



Advancing Standards™

February 19, 2016

Deborah Battell
Independent Evaluator
dbattell@gmail.com

Ms. Battell:

RE: Request for Comment on the Independent Evaluation of the Ombudsman for Banking Services and Investments with respect to Investment-Related Complaints

The Portfolio Management Association of Canada ("PMAC") welcomes the opportunity to participate in the 2016 independent evaluation of the Ombudsman for Banking Services and Investments (OBSI). The purpose of the evaluation is to determine whether OBSI is fulfilling its obligations as outlined in the Memorandum of Understanding concerning oversight of the Ombudsman for Banking Services and Investments (MOU) and whether any operational, budget and/or procedural changes in OBSI would be desirable in order to improve OBSI's effectiveness in servicing registrants and their clients.

We appreciate the opportunity to have met with you in-person on January 25, 2016 to provide feedback on our Members' views of OBSI's dispute resolution service and Member experience to date. As we stated at that meeting, given our Members are new to OBSI along with the very low complaint volume experienced since the service was mandated in August 2014, our feedback on OBSI's operations and practices is somewhat limited. However, we can provide comments that address some key issues we believe merit further review and consideration.

In this letter, we will provide: (i) background on the Associations' advocacy position; (ii) our Member experience with OBSI, (iii) comments on our perception of progress made in OBSI's governance, operations and services, and (iv) recommendations for future consideration.

1. Background on Advocacy Position

PMAC¹ represents over [220 investment management firms](#) from across Canada that manage total assets in excess of \$1.4 trillion, with a mix of both institutional and private client assets.

In December 2013, the Canadian Securities Regulators announced that OBSI was to be the sole independent dispute resolution service for portfolio managers and other registrants with participation commencing August 2014. Prior to 2014, few portfolio management firms had had any experience working with OBSI with the exception of firms that had affiliate companies (e.g. bank owned or large mutual fund companies) who may have utilized OBSI as a third party service provider voluntarily.

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

Our historical advocacy position with respect to OBSI is premised on the following:

- 1) PMAC is very supportive of the requirement for registrants to provide dispute resolution services to clients at the registrant's expense and we strongly agree that investors should have unfettered access in seeking restitution with a no-cost alternative to the court system.
- 2) PMAC does not, however, believe that mandating one Ombudsman is the best approach. We believe allowing firm choice of third party dispute resolution service from an approved list (similar to the rules for federally regulated banks) allows a better match between the service provider and client needs and that a model with multiple professional independent service providers encourages best practices in operations and service delivery versus a monopoly model which has its inherent weaknesses. Further, we do not believe that there is one external complaint body that can meet the needs of all investors given the myriad of complaints that may arise and the different types of investors that exist in the investment industry. Our Members believe that as fiduciaries, they have a duty to choose a complaint handling service provider that is appropriate for their clients; one that has the capacity and experience with the type of investment mandates their firms' manage and a resolution option with no cap on claimed losses given the higher than average size of AUM per client. We also strongly believe that to effectively resolve complaints, the methods used and the remedies offered need to be appropriate to the circumstances. For example, mediation may be a better suited method of dispute resolution in many circumstances and certain service providers have more experience, knowledge and expertise in offering mediation.
- 3) We support a user fee based model. In our view, it is completely unjustified to subject each registered portfolio manager in Canada (excluding Quebec and institutional only managers) to pay OBSI an annual fee regardless of whether the service is ever used. We believe a user fee based method would be a more fair method to allocate fees. Our sector has historically experienced a low complaint volume and high internal resolution rate. This is partly driven by the nature of the fiduciary relationship and the fundamental duty of the portfolio manager to act in the client's best interests. In the event of disagreements, the nature of the fiduciary relationship drives a strong desire to clarify any misunderstandings and to satisfy the client. The low client to advisor ratio and higher average portfolio size results in a strong desire to keep the client satisfied and resolve any issues. In a study conducted by Investor Economics (the "IE Study") and referenced in our first CSA submission (see above), the average AUM of a private client working with a portfolio manager is \$1.2 million and a portfolio manager manages, on average, assets for approximately 58 clients.² Further, many private clients and institutional clients have consultants acting on their behalf and managers recognize that if a client is not happy, the business is moved and they risk loss of other business of related clients and their reputation with the investment consultant. These facts have led to nearly all private client / institutional investor disputes being resolved internally without resort to a third party dispute resolution service provider.

For further details on our advocacy position, please see the following PMAC submissions:

- [PMAC Response to CSA Notice and Request for Comment: Proposed Amendments on NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations](#)
- PMAC Submission -- [Follow-Up on CSA Proposed Amendments to NI 31-103 - Dispute Resolution Service \(OBSI\)](#)

² See PMAC Member Survey, CSA Proposal to Mandate OBSI as Dispute Resolution Provider, February 2013 available at www.portfoliomanagement.org.

2. PMAC Member Experience with OBSI

PMAC Member experience with OBSI is limited. This is because portfolio managers have not experienced a high volume of complaints. In the IE Study, among the 135 companies surveyed over a 5 year period (2008 – 2012), only 4 complaints were escalated to a third party dispute resolution service. Since August 2014, less than 1% of all portfolio managers had complaints escalated to OBSI (i.e. 10 complaints total over 15 month period.) Of these complaints:

- most did not result in a recommendation of compensation by OBSI;
- several did not proceed to the investigation phase; and
- some of the complaints may have been attributed incorrectly to the portfolio manager and instead involved another registrant entity raising potential tracking issues (discussed below).

3. Progress in Governance, Operations & Services

Although as previously noted, our Members have had minimal direct experience with OBSI; we would like to provide some high level observations on our perception of the progress that has been made since the last independent review of OBSI.

a. Service

It is clear from reviewing the most recent annual reports that the Board and management of OBSI have made a concerted effort to improve per complaint file turnaround time in the investments area and for this they should be commended. The chart below illustrates the progress that has been made to date.

Average time spent in phase (days)	Phase 1: Intake & Assessment	Phase 2: OBSI Investigation	Phase 3: Firm/Client Decision Making	Total Per File Average
2011	148.4	116.5	65.3	289.9
2012	158.7	128.5	92.5	325.9
2013	173.7	157.5	136.9	384.8
2014	156.9	117.9	103.3	319.2

The more recent inclusion of a 180 day benchmark also suggests a commitment to move the bar even further with the added transparency of their performance against the benchmark displayed in recent annual reports. The sharp increase in the % of cases resolved in less than 180 days is very positive.

Benchmark	Number of Investment Case Files 2013	Percentage of Total	Number of Investment Case Files 2014	Percentage of Total
< 180 Days	79	16.7%	223	41.4%
>180 Days	393	83.3%	316	58.6%
TOTAL	472	100%	539	100%

b. Governance

Pursuant to the MOU, OBSI’s governance structure should provide fair and meaningful representation on its Board of Directors and board committees of different stakeholders, and promote accountability of the Ombudsman.

In reviewing the governance recommendations from the last independent review and the recent board membership, it is clear that progress has been made in terms of gender and

geographic diversity and board independence from the industry. The breadth and diversity of experience of board members from both within the industry and outside is, we believe, an improvement to board governance and in the best interests of all stakeholders.

Collectively, the service and governance improvements achieved in the last couple of years indicates that OBSI is moving in the right direction in improving OBSI's effectiveness and in fulfilling the provisions of the MOU.

c. *Approved External Complaint Body (ECB)*

We also applaud OBSI for meeting the requirements to become an approved External Complaint Body (ECB) for banking complaints under the *Bank Act* which was announced in June 2015. OBSI now has the ability to operate according to regulatory criteria established by the federal Department of Finance and is overseen by the Financial Consumer Agency of Canada (FCAC). We believe this is a positive development.

4. Recommendations

a. *Governance*

As indicated above, we believe that OBSI had made significant progress towards balancing board representation with different stakeholders and highly qualified independent board members. We recommend the following governance changes be considered to increase the Ombudsman's accountability and governance model:

- a) OBSI currently has a few board nominees from self-regulated organizations (e.g. MFDA, IIROC) and one from an industry trade association (i.e. CBA). We suggest the nomination process be consistent with appointees coming from stakeholder regulators (e.g. CSA Oversight Committee, OSFI, IIROC and MFDA) balanced with the continued appointments of qualified independent board members.
- b) The CSA jurisdictions and OBSI have agreed with the SROs to form the OBSI Joint Regulators Committee (JRC). The JRC plays an important role in ensuring OBSI's effectiveness and consists of representatives of the CSA Designates, IIROC and the MFDA. Currently, the CSA Designates includes the Alberta Securities Commission, the British Columbia Securities Commission and the Ontario Securities Commission. We believe that industry associations could play a valuable role in the JRC and recommend the JRC committee consult formally with industry associations on a yearly basis to share information on Member experience. This would allow a forum to raise issues and concerns proactively regarding OBSI's services, as well as identifying emerging issues.
- c) We believe independent reviews of OBSI should be conducted every 3 years not 5 years. More frequent reviews will ensure OBSI continues to improve.
- d) We recommend the independent reviews include an audit of complaint statistics publicly reported in OBSI's annual report. The industry is collectively raising its reporting standards in Canada through CRM2 and an increase in firms voluntarily meeting The Global Investment Performance Standards (GIPS®) third party validation of a firm performance reporting. In this spirit of increased industry quality reporting, we believe mandating an independent third party audit (i.e. by a large accounting firm) of OBSI's complaint tracking and reporting would help both improve the consistency and the communication of information reported year over year and would improve the industry's understanding and validity of the information being reported.

b. Fees and Costs

The MOU provides that OBSI should have a fair, transparent and appropriate process for setting fees and allocating costs across its membership. The CSA intends to review OBSI's model for setting fees for its participating firms after OBSI has developed some practical experience with its expanded mandate. This review will take place later this year. PMAC intends to work collaboratively with the CSA to provide feedback to ensure that fees are set fairly and will put forth detailed recommendations regarding alternative fee models at that time.

For the purposes of this review, we wish to simply reiterate the same concerns we have had since 2014 with the current OBSI fee model given the very low complaint volume for portfolio managers since August 2014. The current OBSI mandated fee for portfolio management firms is \$165 per Advising Representative (AR) and per Associate Advising Representative (AAR). We note that there was no rationale provided for these rates or this fee model. PMAC advocated for a pay per use fee model but this was not accepted. We do not believe the current fee model is justified given the low complaint volume.

The complaint volume for portfolio managers from August 2014 – October 31, 2014 was two complaints.³ For the period November 2014 to October 2015, we understand approximately 8 complaints were received involving portfolio management firms,⁴ bringing the total number of complaints for the last 15 month period to ten complaints. The total number of registered portfolio management firms based on data provided by the Ontario Securities Commission as of November 30, 2015 is 882. Therefore, the complaint rate for portfolio managers over the last 15 month period is less than 1%. The net projected annual revenue collected from all portfolio managers across Canada was estimated at approximately \$500K⁵.

Given these results, we believe there is a very disproportionate portion of OBSI fees being collected vs. allocated to services for a sector that, by our analysis, does not have the complaint volume to utilize its services. Given this fact, we believe the OBSI fee structure for portfolio managers needs to be reconsidered.

We note that the CSA has oversight of OBSI's fee setting process to ensure reasonableness and fairness. All agree that fees should be fair, transparent and appropriately allocated across OBSI membership. In light of the low complaint volume, we believe the OBSI fees paid by portfolio manager are excessive for firms that place few demands on OBSI's services, and in our view, these fees collected subsidize firms in other registrant categories that make relatively greater use of OBSI.

We will be providing further recommendations to the CSA on the fee model at the conclusion of the two year review period (August 2016) with a view to providing a recommended methodology that is representative of the complaint volume for portfolio managers and one that is both balanced and fair. To assist with this review, it would be helpful if OBSI disclosed publicly its fee model for all registrants, revenue collected per registrant category versus costs incurred to ensure transparency, accountability and that industry sectors are not cross subsidizing other sectors.

³ See 2014 OBSI Annual Report at p. 99 "Investments- Portfolio Managers", <https://www.obsi.ca/en/download/fm/290/filename/Annual-Report-2014-1444055310-0ac88.pdf>

⁴ This data was provided in advance of the 2015 OBSI Annual Report publication for the purposes of this submission.

⁵ Based on an expected 2858 ARs and AAs combined (excluding Quebec ARs & AARs and institutional only ARs & AARs).

c. Methodologies and Transparency

We believe that the OBSI complaint reporting methodology should be carefully reassessed to address a number of concerns, including the following:

- a) Registrants should not be named as complainants when a complaint either has no merit and does not proceed to an investigation phase or if the complaint is voluntarily resolved prior to OBSI launching an investigation;
- b) Complaint tracking should clearly identify the registrant that was directly involved with the key issue involving the complaint and who was in direct contact with the client;
- c) The annual report content and messaging should be reviewed with a goal towards improving year over year tracking in all metrics; and
- d) As noted above, we recommend an independent third party audit in addition to the independent review process which includes an audit of all complaint statistics publicly reported in OBSI's annual report.

It has been the practice in OBSI's annual reports to name all firms when a file is opened for intake and assessment. We believe complaints that do not result in an active investigation process and that are closed quickly without escalation do not meet the threshold to be included or listed as a compliant statistic in the annual report. Listing all complaints initiated is not an appropriate way to presents service results. We believe that this type of reporting inappropriately skews the statistics and disclosure provided to the public. It also impairs the reputation of named registrants with no justifiable policy reason to do so. We believe it is important for all files that proceed to intake and investigation to be tracked and displayed from a count and volume reporting perspective but any specific firm references should be only in circumstances which result in a full investigation.

We have reviewed the 10 complaints involving portfolio managers referred to above and noted that in several cases, complaints identified as complaints against a portfolio manager related to an issue that involved MFDA agent activity. In some cases, the portfolio management firm had no direct client contact. OBSI should carefully assess how it categorizes complaints and ensure all complaints are appropriately attributed to correct registrant type (portfolio manager, dealer, etc.).

The annual report is an important document to support OBSI's commitment to transparency and accountability. In reviewing a number of recent annual reports, we note that although there is a focus on very descriptive, visual displays of activity over the last year, we would suggest some simplification in reporting and visual displays. For example, consistent multi-year statistical reporting would be useful on key metrics versus current practice of some metrics reported current year only while others 5 year. Secondly, in the reporting of the top 10 firms, it may be worthwhile to provide some context such as relative market share so that the file count is shown as a percentage of customer files or some other measure that isn't distorted by market share. Lastly, report conclusions and/or forward looking observations could provide improved guidance to stakeholders. If stakeholder recommendations are considered not appropriate for this report, perhaps the recommendations could be addressed in another forum such as a report to the CSA oversight committee with industry and investor representation or some other means of providing OBSI's insights into considerations to reduce future consumer dissatisfaction and complaints.

d. Resources

Finally, as noted with minimal direct experience in working with OBSI, we are not in a position to make any detailed recommendations regarding the staffing and effectiveness to resolve complaints adequately. We will note that in the feedback provided by Members who had complaints directed to OBSI, there was a learning curve in many cases for OBSI staff to understand the role and business structure of portfolio managers, particularly in the situations in which they had no client dealings but rather were managing and distributing funds through dealers.

We recommend that given both the newness and infrequency of investigating complaints directed at portfolio managers, some staff training be considered to perhaps better orientate any individuals who will be investigating any complaints in the portfolio manager sector. We would be happy to assist in this area if required. Given the little to no volume of complaints that may be expected, we also recommend that a small number of designated individuals within OBSI specialize in the portfolio management sector which will expedite the investigation process and likely result in quicker more effective file resolution.

~~~~~

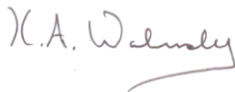
Notwithstanding our historical position on mandating OBSI as the sole dispute resolution provider for portfolio managers, we commend OBSI for some of the progress it has achieved to date in regard to its operations, independence and efficiency. While PMAC is supportive of the requirement for registrants to provide dispute resolution services to clients at the registrant's expense, we continue to have concerns with the current OBSI fee model which we believe should be revisited later this year and which we plan to provide further detailed recommendations.

We support the work of the independent evaluator in its review of OBSI and believe that the review process is critical to ensuring OBSI continues to deliver its services effectively while meeting its obligations under the MOU.

If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley ([kwalmsley@portfoliomanagement.org](mailto:kwalmsley@portfoliomanagement.org)) at (416) 504-7018 or Julie Cordeiro at (416) 504-1118.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie A. Walmsley  
President, PMAC