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VIA EMAIL

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**Re: OBSI Governance Review – Request for Public Comment (the
“Consultation”)**

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following general comments on the Consultation and respond to the specific questions posed below.

General Comments

We understand the Consultation is focused on how the Ombudsman for Banking Services and Investments (“OBSI”) board of directors considers stakeholders’ perspectives in its decision making, particularly those with financial services industry and financial services consumer expertise.

As an overarching comment, we believe it is good governance practice and important for OBSI to take steps towards a board configuration without designated board positions for specific segments of industry participants. We believe director independence and their fiduciary duty to the organizational interests of OBSI are potentially prejudiced by a perceived duty to their nominating constituency/industry segment, creating a potential conflict of interest. Independence and diversity of experiences and backgrounds are key principles of sound governance and better ensure fulfilment of the mandate of acting in the public interest. As an independent pan-Canadian and non-governmental organization, it is therefore important for OBSI’s board to consist of highly skilled and diverse members who are not necessarily representatives of specific industry

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 190,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on [LinkedIn](#) and Twitter at [@CFAInstitute](#).

organizations or constituencies. We believe a foundational focus in the composition of the board on the public interest leads obviously to the consideration of the constituencies present in the public sphere and their incumbent diversity, and then for the pursuit of the necessary skills to compose a highly functioning board. We also believe (and empirical data has shown) that increased board diversity leads to board members acting more independently, and therefore freer to debate the merits of complex governance matters.

The purpose of OBSI is to be independent and impartial; having designated board positions for specific industry categories or constituencies gives a perception of lack of independence and raises questions about these directors' impartiality, and that of the board by extension. The purpose of OBSI is also to operate in the public interest. The public interest requires engagement with and the involvement of a full range of diverse stakeholder representatives from across Canada and also Indigenous Peoples; stakeholder representation must include a strong representation of the key stakeholder group: financial consumers. Further, increasingly, governments are moving away from unfettered self-regulation of professionals (see, for example, legal and medical regulation in British Columbia) in favour of greater accountability and transparency to the public; OBSI should be no different and have significant representation from the public/financial consumers.

Specific 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?

As outlined above, we firmly believe OBSI's board and stakeholders are best served if the board transitions to a nominations system based on a model grounded in composing the best available combination of appropriate skills and diversity of perspectives (being individual diversity reflecting the public interest mandate, and not diversity of perspective from an industry segmentation lens). We believe board members should be chosen based on the skills/qualifications, perspective and characteristics most needed by the board, at that time, rather than to represent a designated stakeholder group.

To foster further confidence in OBSI, and in Canada's financial services sector more broadly, it is paramount to avoid even the appearance of conflicts of interest. While we are aware that many industry designates conduct themselves with integrity and independence, we nonetheless are concerned that maintaining designated industry members may lead to pressure for certain directors to present organizational views and policies rather than review and advise on matters from a substantive perspective based solely on industry experience and their best individual judgment.

There is a diverse spectrum of Canadian financial consumers who require OBSI's dispute resolution services and comprise the constituency that must be served through the organization's public interest mandate. That diversity must be reflected at the top levels of OBSI, including through representation on the board. This could be directly addressed by the skills and attributes matrix that informs board nominations. In this vein, we believe that it is important to specifically ensure there is at least one Indigenous

person on the board. Adherence to commitments to Indigenous reconciliation dictates greater inclusion of Indigenous peoples on boards, standard setters and regulators throughout Canada.

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?*

If a skills-based matrix model is not adopted, it would be reasonable to ensure that an equal proportion of directors have industry and consumer expertise, or at the very least, not less than a certain number of individuals with consumer expertise. It will also be important to have objective qualifying criteria for director nominations and ensure that the criteria is well publicized and explained. Other self-regulatory organizations are able to find adequate highly-skilled independent representatives of the public (e.g. Law Society of British Columbia benchers) and we see no reason why, with adequate publicity and recruitment efforts, there would not be a significant pool of interested individuals with relevant financial consumer expertise.

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?*

While we would prefer a transition to a skills matrix as a first principle, if designated industry and consumer board positions are continued, then we agree a more general nomination of current industry participants and consumer-interested positions is preferable as an incremental governance reform to increase independence and reduce conflicts in director duties, subject to limits on the respective constituencies to ensure balance of perspectives.

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

See previous response. As noted, this is not our suggested or preferred course.

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 believe a model in which there are more informal and formal consultations with various stakeholder committees and organizations will be more effective than primarily relying on the existing consumer advisory council. Holding various and topical consumer and industry roundtables and topical workshops in concert with written consultations could result in more diverse and valuable dialogue. It would also be useful for the OBSI board to have the opportunity for a direct interface with these additional consultation mechanisms and opportunities without necessarily involving any OBSI staff as intermediaries.

Concluding Remarks

We support enhancements to OBSI's governance structure, with a view to ensuring diverse industry and financial consumer voices are heard in pursuit of its organizational mandates. OBSI should adopt a skills-based matrix/nominations structure whereby individual directors are nominated through a process requiring well defined skills and attributes, rather than a process that requires the nomination by or inclusion of representatives from any particular industry or consumer group. **But these contemplated reforms are in our view no reason to delay or defer the long-stated legislative and regulatory proposals to grant OBSI binding authority and sole recognition over securities and banking-related disputes.**

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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