



November 21, 2024
VIA EMAIL

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

Re: Request for Public Comment – OBSI Consultation on Loss Calculation for Complaints Involving Unsuitably Sold Illiquid Exempt Market Securities (the “Consultation”)

The Canadian Advocacy Council of CFA Societies Canada (the “CAC”)¹ appreciates the opportunity to provide the following response to the questions posed in the Consultation.

1. For loss calculations involving unsuitable illiquid exempt market securities for which no ending value can be determined, is OBSI’s approach of assigning a value of zero and requiring the investor to return the unsuitable illiquid exempt market securities to the firm fair and reasonable? If no, are there any alternative approaches that we should consider?

In many circumstances, we agree that OBSI’s approach of assigning a value of zero and requiring the investor to return the unsuitable illiquid exempt market securities to the firm is fair and reasonable.

It was noted in the Consultation that in certain cases, the difficulty in establishing the end value is that there are few arms-length transactions. We would encourage OBSI to further publish how they consider and assist or work with an impacted firm to establish such evidence (or lack thereof), in order to avoid a situation where a firm inadvertently puts forth a value of zero (and takes possession of the securities as a result), only to find, at some later point, that it can receive a windfall by selling the securities at a higher value than the investor’s measured loss. Unlike in a restructuring scenario, the former holder of the security would not be entitled to any such future residual value of the security.

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 behavior 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’ 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.



From a different perspective, it is equally important to ensure that complainants do not unfairly utilize OBSI's default position as a form of insurance policy against normal course market losses. While some investors would have relied on discretionary advice, others may have invested as accredited investors on the basis of investment sophistication or ability to withstand losses. We understand that these factors are taken into consideration by OBSI in determining whether any loss was impacted by client actions (or failure to act, such as failure to ask questions). The total loss calculation should account for market risk in a manner that does not unjustly enrich the client.

While the end value could reasonably be higher than zero if there is a valuation based on a potential purchase of a comparable security, it is important that other aspects of the loss calculation do not unfairly impose an unreasonable market risk discount for the specific illiquid investment. The alternative return should clearly and objectively relate to the risk the investor was willing and able to take at the time of the investment.

2. If we maintain our general approach of assigning a value of zero to unsuitable illiquid exempt market securities when a value cannot be determined and requiring investors to return these securities to firms as part of any settlement:

- a. **are there exceptional situations or specific circumstances where such an approach should not be used?**
- b. **are there any other considerations or steps that we should take in the recommendation and settlement process that would improve the fairness of outcomes for consumers and/or firms in cases where illiquid exempt market securities have been unsuitably sold?**

In the absence of an alternative repeatable framework, the general approach is reasonable as the value of the security must be the price a purchaser is willing to pay. It also reflects the likelihood that the dealer will be in a better position than the consumer to assume the risks associated with holding the relevant securities.

We note that some exempt market dealers, such as captive dealers, only distribute securities of related or connected issuers under common mind and management. In those circumstances, it is important for OBSI to consider, as part of the calculation as to the performance of an alternative suitable investment or portfolio, that the specific dealer would have been restricted from investing in alternative securities. Although the Consultation notes that comparisons against common indices would only be used where the evidence supports it, we would encourage OBSI to further clarify and publish its approach to these cases, and in particular, what weight OBSI would apply to the fact that the investor decided to invest with a firm that has a limited investment strategy or shelf.

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.



**CFA Societies
Canada**

Canadian Advocacy Council

120 Adelaide Street West, Suite 2205
Toronto, ON M5H 1T1

+1 (416) 366 3658
www.cfacanada.org

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

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