

CSA Notice and Request for Comment 25-314**Proposed approach to oversight and refinements to the proposed binding authority framework for an identified ombudservice****July 15, 2025****Introduction**

The Canadian Securities Administrators (CSA or **we**) are publishing for a **60-day comment period expiring September 15, 2025** our proposed approach to oversight of an independent dispute resolution service that can make binding decisions (the **identified ombudservice**) together with additional matters described below. It is anticipated that the Ombudsman for Banking Services and Investments (**OBSI**) will be the identified ombudservice.

The foundation of the CSA's approach to oversight of OBSI would include designation or recognition orders (each, a **designation order**) and a Memorandum of Understanding among participating CSA jurisdictions (the **MOU**). The designation order would set out the terms and conditions that OBSI would be bound by upon designation or recognition as the identified ombudservice,¹ while the MOU would detail how the CSA would oversee OBSI.² Together, the designation order and the MOU make up the CSA's proposed approach to oversight (the **oversight framework**). To implement the oversight framework, enabling legislation will be required in each participating jurisdiction.

The CSA is also publishing for comment proposed refinements to the regulatory framework (the **proposed framework**) published by the CSA for comment on November 30, 2023 (the **2023 CSA Notice**). The proposed framework includes a two-stage process for how OBSI would resolve a complaint, with an investigation and recommendation stage (**stage 1**) and an optional review and decision stage (**stage 2**) conducted by OBSI. The proposed refinements would require OBSI to appoint external decision makers to conduct the processes at stage 2 if OBSI's recommendation at stage 1 meets a monetary threshold (the **proposed refinements**). Specifically, if either party initiates stage 2 regarding a stage 1 recommendation of \$75,000 or more, the proposed refinements contemplate that OBSI would be required to appoint an external decision maker or panel of external decision makers to conduct the review and issue a final and binding decision at stage 2. The proposed refinements recognize the potential impact higher-value recommendations may have on the parties once it becomes a binding decision and are aimed at addressing concerns raised by commenters in response to the 2023 CSA Notice.

Many CSA jurisdictions will require legislative amendments to enable the proposed framework, including the oversight framework. Any amendments to local acts would be proposed by

¹ Published for comment as Annex A.

² Published for comment as Annex B.

governments. Proposed legislative amendments would only become law in a CSA jurisdiction if they are proclaimed and in force in that jurisdiction. Nothing in this Notice or the decision to publish this Notice should be considered as an indication of whether such legislative amendments will be made in any jurisdiction.

The British Columbia Securities Commission (**BCSC**) supports the outcomes intended by this project, but did not participate in the 2023 proposal for comment of the amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) or proposed changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**). The BCSC is not participating in the publication of the designation order or the memorandum of understanding. British Columbia is considering legislative changes that may achieve the same outcomes as those intended by the proposed framework. The BCSC is interested in feedback about the oversight framework, the proposed refinements, and OBSI's limitation period and will take comments into consideration.

In Québec, the Autorité des marchés financiers (**AMF**) provides, pursuant to its governing legislation, conciliation and mediation services to consumers of financial products and services, including retail investors. The AMF is participating in the CSA consultation by proposing to maintain the exemption applicable to firms registered in Québec regarding the dispute resolution services requirements under NI 31-103. That being said, most retail investors in Québec also have access to OBSI's dispute resolution. Although OBSI would not be designated or recognized as an identified ombudservice in Québec, OBSI's non-binding services would remain available to retail investors in Québec. Given this context, the AMF would continue participating in the oversight of OBSI, as detailed in the MOU.

Background

On November 30, 2023, the CSA jurisdictions other than the BCSC published for comment proposed amendments to certain complaint handling provisions of NI 31-103, as well as proposed changes to 31-103CP, which would form part of the proposed framework in those jurisdictions. The BCSC supports the outcomes intended by the 2023 CSA Notice.

The 2023 CSA Notice also described potential key structural elements of the proposed framework along with the CSA's rationale for proposing these elements. This included an overview of the CSA's proposed approach to enhanced oversight of OBSI that would broadly follow the approach for oversight of entities such as self-regulatory organizations.

The proposed framework is intended to provide fair and accessible dispute resolution as an alternative to litigation. This includes addressing the problem of low settlements that is enabled by the power imbalance between typical retail clients and firms. Although it is anticipated that OBSI will be the identified ombudservice, the proposed framework, oversight framework, and the proposed refinements would only apply to OBSI's investment mandate.

Overview of OBSI's dispute resolution process under the proposed framework published in 2023

As noted above, the proposed framework introduced two stages to the dispute resolution process. Stage 1 would carry forward OBSI's current investigative processes, using the inquisitorial approach, and result in a recommended outcome (**recommendation**).

After OBSI makes a recommendation, the complainant or the firm could object to the recommendation within a specified time (the **acceptance period**). A recommendation would become final and binding after:

- OBSI receives acceptance of the recommendation from both the complainant and firm; or
- the end of the acceptance period if the firm did not object to the recommendation and if the complainant accepted the recommendation or did not object to it.

If either or both the complainant and the firm object to OBSI's recommendation, the complaint proceeds to stage 2 where OBSI would review the recommendation and issue a decision. The 2023 CSA Notice proposed that during the review and decision stage, a senior OBSI decision maker who was not involved at stage 1 would consider the party's formal objection to the recommendation. The senior OBSI decision maker would apply the essential process test to maximize the speed, efficiency, and clarity of processes while resolving the dispute in a fair manner. The essential process test would enable the senior OBSI decision maker to use processes that range from inquisitorial to adversarial, but with adversarial processes anticipated to be used infrequently. At the end of stage 2, the senior OBSI decision maker would provide a decision to the parties.

If the complainant initiated the stage 2 review, then the stage 2 decision would be final and binding on both parties once issued. If stage 2 was not initiated by the complainant, the complainant would be able to accept or reject the decision within a specified time (the **post-decision period**). In the exceptional circumstance where the complainant has not accepted or rejected the decision by the end of the post-decision period, the decision would become final and binding on both parties.

Once a decision becomes final and binding, firms would be required to promptly comply with the decision. As stated in the 2023 CSA Notice, it is contemplated that a final decision may be filed with the courts as a court order if a firm fails to comply with the final decision.

Highlights of comments and responses regarding oversight and appeals

The comments received in response to the 2023 CSA Notice generally supported the CSA developing an oversight regime that balances accountability with independence for OBSI. Commenters expressed interest in the CSA's ongoing development of its oversight framework; however, their recommendations on the approach to oversight varied. Some commenters called for an approach that would not unreasonably encroach on OBSI's existing level of independence as an organization, while others called for greater oversight once OBSI receives binding authority. Many commenters also expressed concern about the absence of a substantive external right of appeal from a binding decision of OBSI.

Although commenters generally support a fair, accessible, and cost-effective dispute resolution service, a significant portion identified as a concern the absence of a mechanism to appeal a binding decision. Many commenters, including those that are otherwise supportive of a dispute resolution service with binding authority, advocated strongly for an external appeal mechanism beyond judicial review, and expressed significant concern related to, among other things:

- the internal stage 2 review process under the proposed framework, given the risk of perceived or actual bias, noting that a review by an independent party outside of OBSI would instill confidence in the proposed framework
- procedural fairness, even with the introduction of the essential process test, the application of which would rely on OBSI's discretion
- the absence of a statutory right of appeal

While the CSA remains confident in OBSI's ability to resolve disputes in a fair and independent manner, the CSA is proposing refinements to the proposed framework to further promote trust and confidence in the binding dispute resolution process while maintaining accessibility and efficiency. The proposed refinements are intended to address stakeholder concerns in a more economical way than a statutory right of appeal to a securities tribunal or a court would. As discussed in the 2023 CSA Notice, an appeal process would increase expense, delay, and complexity for all parties. In contrast, the proposed refinements offer a targeted approach to addressing stakeholder concerns that also limits the potential costs to the parties and preserves the accessibility and efficiency of OBSI's dispute resolution processes which are distinct from traditional judicial processes. Specifically, the introduction of external decision makers, who would be retained on a contractual basis rather than being employed full-time by OBSI, provides the opportunity for parties to have their submissions heard by someone external to OBSI in instances where a higher compensation amount is at issue before a binding decision is rendered. Under this approach, OBSI's processes will continue to apply, and parties would not need to retain legal counsel for assistance navigating formal judicial or quasi-judicial procedures to have their matter resolved.

The CSA believes the proposed refinements, together with the CSA's enhanced approach to overseeing OBSI, strike an appropriate balance between maintaining OBSI's level of independence and ensuring a level of accountability that is commensurate with the authority to make final and binding decisions for compensation up to \$350,000.

Comments regarding OBSI's limitation period

Some commenters raised concerns about OBSI's six-year limitation period applying in a binding authority context since many jurisdictions in Canada have a two-year limitation period for pursuing a civil action in court. Other commenters noted that the limitation period for a civil action should remain suspended until OBSI closes a complaint. A few advocated for broader guidelines relating to a "reasonable" timeframe to bring a complaint instead of a specified time limit.

While the CSA is not proposing a change to the limitation period at this time, this consultation provides some additional background information and invites comments regarding OBSI's six-year limitation period.

The Oversight Framework

It remains the CSA's view that implementing the proposed framework would enhance the accessibility and efficiency of the dispute resolution process through OBSI, provide fairness for both firms and complainants, and enhance investor protection and confidence in the investment services sector. Our view is that a comprehensive oversight framework that clearly sets out how OBSI would be accountable to the CSA while also recognizing the unique role of an independent dispute resolution service would further these outcomes as well.

The CSA's current engagement with OBSI's investment mandate is set out in a memorandum of understanding, dated December 1, 2015, which includes standards for OBSI to meet with respect to areas such as governance, independence and standard of fairness, fees and costs, processes to perform functions on a timely and fair basis, and core methodologies for dispute resolution.

The current memorandum of understanding also established a Joint Regulators Committee (**JRC**) whose membership is presently comprised of CSA designated representatives from the Alberta Securities Commission, the BCSC, the Ontario Securities Commission, and the AMF, and representatives from the Canadian Investment Regulatory Organization. The JRC's role is to:

- facilitate a holistic approach to information sharing and monitoring of the dispute resolution process with an overall view to promoting investor protection and confidence in the external dispute resolution system;
- support fairness, accessibility and effectiveness of the dispute resolution process; and
- facilitate regular communication and consultation among JRC members and OBSI.

The 2023 CSA Notice contemplated that OBSI would be subject to enhanced regulatory oversight commensurate with OBSI's proposed ability to make final and binding decisions. In our view, an enhanced oversight regime would require, among other things, that OBSI operate in the public interest, that OBSI meet certain corporate governance standards set by the CSA, CSA approval of OBSI's key governing documents (e.g., Terms of Reference, procedural rules, etc.), more robust reporting practices, and examinations by the CSA of OBSI against the obligations in the designation order and local enabling legislation.

To that end, the CSA has developed:

- a draft designation order that includes the terms and conditions that OBSI would be bound by if designated as the identified ombudservice, and

- a draft MOU that, on execution, would be an agreement among jurisdictions (**designating regulators**³) regarding their oversight of OBSI as the identified ombudservice and that sets out the CSA's proposed oversight review methodology. The MOU anticipates establishing an oversight committee to co-ordinate and discuss oversight activities and the approval of, or non-objection to, certain key documents of OBSI (the **OBSI Oversight Committee**). We anticipate that transitional provisions would also be added to a final version of the MOU to account for the possible staggered implementation of the proposed framework, including the oversight framework.

(a) Governance

It is anticipated that under the terms and conditions of the designation order, OBSI would be required to (among other things):

- maintain a separation between the roles of the Chief Executive Officer (**CEO**) and Chair of the Board of Directors (the **Board**)
- maintain appropriate term limits for members of the Board
- maintain skills matrices for the Board, CEO, ombudsperson and external decision makers
- ensure its dispute resolution process remains independent and impartial from the Board
- ensure its corporate governance effectively addresses its public interest obligation, which includes providing independent and impartial dispute resolution services.

Additionally, the nomination of independent directors, appointment of the CEO, and changes to the skills matrices listed above would require concurrence of the designating regulators.

(b) CSA Approval of Documents

It is anticipated that any changes to the following would require prior approval by designating regulators, following consideration by the OBSI Oversight Committee:

- the terms of reference, by-laws, procedural guidelines,⁴ or any other governing documents of OBSI
- the corporate governance structure of OBSI
- the charter or mandate of the Board and each of its committees
- the assignment, transfer, delegation, or sub-contracting of the performance of all or part of OBSI's functions or responsibilities
- the access criteria and process for a firm to become a member of OBSI

³ AMF would participate in the MOU with respect to the supervision of OBSI's non-binding services provided to Québec investors and registered firms.

⁴ Including material relating to the application of the fairness standard and the essential process test that would be required under subsection 5(1)(a) of Appendix A to the Designation Order (see Annex A).

- loss calculation methodologies
- the fee model in determining membership fees for firms.

Similarly, any material changes to the following would require prior approval by designating regulators, following consideration by the OBSI Oversight Committee:

- the Board and employee code of conduct and written policy about managing potential conflicts of interest
- the functions OBSI performs
- OBSI's organizational structure, including the location of OBSI's offices.

In instances where there are proposed changes to a document that OBSI publishes detailing its complaint handling process, including any procedures, the CSA would require that they be published for comment before the designating regulators provide their decisions. Where proposed changes have no material impact on investors, firms, or OBSI generally, they would not be required to be published for comment.

(c) Reporting Obligations

The oversight framework sets out the designating regulators' expectations for OBSI with respect to reporting, including prior or prompt notification to the OBSI Oversight Committee of significant events, such as any potential material violations of applicable securities legislation by a firm of which OBSI becomes aware in the ordinary operation of its activities.

Additionally, OBSI would be required to submit written reports regarding its operations, including summary statistics for the previous quarter regarding all complaints, and a summary of files (if any) that were referred to the OBSI Oversight Committee. OBSI would also be required to submit to the OBSI Oversight Committee on an annual basis a written report containing, among other things, a self-assessment of how it is meeting its mandate. This report would include a certification by OBSI's CEO and general counsel that OBSI is in compliance with the terms and conditions set out in the designation order.

The CSA must also receive reasonable prior notification of material changes to OBSI's internal procedural guidelines or any document it intends to publish to the public that could have significant impact on the firms or the capital markets. OBSI must receive confirmation from the CSA that it has no questions or comments on these documents before proceeding with the changes or publication of the material.

(d) Periodic examinations by the CSA

To confirm OBSI is compliant with the designation order and to ensure that regulatory expectations are met, the designating regulators may perform periodic reviews of OBSI's functions, including reviews relating to specific investment complaint cases considered by OBSI. Such reviews may include the sampling of OBSI recommendations and decisions to identify any relevant trends and patterns. The reviews will be focused on OBSI's performance of its functions

and will have no bearing on the outcome of OBSI cases or constitute an appeal of the findings or process. For example, periodic examinations, combined with reporting, would help the CSA identify whether OBSI's interpretation of securities regulatory requirements and policy is consistent with the views of the designating regulators.

OBSI could be required, at the direction of the CSA, to undergo independent third-party evaluations of its operations at minimum once every three years, and to seek the CSA's input on its proposed response to any recommendations arising from the third-party evaluation.

Refinements to the Proposed Framework

As mentioned above, the proposed refinements would apply in cases where a party objects to a stage 1 recommendation that meets or exceeds \$75,000. In those cases, rather than appointing a senior internal decision-maker to conduct the stage 2 review and issue a binding decision, OBSI would be required to appoint a single or panel of external decision maker(s).

The external decision makers would not be employees of OBSI but instead would be retained by OBSI on a part-time basis. They would be appointed to a roster that would be maintained by OBSI and approved by the CSA. We anticipate that this roster would largely comprise industry experts, lawyers and relevant technical experts.

The external decision makers would receive the same training that decision makers who are employed by OBSI ordinarily receive. This includes training relating to the application of the fairness standard, the essential process test, and decision writing. To ensure consistency in OBSI decision making, all stage 2 processes would be conducted in the same manner regardless of whether the reviewing decision maker is an external decision maker or not.

The proposed designation order contemplates that OBSI would, given its unique expertise, train all decision makers and would identify and avoid conflicts of interest regarding all decision makers.

While OBSI would be required to appoint a single or panel of external decision makers for stage 2 reviews of stage 1 recommendations that meet or exceed \$75,000, OBSI would be free to exercise its discretion when assigning decision makers to all other stage 2 reviews. For example, in a case where OBSI recommends compensation below \$75,000 or no compensation at all at stage 1, OBSI could assign an external decision maker to an ensuing stage 2 review or determine that a stage 2 review should be conducted by a panel of both internal and external decision makers. When determining who would conduct the stage 2 review where the stage 1 recommendation was less than \$75,000, OBSI would take into consideration the nature of the dispute as well as the skills and experience needed to achieve an efficient resolution of the dispute. We expect that OBSI will develop processes and criteria to determine when to assign external decision makers to complaints below the monetary threshold, which would be subject to the CSA's oversight.

The proposed monetary threshold of \$75,000 is intended to ensure that enhanced procedures apply at stage 2 where OBSI recommends monetary compensation at stage 1 that is sufficiently high and therefore of more significant impact to the parties, without compromising the accessibility,

fairness, and overall efficiency of OBSI’s dispute resolution process for most cases. Stipulating that higher value cases require external decision makers would also limit the potential cost impact on firms. Since OBSI operates on a cost-recovery basis and allocates its budget between different industry sectors using OBSI’s services in the form of membership fees, additional cost requirements on OBSI from retaining external decision makers would be passed on to firms.

Table 1: OBSI Investment Case Recommendations Over \$50,000 (FY 2020 – 2024)

Range	2020	2021	2022	2023	2024	Total
\$100,000 & over	2	4	3	-	7	16
\$75,000 - \$99,999	-	1	-	3	-	4
\$50,000 - \$74,999	2	3	2	5	7	19
Total	4	8	5	8	14	39

Based on the information from Table 1, on average, there were about 3 cases where OBSI recommended an amount above \$100,000, 4 cases in which OBSI recommended an amount above \$75,000, and close to 8 cases in which OBSI recommended an amount above \$50,000 in each fiscal year since 2020. While this past data cannot predict the quantum of recommendations upon implementation of the proposed framework, it provides helpful guidance for setting an appropriate monetary threshold in cases involving significant values while maintaining the accessibility and efficiency of the proposed framework.

Limitation Periods

Generally, limitation periods set out the amount of time a party has to commence a claim against another party. In the context of civil litigation, limitation periods are set by provincial laws, which vary by jurisdiction.

While legal limitation periods do not apply to complaints considered by OBSI, for fairness reasons, OBSI imposes a limitation period on claims that complainants can bring to them.⁵ Section 5.1(e) of OBSI’s Terms of Reference states that OBSI may investigate a complaint it receives provided OBSI is satisfied that the complainant raised their complaint with their firm within six years after the complainant knew or ought to have known about the circumstances from which the complaint arose. This limitation period is reflected in the definition of “complaint” at subsection 13.16(1) of NI 31-103. The same limitation period also applies to OBSI’s banking mandate.

Maintaining OBSI’s six-year limitation period would provide uniformity across CSA jurisdictions for accessing OBSI’s dispute resolution services and is in line with the proposed framework’s policy goal of providing an accessible alternative to court.

⁵ Limitation Period, “OBSI’s approach to the six-year limitation period”, at <https://www.obsi.ca/en/how-we-work/our-approaches/limitation-period/>.

Request for Comments

In addition to any general comments you may have, we also invite comments on the specific questions below:

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?
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?
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?
4. Does the oversight framework strike the appropriate balance between ensuring OBSI's accountability and maintaining OBSI's organizational and decision-making independence?
5. What would the impact be of maintaining OBSI's current six-year limitation period?

Please submit your comments in writing on or before September 15, 2025 and address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
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
Superintendent of Securities, Nunavut

Please deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA members.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

This Notice contains the following annexes:

[Annex A – Not published in British Columbia]

[Annex B – Not published in British Columbia]

Questions

Please refer your questions to any of the following:

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