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VIA EMAIL

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
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Re: CSA Notice and Request for Comment 25-314 - *Proposed approach to oversight and refinements to the proposed binding authority framework for an identified ombudservice* (the “Consultation”)

The Canadian Advocacy Council of CFA Societies Canada (the “CAC”)¹ appreciates the opportunity to provide comments on the Consultation.

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 21,000 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.

As the global association of investment professionals, CFA Institute sets the standard for professional excellence and credentials. The organization is a champion of ethical behaviour in investment markets and serves as the leading source of learning and research for the investment industry. CFA Institute believes in fostering an environment where investors'



We applaud the Canadian Securities Administrators (the “**CSA**”) for their continued work towards implementing a framework for the binding resolution of retail investor complaints. The Ombudsman for Banking Services and Investments (“**OBSI**”) has performed very well to date since it was first designated as an external complaints body. Allowing OBSI to make binding decisions is the right decision for the Canadian ecosystem and will help bring Canada’s dispute resolution process for investment complaints in line with its international peers.

We are concerned, however, as to the level and nature of regulatory oversight contemplated under the Consultation, and its potential to introduce unnecessary incremental administrative and regulatory oversight burdens to a well-functioning and cost-effective current state. In our responses to the consultation questions below, we outline what we view as a more proportionate, tailored framework for oversight that reflects the unique role an ombudservice plays in investor and consumer protection, while at the same time ensuring accountability to the public interest.

Looking beyond the oversight framework, we believe the remainder of the Consultation strikes the right balance. For example, we support the CSA’s decision not to endorse a statutory right of appeal for OBSI decisions. These decisions are already subject to judicial review for reasonableness. Courts would interpret the inclusion of an explicit statutory right of appeal as a signal that they should scrutinize OBSI decisions more closely than other administrative decisions, which would run counter to the intent behind facilitating access to justice.² As for the potential for divergences or differences in timing with respect to provincial and territorial implementation of a binding framework, we also agree that ensuring timely access to an independent dispute resolution service with binding authority outweighs any burdens that might result from different jurisdictions approaching the issue from alternative perspectives.

Before proceeding with our responses to the consultation questions, we would also point to our previous comments on the compensation limit. The current threshold of \$350,000 was implemented in 1996, and hence long overdue for revision. We remain supportive of an increase to a limit of \$500,000, with regular cost of living adjustments, as previously recommended by the Ontario Capital Markets Modernization Taskforce. We believe this to be especially warranted given the multi-stage review framework noted above.

Responses to Specific Consultation Questions

1. Is \$75,000 an appropriate threshold amount to require OBSI to appoint an external decision maker or a panel of external decision makers at stage 2?

We are not aware of any support or recommendation for the use of external decision makers in any of the prior reviews of OBSI’s activities. We expect that this requirement will add to the expense and time required to administer this function and to reach final decisions on reviewed retail investor complaints. For investors with

interests come first, markets function at their best, and economies grow. With more than 200,000 charterholders worldwide across 160 markets, CFA Institute has ten offices and 160 local societies. Find us at www.cfainstitute.org or follow us on LinkedIn and X at @CFAINstitute.

² See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 36.



claims in excess of the threshold amount, we wonder whether this structure would create incentives for complaint respondents to pursue compensation offers (and for the investor to accept compensation offers) for less than the full amount of their claims, so as to avoid the extra time and burden involved in this process.

In our view, the CSA should instead revert to its prior 2023 proposal of allowing stage 2 reviews conducted by senior OBSI decision-makers who were not involved in the stage 1 process. If, however, the CSA decides to require external reviews, OBSI should be free to appoint these decision-makers without having to seek approval from the CSA. Moreover, these external decision-makers ought to be independent not only of OBSI, but also the investment industry.

2. **Does setting a monetary threshold for the requirement to appoint an external decision maker at stage 2 impact the accessibility of the proposed framework for investors?**

As suggested above, we expect that this requirement would add to the time and cost involved in resolving investor complaints, thus rendering the framework less accessible.

3. **What would be potential advantages and disadvantages of permitting OBSI to appoint senior OBSI staff not involved in the stage 1 process to a panel conducting the stage 2 process in cases that meet or exceed the proposed monetary threshold, if the majority of the panel is comprised of external decision makers?**

We expect that it will be easier (more timely, and without additional administrative and per-case costs) to draw on senior OBSI staff not involved in the stage 1 process to constitute part of a panel than to retain an(other) external decision-maker, in turn allowing the more timely resolution of investor complaints without compromising the independence objective. Our preference remains that the CSA revert to the 2023 proposal of stage 2 reviews entirely conducted by OBSI staff not involved in the stage 1 process.

4. **Does the oversight framework strike the appropriate balance between ensuring OBSI's accountability and maintaining OBSI's organizational and decision-making independence?**

We are concerned that the proposed oversight structure, with multiple prongs requiring CSA approvals, introduces unnecessary costs that will be passed down to industry and retail investors. OBSI has existed for decades without this level of oversight, and the independent reviews conducted in respect of the organization have never raised concerns about its commitment to the public interest. Rather than requiring CSA review and approval of individual board appointments, policies, and other decisions by OBSI, coupled with periodic examinations by regulators (for which we are not aware of any precedents among peer jurisdictions), the CSA should focus on ensuring the OBSI board has policies and practices in place that will foster decision-making in the public interest. For instance, the CSA could reserve the right to review and approve independence standards and skills matrices for board



appointments, and require separation of the roles of Chief Executive Officer and Chair of the Board of Directors, and leave the OBSI board to seek out and select board candidates who meet these standards.

In addition to introducing unnecessary regulatory burdens and costs, we are concerned that requiring line-by-line, granular approval of OBSI decisions by regulators would prevent OBSI from fulfilling its roles as an ombudservice. One of these roles is to point out aspects of the broader regulatory framework that seem not to be functioning appropriately for consumers, so as to stimulate public discussion and possible reforms. An overly stringent oversight framework gives rise to concerns that the ombudservice will refrain from making statements that could be construed as criticism of the regulators that oversee it. A degree of operational independence from regulators is necessary to inspire public confidence that an ombudsperson will undertake its role in the public interest.

Relatedly, as we have emphasized in prior comments, we observe that an ombudservice is not the same as a self-regulatory organization (“SRO”). Stringent oversight of SROs is necessary because of the concern that these organizations will work to protect their industry membership rather than the public. An ombudservice governed by an independent board does not raise this concern, such that a more tailored framework reflecting its distinct purpose and roles is appropriate.

5. What would the impact be of maintaining OBSI’s current six-year limitation period?

We believe that maintaining the current six-year limitation period is appropriate given the objective behind the framework to protect vulnerable investors. Unlike routine court disputes involving physical injuries or contractual disputes among commercial parties, issues involving the provision of investment advice and management of client assets are both notoriously difficult to detect and involve significant asymmetries of information between investors and investment professionals.

The notion that vulnerable retail investors should not be left to the mercy of the free market underlies our system of securities regulation and is well reflected in this aspect of the CSA’s proposal framework.

Concluding Remarks

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 the future.

(Signed) *The Canadian Advocacy Council of*

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