which may be relevant to the applicable industry.

In addition to technical skills, soft skills are also important for the role of a director. Some of the soft skills that may be required include:

- (a) *Leadership*: This includes the ability to lead and inspire a team, to make difficult decisions, and to provide guidance and direction to OBSI.
- (b) *Communication skills*: This includes the ability to communicate effectively and persuasively, both verbally and in writing, and to build and maintain relationships with stakeholders.
- (c) *Governance abilities*: This includes knowledge of corporate governance principles and an understanding of the responsibilities and duties of a director.

Diversity and inclusion are also important factors to consider for board nominees. This includes considering the nominee's background, ethnicity, gender, and experience in promoting diversity and inclusion. This can help ensure that the board is reflective of the society and OBSI's stakeholders and brings a diversity of perspectives and ideas to the table.

The PCMA also believes that a skills matrix and qualification policy should include specifics on what evidence OBSI's recruitment committee may consider when assessing and weighing a nominee's skill or qualification. For *industry knowledge*, for example, OBSI could request evidence of a nominee's: (a) experience in the specific industry, including their understanding of the trends and challenges facing the industry; (b) professional certifications or degrees related to the industry; (c) active involvement in industry associations or groups and (d) publications or presentations related to the industry.

As for *financial expertise*, OBSI could request obtain evidence of the nominee's: (a) experience in financial reporting, budgeting, and forecasting; (b) professional certifications or degrees related to finance, (c) experience in understanding financial instruments and markets and (d) involvement in financial decision-making at previous organizations.

Furthermore, the PCMA believes that OBSI should consider additional skills and qualifications required of a consumer or investor representative. For the investment industry, a more appropriate term would be an "**investor representative**". From a private capital markets perspective, such a board nominee should have a strong understanding of the private capital markets and the unique characteristics and risks associated with private market investments. Specifically, the investor representative should have investment experience working with an exempt market dealer and have made private market investments. This experience is crucial as it directly impacts their ability to make informed decisions as an OBSI board member.

Furthermore, an investor representative should have knowledge and understanding of the private capital markets and securities laws and experience in redeeming their investments and perhaps with one or more investments that were unsuccessful. This experience will ensure that an investor representative has a well-rounded understanding of the risks and rewards associated with various types of investments, both private and public, and will enable them to make informed and effective decisions on behalf of investors if appointed to OBSI's board.

Ensuring that OBSI has specific evidence to support each skill and qualification is directly related to the ability of OBSI to evaluate the satisfaction of each criteria against a rating system, which is further discussed below.

### **Designing a Weighted Rating System**

The PCMA recommends that OBSI's skills matrix and qualifications should be subject to a weighted rating system. This would provide a clear, practical and quantitative methodology for comparing director nominees against certain criteria and, among one another, based on a score. Designing a weighted rating system involves, among other things, the following considerations:

- (i) Defining the skills and qualification criteria: Define the evaluation criteria as discussed above, including financial expertise, industry knowledge, leadership skills, and governance abilities.

- (ii) Assign a weighting to each criteria: Assign a weighting to each criteria to indicate its importance in the overall evaluation. For example, if industry expertise is deemed more important than financial knowledge, it should be assigned a higher weighting.
- (iii) Develop a rating scale: Develop a rating scale for each criteria, for example, a scale of 1 – 100 or 1 -5 for each criteria.
- (iv) Assign a rating to each director nominee: Assign a rating to each nominee based on their qualifications, experience and potential to contribute to the board.
- (v) Calculate an overall score: Calculate an overall score for each nominee by multiplying the rating assigned to each criteria by its weighting and summing up the scores.

Based on the above methodology, OBSI would then use the scores to make a decision on a nominee's suitability for the role of a director.

### Hypothetical Skills Matrix Weighted Rating System

The PCMA believes a weighted rating system is an effective way to objectively evaluate the qualifications of an OBSI board nominee based on the relative importance of different skills and qualifications. The following table illustrates an example of how a fictional board nominee's qualifications could be evaluated using this system:

Qualification	Weight (out of 100)	Nominee's Rating (out of 100)
<b>Criteria #1</b>	35	85
<b>Criteria #2</b>	25	75
<b>Criteria #3</b>	15	90
<b>Criteria #4</b>	10	85
<b>Criteria #5</b>	10	80
<b>Criteria #6</b>	5	80
<b>Overall rating</b>		<b><u>82.5</u></b>

The weighting assigned to each criteria represents its relative importance in the overall evaluation, with a higher weight indicating more importance. This weighting would have to be determined by OBSI and should be fully disclosed to all stakeholders. In the above example Criteria #1 is deemed more important than Criteria #2 and is assigned a higher weighting. The nominee's rating is determined based on their qualifications, experience, and potential to contribute to the board. The overall rating is calculated by multiplying the nominee's rating for each criteria by its weight and summing up the scores.

As a result, in this example, the nominee's overall rating is 82.5 which is arguably a good score, indicating that the nominee has a good mix of skills and qualifications that align well with the evaluation criteria.

The PCMA appreciates the opportunity to elaborate on a skills matrix and its practical application with clear definitions and weighting. The PCMA believes that it is in the public interest that OBSI should fully

publish and make such processes publicly available on its website as it now undertakes a review of its governance structure.

In conclusion, the PCMA is concerned that moving to solely a skills matrix without industry or investor representation will mute the voice of the private capital markets and have it subsumed by those with a skills matrix that have little to no knowledge about the private capital markets. Moreover, the PCMA is concerned that a skills matrix may group together bank owned investment dealers and large mutual fund dealers and suggest the PCMA member interests are represented. They are not our members and do not represent the hundreds of small and medium sized firms that participate in the private capital markets. The private capital markets served by EMDs are different than those served by investment dealers. If the private capital market industry voice is not heard then the PCMA believes it will directly impact capital raising in Canada, in particular, for small and medium sized enterprises. Lastly, with OBSI seeking binding decision-making powers of up to \$500,000, it is imperative that OBSI change its board structure, which attempts to serve two different constituencies, and allow industry representation.

\* \* \*

The PCMA thanks OBSI for the opportunity to provide you with our comments and would be pleased to discuss them with you at your earliest convenience.

Yours truly,

PCMA Comment Letter Committee Members\*

*“Brian Koscak”*

PCMA Chair of Advocacy Committee &  
Executive Committee Member

*“Nadine Milne”*

PCMA Executive Committee Member and  
Co-Chair of the Compliance Committee

*“David Gilkes”*

PCMA Executive Committee Member and  
Co-Chair of the Compliance Committee

*\*The views expressed herein are those of the above individuals in their role as members of the PCMA and not necessarily those of the organizations of which they are employed or affiliated.*

cc: PCMA Board of Directors