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Delivered By Email: publicaffairs@obsi.ca

Attention: Mark Wright
Director, Communications and Stakeholder Relations
20 Queen Street West, Suite 2400, P.O. Box 8
Toronto, ON M5H 3R3

Dear Sirs and Mesdames:

RE: OBSI Governance Review – Request for Public Comment

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on the Ombudsman for Banking Services and Investments (**OBSI**) Governance Review – Request for Public Comment (the **Consultation**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors, and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

Summary

IFIC is pleased to provide the following comments in connection with the Consultation. Our feedback is focused on the following key points:

- IFIC supports OBSI updating its board skills matrix to include experience in the range of relevant industry sectors, as well as important consumer and investor perspectives, geographic and linguistic diversity, and a diversity of backgrounds, as recommended in the recent 2021 independent evaluation of OBSI – investments mandate (**2021 Review**).
- IFIC strongly supports OBSI continuing to have designated board positions for industry participants (**Industry Directors**, as defined below).
- IFIC recommends OBSI add two additional Industry Directors and have the number of board members set at 11 directors (or up to 13), with a minority (set at five) Industry Directors and a majority (set at six or up to eight) unaffiliated community directors (**Community Directors**).
- IFIC recommends OBSI continue the approach of having nominations for one position from a mutual fund dealer and one position from an investment dealer, which would be done by the New SRO (defined below), and one position nominated by the Canadian Bankers Association (**CBA**), for three of the designated Industry Director positions.
- IFIC recommends OBSI solicit nominations from industry participants of the currently unrepresented other categories of securities registrants for two additional designated Industry Director positions.

- IFIC supports the suggestion from the 2021 Review that OBSI's board reconsider the existence of OBSI's consumer and investor advisory council (**CIAC**). IFIC's view is that the CIAC should not be necessary if OBSI updates its board skills matrix to specifically include experience in a range of consumer and investor perspectives and additional diversity metrics as recommended in the 2021 Review.

Support for OBSI to Update its Board Skills Matrix as Recommended by the 2021 Review

The 2021 Review made a number of governance-related recommendations (applicable to both the investments mandate and banking mandate reviews). One of those recommendations is that OBSI's board should “amend and update its skills matrix and use it as the basis for recruitment to ensure that directors have the skills and competencies needed to effectively oversee OBSI. The skills matrix should include experience in the range of relevant industry sectors, as well as important consumer and investor perspectives; geographic and linguistic diversity; and a diversity of backgrounds.”¹

IFIC supports the above 2021 Review recommendation and encourages OBSI to make this change to its board skills matrix. Doing so would better ensure that all the various stakeholder perspectives impacted by OBSI's important services are better reflected, and especially to ensure that the Community Directors who form a majority of the board will have the necessary background and skills to represent important consumer interests and perspectives as well. In so doing, IFIC proposes that OBSI may not need the requirement to have at least one designated consumer interest director (**Consumer Interest Director**) as all Community Directors recruited by applying the updated board skills matrix would be able to address the current purpose of the Consumer Interest Director(s), which is to have “particular interest in, access to, and competencies with the interests and perspectives of the types of consumers which the OBSI serves.”² Further, by making this change, IFIC's view is that the continued existence of CIAC in OBSI's governance structure would become questionable. We will discuss both these points in more detail below. Adopting this approach would serve to both simplify and improve OBSI's governance structure.

Support for Continuing to Have Designated Board Positions for Industry Participants

Currently, OBSI's corporate bylaws provide that three members of the board are representatives from industry, with one being elected from nominations put forward by the Investment Industry Regulatory Organization of Canada (**IIROC**), the Mutual Fund Dealers Association of Canada (**MFDA**), and the CBA (collectively, the **Industry Directors**).³ The Consultation notes that with the merger of IIROC and MFDA to form the New Self-Regulatory Organization of Canada (**New SRO**), the New SRO will have the right to put forward nominees for two Industry Director positions.

The current OBSI board complement is 10 directors, of which seven are Community Directors (one of which is a designated Consumer Interest Director) and three are the designated Industry Directors. The Consultation also notes that since 2014, in addition to IIROC and MFDA, OBSI's investment securities mandate expanded to include all other categories of securities registrants (i.e. including exempt market dealers, portfolio managers, and scholarship plan dealers) registered with the Canadian Securities Administrators. However, these other categories of securities registrants are not reflected under the current Industry Directors nomination process.

IFIC strongly supports OBSI continuing to have designated Industry Director positions on its board. In keeping with IFIC's submission on the consultation about the New SRO's proposed governance structure, IFIC's view is that OBSI's board and committee governance needs to be a fair representation from all stakeholders in the investment industry. With only the current three Industry Directors representative of MFDA, IIROC, and CBA member firms, we think there is a gap in providing adequate representation of the wide and diverse range of various business models of firms in the investment sector that are required to

¹ Page 23, third bullet, of the 2021 Review https://www.obsi.ca/en/about-us/resources/Documents/Independent-External-Review---OBSI-Investments-Mandate_EN.pdf

² Subsection 6.5(b)(iii) of OBSI's Corporate Bylaws https://www.obsi.ca/en/about-us/resources/Documents/OBSI---Consolidated-By-laws_September-2020_AODA.pdf

³ Subsections 6.5(a)(i),(ii) and (iii) of OBSI's Corporate Bylaws https://www.obsi.ca/en/about-us/resources/Documents/OBSI---Consolidated-By-laws_September-2020_AODA.pdf

provide OBSI's services to their clients. Under the heading below, we provide recommendations for resolving this gap.

We believe that it is necessary and essential for OBSI to continue to have sufficient representatives on the board who have specific industry perspectives, experience and expertise concerning: (i) the broad spectrum of business models among all the firms in the investments sector, (ii) the very broad product and service offerings that range widely in their level of complexity across the various types of securities registrants, (iii) distribution issues, (iv) operations issues, and (v) client expectations and needs, including reasonable processes and information flows for positive client experiences. However, we are not suggesting that there be a majority industry representation on the board.

Recommendation to Add Two Additional Industry Directors and Have the Board Set at 11 Directors, with a Minority (Five) Industry Directors and Majority (Six) Community Directors

Under OBSI's Articles of Continuance, the board may have a minimum of seven and a maximum of 11 members. OBSI's corporate bylaws provide that "the minimum number of Community Directors shall at all times be at least one (1) greater than the sum total number of the Industry Directors, with the Consumer Interest Director(s) counted as a Community Director for the purposes of this calculation".⁴

Regarding the composition of the board, in keeping with the current approach, IFIC agrees that the total number of Industry Directors on the board should be a minority and that the majority representation should be candidates who are without recent industry, regulatory, or government affiliation (i.e. unaffiliated Community Directors). To resolve for the gap in representation of other categories of securities registrants (referred to under the heading above), IFIC recommends that OBSI add two additional Industry Directors on the board to allow for more comprehensive representation of other specific industry perspectives, experience and expertise that are required to offer OBSI's services, as discussed under the previous heading. To provide for this and assuming that OBSI retains the current 11-member maximum on the board, we recommend that OBSI's corporate bylaws are also revised to provide that the number of directors on the board be set at 11 members, with the number of Industry Directors being set at five and the number of Community Directors set at six. We believe that setting the board at 11 members, which is the maximum allowed by the current OBSI articles, would allow for having five Industry Director positions with the majority of Community Directors at six. Having the board set at an odd number of directors also allows for a tie-breaking vote.

As an alternative to the above recommendation of setting the board at 11 members, OBSI could consider amending its articles to increase the maximum number of board members from 11 to 13 to provide for up to two additional Community Director positions.

Further, if the board skills matrix for recruiting is broadened as recommended by the 2021 Review (and supported by IFIC as indicated above), it will ensure that the unaffiliated Community Directors will also be able to represent a range of important consumer and investor perspectives. Therefore, OBSI may consider whether the need for a designated Consumer Interest Director(s) (i.e. the purpose of which is cited under the first heading above and referenced by footnote 2) would still be relevant because the board members who are not designated Industry Directors will make up a majority of directors who should be able to have more experience and perspectives to more specifically reflect consumer interests and investor perspectives.

Recommendation to Continue to Have Three Designated Industry Directors Nominated by the New SRO and CBA, and to Solicit Nominations for Currently Unrepresented Categories of Securities Registrants as Two Additional Designated Industry Directors

In regards to determining three of the five Industry Director positions that IFIC recommends in this letter, IFIC supports continuing the approach of having nominations for one position from an investment dealer and one position from a mutual fund dealer, which would be done by the New SRO, and one position

⁴ Subsection 6.5(b) of OBSI's Corporate Bylaws https://www.obsi.ca/en/about-us/resources/Documents/OBSI---Consolidated-By-laws_September-2020_AODA.pdf

nominated by the CBA. For the other two additional Industry Directors (i.e. to represent the currently unrepresented categories of securities registrants), we recommend that OBSI's Governance and Human Resources Committee of the board solicit nominations through a public search by advertisements and referrals from industry participants in those sectors. Eligibility criteria may need to be created and set out in the bylaws.

Support for Suggestion that CIAC Should Not Be Necessary If OBSI Chooses to Update its Board Skills Matrix

IFIC's agrees with the suggestion made in the recent 2021 Review that OBSI's board reconsider the existence of the CIAC. The Consultation notes that CIAC was established in 2010 with a mandate to advise the board on issues and challenges faced by consumers and investors in dealing with OBSI to resolve their complaints, and may also provide information and expert advice to the OBSI board on issues related to the financial services sector, client experience, social policy, ombudsman operational activities, social conditions, equality and disability issues, outreach activities and other issues as requested by the board.

Since that time, OSBI has continuously evolved its industry and consumer advocate stakeholder engagements resulting in regular open and transparent exchanges with the various stakeholder interests impacted by OBSI's important services. Also, in the Consultation, OBSI has indicated that it will be internally considering another governance-related recommendation from the 2021 Review, which is that the board consider adding other metrics to include diversity deliberations for recruitment purposes, including indigenous ancestry, membership in a visible minority community, and disability (i.e. to update OBSI's existing policy on board diversity). If OBSI updates its board skills matrix to specifically include experience in a range of consumer and investor perspectives and these additional diversity metrics, together combined with the ongoing improvements in OBSI's external industry and consumer advocate stakeholder engagements, IFIC's view is that the CIAC may no longer be necessary. The updated board governance structure would be able to serve many of the purposes of the CIAC. It may also alleviate some of the operational design challenges and philosophical tensions the council experienced in recent years, as was observed by the independent evaluator by the 2021 Review.⁵ As we stated above, adopting this approach would serve to both simplify and improve OBSI's governance structure.

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IFIC is pleased to have had this opportunity to comment on the Consultation and commends the OBSI for undertaking this review of its governance structure.

We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at amitchell@ific.ca.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Andrew Mitchell
President & CEO

⁵ Page 20, 21 and 22 of the 2021 Review https://www.obsi.ca/en/about-us/resources/Documents/Independent-External-Review---OBSI-Investments-Mandate_EN.pdf