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February 15, 2013

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Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario M5H 3S8

and

Me Anne-Marie Beaudoin  
Directrice du secrétariat  
Autorité des marchés financiers  
800, square Victoria, 22e étage  
C.P. 246, tour de la Bourse  
Montréal, Québec H4Z 1G3

Dear Sir and Madam:

**Re: Response to CSA Notice and Request for Comment: Proposed Amendments on NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations**

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The Portfolio Management Association of Canada (PMAC), through its Industry, Regulation and Tax Committee, is pleased to have the opportunity to submit the following comments regarding the Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") and to Companion Policy 31-301 *Registration Requirement and Exemptions* regarding the proposal that would require all registered dealers and registered advisers outside of Québec to utilize the Ombudsman for Banking Services and Investments (OBSI) as a service provider in respect of their dispute resolution or mediation services obligations under section 13.16 [*dispute resolution service*] of NI 31-103 (the "**OBSI Proposal**").

As background, PMAC represents investment management firms registered to do business in Canada as Portfolio Managers. We have over 170 members from across Canada that are comprised of both large and small firms managing total assets in excess of \$800 billion (excluding mutual funds assets) for institutional and private client portfolios. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at [www.portfoliomanagement.org](http://www.portfoliomanagement.org).

## **Executive Summary**

PMAC is supportive of the requirement in NI 31-103 for registrants to provide dispute resolution services to clients at registrant's expense and we strongly agree that investors should have unfettered access in seeking restitution with a no-cost alternative to the court system. We are also advocates of securities regulation that promotes safeguarding the rights of the Canadian investing public and that works to avoid or minimize investor dissatisfaction.

PMAC does not, however, believe that there is one external complaint body that can meet the needs of all investors given the myriad of complaints that may arise. Although we applaud the strides OBSI has made since its inception in growing and evolving as an ombudsman service, we do not believe it is the appropriate time in its business lifecycle, nor in the best interest of the evolving needs of all investors, to expand its mandate beyond its current scope.<sup>1</sup> OBSI's founding mandate has been to provide no cost, ombudsman / investigation services to retail banking and investment customers, with a mandate of disputes under \$350k. While its structure, mandate and services may be suitable for its current client base, we believe there are a number of limitations on its ability to expand services beyond its core mandate, and any expansion in mandate would be to the detriment of investors.

Moreover, the historical roots of ombudsman services in retail banking and investments has been driven by the need to effectively manage and streamline the significant volume of complaints in the retail financial services sector. There has been no such parallel need evident among institutional and private clients of Portfolio Managers. In fact, our submission will make reference to a number of statistics supporting our claims. PMAC surveyed its Members and received 135 responses from Member firms. We also partnered with Investor Economics<sup>2</sup> in order to analyze the data collected on our membership's complaint volume, size and experience among Portfolio Managers. The results of this survey are summarized in the **Investor Economics' Report** (the "IE Report") and are discussed throughout this submission. A full copy of the report is included in Appendix E.

As illustrated in the IE Report, the portfolio management sector experiences a very low volume of complaints, and little to no usage of third party dispute resolution services. From the Portfolio Manager standpoint, the OBSI Proposal is, in effect, mandating a solution to a sector of the industry where no problem exists. Pensions, foundations and high-net worth private clients, are typically sophisticated clients, with very large investment mandates, well beyond OBSI's retail client base, and have access to professional resources to manage disputes should they arise. In this sector, the power imbalance that may exist in the retail sector does not apply. The large asset base in this sector places such investors in a "buyer's market" with a variety of investment managers available to them. In the event that they are dissatisfied with an investment manager, they have a multitude of remedies available to them and typically have the resources to take appropriate action. For this

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<sup>1</sup> See 2011OBSI Annual Report: "The 2012 budget is the first in OBSI's 16-year history to show a year-over-year drop in the total budget." at p.71.

<sup>2</sup> Investor Economics is a research firm that specializes in the fact-based measurement and analysis of Canada's retail financial services and wealth management industry. For more information, go to [www.iei.ca](http://www.iei.ca)

reason, whether there is one mandated service provider or multiple, we anticipate little to no usage of a dispute resolution service.

Our Members believe that as fiduciaries, they have a duty to choose a complaint handling service provider that is appropriate for their clients; one that has the capacity and experience with the type of investment mandates their firms' manage and a resolution option with no cap on claimed losses. We also strongly believe that to effectively resolve complaints, the methods used and the remedies offered need to be appropriate to the circumstances. One size fits all will not work with complex mandates. Although the OBSI Proposal may, with good intentions, attempt to improve investor protection, we note that OBSI would be the main beneficiary of a framework that effectively grants it monopoly status and the outcome would be to sustain OBSI financially without it actually being called upon to any great extent to provide service.

In summary, we support the continuance of the current dispute resolution regime promulgated in NI 31-103 which allows for choice of service provider for the following reasons:

- 1) Portfolio managers do not have the historical complaint volume that has led to a demand or need for dispute resolution services. Complaints arise infrequently in this sector of the investment industry and when they do arise, they are routinely resolved efficiently and effectively internally without the need for a third party dispute resolution service;
- 2) In the very few cases where a Portfolio Manager may require the services of a dispute resolution service provider, OBSI presently does not have any qualified Chartered Mediators or Chartered Arbitrators on staff nor does it currently provide mediation services. We are of the opinion, for reasons that will be further outlined in this submission, that mediation is the best alternative dispute resolution mechanism for clients of Portfolio Managers and that OBSI is currently not structured nor resourced to provide this service. Its specialization in ombudsman/investigative services may be entirely appropriate for simpler, more systemic issues<sup>3</sup> among retail banking and investment clients but it is not an efficient or effective dispute resolution service for larger and more complex complaints of sophisticated investors;
- 3) OBSI's current mandate of claimed losses under \$350K is not suitable for clients of Portfolio Managers which have large investable asset bases with potentially large claimed losses. The current OBSI cap is not suitable for these investors;
- 4) Imposition of the current OBSI fee model (i.e. fees based on AUM) on Portfolio Managers would lead to a very disproportionate portion of its costs being allocated to a sector that would, by our analysis, not utilize its services. Given this fact, the only fair fee structure would be user fee based however, our understanding is that there has been historical resistance to this model by OBSI; and
- 5) We support the legislation adopted by the Federal government which allows banks to belong to their choice of federally-approved external complaints bodies (the "Federal Model") and that establishes an oversight framework to

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<sup>3</sup> OBSI's Terms of Reference define "systemic issues" as undisclosed fees or charges, misleading communications, administrative errors or product flaws discovered in the course of considering a Complaint against a Participating Firm which may have caused loss, damage or harm to one or more other Customers of the Participating Firm in a similar fashion to that experienced by the original Complainant.

set standards that must be met by all approved external complaint bodies.<sup>4</sup> We support a model that, like the Federal Model, allows registrants to choose the best possible complaint handling body for their clients to ensure they have access to accountable, impartial and independent dispute resolution services at no cost.

As suggested in the Navigator Company Independent Review Report (2011), the government of Canada has answered the question of whether the public interest is best served under a multi-provider model<sup>5</sup> and we agree that a multi-provider model is in investors' best interests. The OBSI Proposal is not only out of step with the national direction in Canada on the selection of third party dispute resolution service providers in the financial industry but also out of step internationally. As explained further in this submission, we view the experience in other jurisdictions as very relevant to some of the concerns we raise and note that other international ombudsmen have continued to focus their efforts on retail clients and have expressly acknowledged that sophisticated clients should have access to a wider variety and more specialized services.

If the CSA believes the one-provider model is in the best interests of the Canadian public, then we strongly urge you to conduct a thorough and transparent Request for Proposal (RFP) process and objectively compare OBSI to other Canadian service providers. PMAC embarked on this process two years ago in an effort to find the best possible solution for our membership and their clients. This review process is outlined in section B and a summary of PMAC's Comparison of Dispute Resolution Service Providers is included in Appendix A. We did not select OBSI for reasons outlined<sup>6</sup> but did select a solution which we believe meets the needs of most of our Members and their clients.

Furthermore, we believe that allowing the choice of multiple approved external complaint bodies subject to a regulatory approval process ensures that certain national and/or international alternative dispute resolution standards are met, and further ensures they are accessible, accountable, impartial and independent. We note that the foundation of the success of the Canadian financial services industry has been the balance between effective regulation and strong competition that delivers the best products and services to consumers and ultimately meeting their individual needs. We believe these underlying principles of choice and competition need to be embodied in the handling of unresolved disputes and that registrants should have the right to choose a service that is best qualified to meet the needs of their clients and these clients should also be able to participate, if desired, in the selection of a professional to handle their complaint. We do not believe a one size fits all approach is in the investing public's best interests. Accordingly, a multiple service provider model would improve on the timeliness of complaint resolution and allow for flexibility in types of services/professionals offered. For example, under the proposed Federal regulations of the Federal Model, external complaints bodies would be required to resolve complaints within 120 days, compared to the current standard of 180 days as outlined in OBSI's Code of Practice.<sup>7</sup>

### **Concerns with CSA Consultation Process**

Our Members have expressed a number of concerns with the CSA consultation process. In our view, the OBSI Proposal failed to provide adequate data, research and analysis to support the proposal and we were disappointed to see the CSA's hasty conclusion as to what would be in the best interests of clients of Portfolio Managers. There was very little explanation as to the CSA's rationale, along with a lack of data collected to support the proposal to mandate the use of OBSI.

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<sup>4</sup> See Bill C-47, *Sustaining Canada's Economic Recovery Act* -- <http://www.fin.gc.ca/n10/10-122-eng.asp>.

<sup>5</sup> See Navigator Company Report on OBSI - 2011 Independent Review at p.24.

<sup>6</sup> OBSI was neither our first or second choice following our review process.

<sup>7</sup> See Section 6 of OBSI Code of Practice.

We appreciate the opportunity we had to meet with members of the CSA last year to discuss its direction. However, the OBSI Proposal is silent on all of the issues raised during our meeting and there was no inclusion or analysis undertaken to respond to the concerns we conveyed. In fact, the OBSI Proposal does not reflect at all on the important differences between sophisticated and institutional clients and the types of investors from which OBSI currently receives complaints.

Of particular concern, the OBSI Proposal states that the CSA considers OBSI to be the "appropriate choice" but doesn't discuss any other choices considered or other dispute resolution providers available to Canadian investors. To our knowledge, ADR Chambers and the ADR Institute of Canada were not contacted by the CSA. Under the heading "Research and consultations" there is no indication that a request for proposals process was considered where the CSA reviewed other dispute resolution service providers. It is unclear as to whether there was any Federal consultation regarding the extensive process undertaken by our Federal government in implementing the Federal Model. Similarly, while reference was made to jurisdictions such as the United Kingdom and Australia, no information was provided as to what these jurisdictions currently do nor was there any explanation as to why only these particular jurisdictions were considered.

We believe it would have been useful to understand how and to what extent the CSA examined the alternatives it indicates that it considered: (i) maintaining the current system, and (ii) specifying more than one dispute resolution or mediation service provider. In particular, we would be interested to know whether the CSA considered adopting a model similar to or consistent with the regime in Quebec.

The OBSI Proposal also states under the heading "Anticipated Benefits and Costs" that the benefits of mandating a common dispute resolutions service provider outweigh the potential for any incrementally higher costs to registrants. Since there was essentially very little discussion on the fee model under OBSI, we do not believe the CSA has discharged its obligation under the *Securities Act* to conduct a thorough analysis of the anticipated costs of this proposal.<sup>8</sup> Since OBSI's current fee model is based on firms paying a levy based on their size or volume of business, it is difficult to accept that the costs of mandating the use of OBSI for Portfolio Managers would be "incrementally" higher than other options available. In fact, if Portfolio Managers were required to pay a levy based on the size or volume of their business, this would be extremely significant to a sector of the investment industry that has very low complaint volume and a very high number of assets under management (AUM). For instance, almost 40% of respondents in the IE Report (referenced in the Outline section below) have an AUM of over \$1 billion.

One of the main shortcomings of the OBSI Proposal was that it contained very limited information on the potential fee impact this could have on Portfolio Managers. Given the size of some of our Members, this is of clear importance and concern to our Members since they have a proven low complaint level. The CSA indicated that it is working with OBSI on an appropriate fee model that would be fair to all registrants. We are of the view that the OBSI Proposal should have been more transparent as to the fee options being considered. Particularly, because it remains unclear as to what OBSI's participating firms are being billed and how. Furthermore, publishing the OBSI Proposal or moving forward with its implementation without a concrete direction on the application of fees is objectionable.

Finally, the OBSI Proposal was also vague on the potential regulatory oversight the CSA would have over OBSI. The fee model and oversight issues are significant enough to warrant full and thorough consideration/consultation before taking any further steps with

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<sup>8</sup> See section 143.2(2)7 of the *Securities Act* (Ontario).

this proposal. In fact, we believe these issues should have been fully weighed before proceeding with the OBSI Proposal.

### **Summary of Recommendations**

- 1. We support the continuance of the current dispute resolution regime promulgated in NI 31-103 which allows for choice of service provider.**
- 2. Should the CSA move forward with mandating OBSI, we recommend registrants registered in the category of Portfolio Managers be exempted and continue to have the choice of selecting an appropriate dispute resolution services provider for their clients (should the need to appoint a third party dispute resolution service provider arise).**
- 3. Or, if the CSA does mandate the use of OBSI by Portfolio Managers, we recommend:**
  - a) OBSI's mandate should be expanded to allow for independent contractors to provide mediation services by certified and experienced professionals;**
  - b) Fees be charged to Portfolio Managers on a user-fee basis only;**
  - c) The CSA have oversight of OBSI's mandate and the fee setting process to ensure reasonableness and fairness;**
  - d) Service standards be set and transparent with investor satisfaction surveys broken down by registrant base; and**
  - e) A 2 year review period be implemented on the effectiveness of OBSI with its expanded mandate.**

### **Outline**

This submission is organized as follows:

- A. Background:
  1. Spirit and Intent of Dispute Resolution Service Requirements in NI 31-103
  2. Portfolio Managers – Who We Are and Why Our Clients are Unique
- B. The IE Report
- C. PMAC's Review of Dispute Resolution Providers
  1. OBSI
  2. ADR Chambers
  3. ADR Institute of Canada
  4. PMAC's Decision
- D. A Review of the OBSI Proposal
  1. The Rationale for the OBSI Proposal
  2. PMAC's Concerns with the OBSI Proposal
- E. Other Dispute Resolution Service Providers and Options
  1. The Federal Model
  2. *The Dispute Resolution Regime in Quebec*
- F. A Review of Dispute Resolution Services in Other Jurisdictions
  1. United Kingdom
  2. United States
  3. Australia
- G. Conclusion

We respectfully acknowledge the issues the CSA has requested comment on however, we will not be addressing these specifically as our Members believe a more fundamental overall consideration of the OBSI Proposal is warranted.

## **Appendices**

Appendix A - PMAC Comparison of Dispute Resolution Service Providers

Appendix B - Summary of Dispute Resolution Requirements in the U.S.

Appendix C - Summary of Dispute Resolution Requirements in the UK

Appendix D - Summary of Dispute Resolution Requirements in Australia

Appendix E - Investor Economics Report on PMAC Member Survey on the CSA Proposal to Mandate OBSI as Dispute Resolution Service Provider

## **A. Background**

### ***1. Spirit and Intent of Dispute Resolution Service Requirement in NI 31-103***

Mandating the use of OBSI is not in line with the spirit and intent of the dispute resolution service requirement set out in section 13.16 of NI 31-103. Dispute resolution is generally defined as one of several different consensual processes used to resolve disputes between parties, including negotiation, mediation and arbitration.<sup>9</sup> In other words, dispute resolution is the process of resolving a dispute or a conflict by meeting at least some of each side's needs and addressing their interests.

Subsection 13.16 of NI 31-103 requires that:

Dispute resolution service

(1) A registered firm must ensure that independent dispute resolution or mediation services are made available, at the firm's expense, to a client to resolve a complaint made by the client about any trading or advising activity of the firm or one of its representatives.

(2) If a person or company makes a complaint to a registered firm about any trading or advising activity of the firm or one of its representatives, the registered firm must as soon as possible inform the person or company of how to contact and use the dispute resolution or mediation services which are provided to the firm's clients.

We note that in earlier iterations of NI 31-103, various commenters<sup>10</sup> to the original proposals for this requirement recommended that registrants and their clients should be permitted to choose whether or not to participate in a dispute resolution service. The CSA, at the time, agreed with this position and redrafted the dispute resolution provision to clarify the intention that registrants can use a dispute resolution service provider of their choice. Similarly, it was clear at the time that the regulators did not intend to require registrants to "participate" in a specific dispute resolution program. It is not clear why the CSA is now proceeding in a different direction nor was this explained in any manner in the OBSI Proposal. In fact, a key question that has dominated our discussions on the OBSI Proposal is "what is the problem that the OBSI Proposal is seeking to solve." Our conclusion is that there isn't a dispute resolution "problem" in the Portfolio Manager sector and therefore, the OBSI Proposal appears to mandate a solution where no problem exists.

We also note the direct reference to and inclusion of "mediation" in section 13.16 of NI 31-103. As you are aware, mediation is a way of resolving disputes between two or more parties, where a third party, the mediator, assists the parties to negotiate a settlement. The

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<sup>9</sup> The Oxford Dictionary defines "alternative dispute resolution" as the use of methods such as mediation or arbitration to resolve a dispute without resort to litigation.

<sup>10</sup> See publication on July 17, 2009 -- Appendix A: Summary of Comments and Responses on the 2008 Proposal. [http://www.osc.gov.on.ca/documents/en/Securities-Category3/rule\\_20090717\\_31-103\\_appendix-a.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3/rule_20090717_31-103_appendix-a.pdf)

mediator acts as a neutral third party and facilitates rather than directs the process.<sup>11</sup> We believe that this type of dispute resolution is well suited to parties such as Portfolio Managers and their clients who wish to maintain an ongoing relationship and preserve the client/adviser relationship as well as reach an outcome that is workable and agreeable for all parties involved. OBSI's mandate is centered on performing investigations to resolve disputes and it does not provide mediation services to complainants. This is a major limitation of OBSI's suitability to address potential complaints from clients of portfolio managers. The focus of mediation is more appropriately in balance of preserving the relationship as opposed to solely the process and outcome (the tenets of an investigation process). The OBSI Proposal in effect eliminates the option of addressing a complaint through mediation since OBSI does not provide this service. Mandating OBSI is essentially rewriting s.13.16 and eliminating an important type of dispute resolution currently available to registrants. In our view, if this proposal goes forward, it amounts to an infringement on an investors right to a remedy they once had available.

We recommend the CSA reassess the benefits of the OBSI Proposal to clients of Portfolio Managers in light of the spirit and intent of s.13.16 and the comments and data provided in this submission.

## ***2. Portfolio Managers: Who we are and why are our clients unique***

Portfolio Managers have the highest standard of duty as fiduciaries to their clients, meet the highest conditions of registration and proficiency with the securities commissions, and have clients, who are for the most part sophisticated, accredited and institutional investors. As a result, Portfolio Managers have a consistently low complaint volume from their clients and occupy a very unique space in the investment management industry. Consequently, this registrant profile and investor profile would require a much different service than OBSI currently provides.

### *i. Who We Are*

PMAC represents firms registered as "Portfolio Manager" whose primary focus is discretionary investment management for clients. Portfolio Managers make their own decisions in making and changing investments for clients. To be able to do so, Portfolio Managers meet the highest conditions of registration and proficiency with the securities commissions.

Most Portfolio Managers employed by our member firms hold the coveted Chartered Financial Analyst (CFA) designation and abide by a strict code of ethics. Their only business is the discretionary management of investment portfolios for individuals, estates and trusts, charitable foundations, corporations, pension funds and endowment funds. Portfolio Managers also offer pooled funds to clients with smaller amounts to invest than the minimum for segregated accounts. These firms provide segregated accounts<sup>12</sup> and pooled funds<sup>13</sup>. Portfolio Managers differ from mass-market or retail investment managers because they manage larger amounts of money for fewer clients. This often results in lower management fees.

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<sup>11</sup> See Definition of "Mediation" on Wikipedia.org; See also ADR Institute Of Canada, Inc., National Mediation Rules available at [www.amic.org](http://www.amic.org) and <http://adrchambers.com/ca/mediation/>.

<sup>12</sup> Not to be confused with segregated funds, these are separate, custom portfolios only available from portfolio management firms. Care is taken by the Portfolio Manager to understand the investment objectives, personal circumstances and risk tolerance of each client and, with this information, a suitable portfolio of investments is constructed. Portfolio Managers seek a minimum account size for segregated accounts that typically ranges from \$500,000 upwards and is, most commonly, in the \$500,000 to several million range.

<sup>13</sup> These are similar to mutual funds in structure but require a minimum investment of \$150,000 and disclosure is in the form of an information circular as opposed to a prospectus. There is no sales fee involved in buying a pooled fund and the management fee is generally in the range of 1% and is 1% to 2% less than in mutual funds. Pooled funds are generally available from investment counsel firms, Portfolio Managers and insurance companies.



There are numerous benefits to working with Portfolio Manager. Namely, Portfolio Managers have a fiduciary duty to act with care, honesty and good faith, always in the best interest of their clients.<sup>14</sup> Investment decisions therefore must be independent and free of bias. This results in a higher level of trust placed on Portfolio Managers. Investors trust their advisor to provide advice that benefits the client first. This trust is underpinned by a belief that their advisor has a legal responsibility to "put the client's best interest first".<sup>15</sup> As fiduciaries, securities regulation requires the highest level of education and experience in the investment industry.

Portfolio Managers provide ongoing personalized management of investments based on the client's objectives and risk tolerance outlined in the investment policy statement (IPS). Clients typically give authority to the Portfolio Manager to make investment decisions without getting prior approval for each transaction ("discretionary management"). This individualized written agreement is established to set out how the client will work with the Portfolio Manager, including ongoing communication, types of investments, reporting, fees, risks and other issues related to each client's own circumstances.

In addition, firms registered as Portfolio Managers must meet strict financial reporting, capital and insurance requirements to further protect their client's investments. Furthermore, PMAC Members are required as a condition of membership to have an errors and omission insurance policy to cover any losses attributable to claims made by clients for inadequate work or negligent actions. This is important in this context because our Members have protection in place to deal with quantifiable losses and disputes that may arise and that are covered under the policy. The IE Report shows that between 2008 and 2012, 96% of firms did not file any insurance claims under their corporate professional liability policy or errors & omissions policy.<sup>16</sup>

#### *ii. Our Clients are Unique*

PMs' clients have a unique investor profile. They are typically high net worth private clients who are sophisticated or accredited investors and/or institutional investors who include pensions, large public companies, foundations, endowments, etc. Both private high net worth clients and institutional clients command a higher financial proficiency and sophistication than retail clients. Each is discussed in more detail below.

Private clients are individuals and families who have a significant financial portfolio and require expertise and access to investments beyond those available to the mass market. Because of the size of their portfolios, private clients need specific expertise and access to investments that are not available to investors with smaller portfolios. They often have investment needs similar to those of endowments, foundations and institutions, which is why private clients work with Portfolio Managers. Also, the size of their portfolio affords a

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<sup>14</sup> See: CFA Institute - Code of Ethics and Standards of Professional Conduct, Section III. DUTIES TO CLIENTS A. *Loyalty, Prudence, and Care*. Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests. See also: CFA Asset Manager Code of Professional Conduct, Section, Section A. Loyalty to Clients that states managers must:

1. Place client interests before their own.
2. Preserve the confidentiality of information communicated by clients within the scope of the Manager-client relationship.
3. Refuse to participate in any business relationship or accept any gift that could

reasonably be expected to affect their independence, objectivity, or loyalty to clients.

Finally, see: Standards of Practice Handbook, pages 83 – 113 for guidance on complying with the duty to clients standard (loyalty, prudence and care). <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2010.n2.1>

<sup>15</sup> "Investor behaviour and beliefs: Advisor relationships and investor decision-making study", by *The Brondesbury Group*, Toronto, ON 2012 (Investor Education Fund).

<sup>16</sup> There was only one firm out of 135 that did file a claim. Four firms indicated either "N/A" or not sure. Those indicating N/A may be new members who are in the process of getting this insurance. We note that previous claims data submitted to the CSA in past consultations did not include the same sample as included in the IE Report.

lower fee structure than available with mass-market or retail funds. As a private client, the client has a direct relationship with the firm that manages his or her money. Over 60% of respondents in the IE Report indicated that 75% of their firm's assets under management are made up of private client assets. According to the IE Report, the average AUM per private client was \$1.2 million.

Many Portfolio Managers also manage funds for institutions and, as a result, are diligent about providing investment detail well beyond what is required at the mass-market level. Our members' institutional clients include some of the largest and most widely known companies, financial institutions, organizations, charitable foundations, pensions and endowments. Over 30% of our Members indicated in the IE Report that institutional investors make up 50% of their firm's assets under management. Over half of Members indicated that the average mandate of their institutional clients is approximately \$10 million and over.

### *iii. Relationship between Portfolio Managers and their Clients*

The relationship between a Portfolio Manager and a client is guided by the client's investment objectives and constraints. The Portfolio Manager and client work together to develop investment policies and strategies, taking into consideration a number of factors, including client objectives, a client's investment time horizon, market and economic conditions. The Portfolio Manager implements policies and strategies including security research, selection, analysis, and portfolio construction to meet the client's investment needs. These relationships are typically long standing and there is a heightened focus on preserving the relationship. In this regard, our members are committed to providing clients with high-end customized services with a view to maintaining a long relationship. To this end, PMAC Members have established effective and efficient internal dispute-resolution processes that are reflected in the establishment and dissemination of policies and procedures for complaint handling which support and enhance client relationship preservation.

These relationships are maintained, among other things, by regular contact. According to the *Investor Education Fund Study: Advisor Relationships & Decision-Making – Investor Education Fund*<sup>17</sup>, virtually all investors have met or spoken with their advisor over the past two years. Two-thirds have contact at least 2 to 4 times each year, and a portion of this group have contact even more often. Portfolio Managers and their clients enjoy a personal and service-based relationship as opposed to a transaction based relationship more typical of retail banking clients.

### *iv. Portfolio Managers Experience Low Volume of Complaints*

As the IE Report illustrates (discussed below), our sector has historically experienced a low complaint volume and high internal resolution rate. We believe that this is partly driven by the nature of the fiduciary relationship and the fundamental duty of the PM to act in the client's best interests. In the event of disagreements, the nature of the fiduciary relationship drives a strong desire to clarify any misunderstandings and to satisfy the client. Many private clients and institutional have consultants acting on their behalf and the managers recognize if a client isn't happy the business is moved and they risk loss of other business. This fact has led to nearly all private client / institutional disputes being resolved internally.

Our Members' client complaint volume is significantly lower than in other sectors of the industry. The nature of the discretionary management relationship thwarts high complaint volume (KYC process, RDI, Investment Management Agreements (IMA), Investment Policy Statement (IPS) and frequency of communication with clients) and therefore, PMs do not

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<sup>17</sup> *Ibid* at 15, see p.11.

typically rely on external dispute resolution service providers. For the minimal number of complaints received, these are generally resolved internally and do not escalate to third party dispute resolution.

## **B. The IE Report**

The PMAC Member survey on the OBSI Proposal received a tremendous response. We had 135 Members respond that are made up of institutional and private high net worth client portfolio management firms across a mix of firm sizes in terms of assets under management. This response pattern enabled IE to examine complaint experience under a range of situations related to business size and structure. The tabulation of complaint counts and economic sizing indicated a very low level of complaints.

**In 2012, 98% of respondents reported zero institutional client complaints and 90% reported zero private client complaints**

Of the firms that received complaints in the past five years, only 4 firms reported use of a third-party dispute resolution provider.

The IE Report also found:

- **Almost 85% of survey respondents indicated that for their private client accounts, there have been no formal complaints with quantifiable loss for these accounts in the last 5 years.**
- **Similarly, 95% of survey respondents indicated that for their institutional accounts, there have been no formal complaints with quantifiable loss for these accounts in the last 5 years.**
- **99% of firms have not, in the last 5 years, filed any insurance claims under their corporate Financial Institution Bond insurance policy.**
- **130 firms (96%) have not, in the last 5, years filed any insurance claims under their corporate professional liability policy or errors & omissions policy (protects companies and individuals against claims made by clients for inadequate work or negligent actions).**

The IE Report revealed that the nature of past complaints dealt with either suitability issues or diminishing returns followed by trade errors and untimely execution. However, most complaints dealt with other issues including service and administrative issues along with trade errors and untimely execution.<sup>18</sup>

When we asked our Members about some of the reasons why they thought they have such a low complaint volume, over 80% attribute low complaints to the fact that Portfolio Managers owe clients a fiduciary duty as well as the nature of the discretionary management relationship. IPS and IMAs were the second most cited reason provided followed by the frequency of communication with clients. Members also cited that Portfolio Managers typically have fewer clients per registered adviser and a higher AUM per client. In addition, Members commented that Portfolio Managers have higher ethical and education standards (CFAs have rigorous training and annual sign off on code of ethics) and the compensation structure (no conflict of interest in churning or selling new issues/high margined product as compared to brokers who are commission based) both contribute to an enhanced relationship with clients.<sup>19</sup>

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<sup>18</sup> See page 28 of IE Report.

<sup>19</sup> See pages 29-30 of IE Report.

Please refer to Appendix E for a full copy of the IE Report.

### **C. PMAC's Review of Dispute Resolution Providers**

Beginning in 2009, in preparation for the NI 31-103 dispute resolution service requirement, PMAC engaged in an extensive review process of available service providers. The objective of which was to review all dispute resolution service providers available with a view to determining which provider best suited the needs of our Members and their clients. Our initial objective was to perform some initial due diligence for Members on how to select a dispute resolution provider. As part of our review, we considered factors including, but not limited to:

- the expertise, knowledge and experience of available mediators and arbitrators and whether they could handle more complex complaints by sophisticated clients;
- the independence, impartiality and objectivity of the service provider;
- operational capacity; and
- the cost of the service.

During this process, members of PMAC's Executive Committee met with various leading dispute resolution service providers including, the Ombudsman for Banking Services and Investments (OBSI), ADR Chambers and the ADR Institute of Canada (ADR Institute). During each of these meetings, we asked questions aimed at determining whether the provider had the type of service / process that would be suited for a sector of the investment management industry with such historically low complaint volume and with a unique client profile. We also consulted with several of PMAC's affiliate member law firms. We felt it was important to embark on this consultative process in order to assist our Members and to prepare them to meet the dispute resolution requirement.

A chart outlining our comparison of dispute resolution service providers is included in Appendix A.

#### **1. OBSI**

The review process began with a meeting with staff at OBSI. At the time, it was one of the main providers of dispute resolution services in the financial services industry and we were aware that some PMAC Members' affiliates were utilizing their services. Prior to meeting, we had reviewed information available in the public domain on their services and spoken to current clients of OBSI. Although we were impressed with their commitment to the industry, the following were seen as major disadvantages of their services:

- Primary experience in banking and retail and smaller claims amounts;
- Very limited experience and lack of expertise in working with high net worth private clients and more complex investment mandates;
- Lack of choice of specific professional with whom the investment manager and client would work with;
- Lack of mediation/arbitration qualifications or experience of OBSI staff;
- Minimal education and knowledge of asset management low (e.g. no qualified asset managers on staff);
- Lack of experience and qualifications of investigative teams (several junior staff members on the investment team);
- Below expected standard in turnaround time for complaint handling;
- Structure and governance appeared to be very industry dominant and did not appear to be impartial as advertised;
- Structure and governance appeared to be very banking and broker/dealer dominant raising concerns that the needs of Portfolio Manager clients would not be prioritized nor met; and

- Fee structure based on annual levy according to business size, not entirely transparent and no user fee model in place.

We note that we also met with members of OBSI earlier this year to discuss the OBSI Proposal. We include additional information in section D on this and set out further details of our Members' concerns with the OBSI process and its current mandate.

## **2. ADR Chambers**

ADR Chambers represents itself as a leading Canadian alternative dispute resolution organization that provides conflict resolution services across Canada and internationally in multiple industries. Its services include a variety of processes such as mediation, arbitration, neutral evaluation, med/arb, fairness monitoring, investigations and private appeals. It is also a leader in training professionals. At ADR Chambers, clients have the option of the process that best suits their needs and investor profile with a wide variety of services that can be custom tailored to meet the needs of investors and registrants. The professionals (commonly referred by ADR Chambers as neutrals) include retired judges, experienced lawyers and other dispute resolution professionals. These are individuals that adhere to ADR Chambers mediation and arbitration standards along with their own individual professional code of ethics. Parties can agree on a mediator from a roster of mediators and, if requested, ADR Chambers can suggest mediators based on the type of issue in dispute.<sup>20</sup> ADR Chambers' professionals assist parties to resolve disputes in an expeditious<sup>21</sup> and cost-effective manner.<sup>22</sup>

ADR Chambers Banking Ombudsman Office (ADRBO), created in 2009, reviews decisions of participating banks when a bank's customer is not satisfied with the outcome of the bank's internal Ombudsman process. It has been in operation for over 4 years with current participating banks being Royal Bank of Canada (RBC) and Toronto-Dominion Bank (TD). Like OBSI, an ADR Chambers investigator can advise customers about whether they have been treated fairly. However, unlike OBSI, these investigators are fully independent contractors are not employees of ADRBO. It is important to highlight that ADRBO's investigators are not employees of ADR Chambers but rather are independent contractors because we believe that the independence of the individual handling the complaint is crucial to the fairness and impartiality of the decision maker.<sup>23</sup> If a complaint requires a full investigation, an investigation will be conducted and the investigator may make non-binding recommendations. These independent investigators also have mediation training should the parties require such service. ADRBO is a separate branch of ADR Chambers. ADR Chambers is a private company that operates independently from the participating banks. The ADR Chambers Ombuds service is free of charge to those making the complaint.

The following were seen to be the advantages of ADR Chambers:

- Breadth and scope of alternative dispute resolution services (investigation, mediation arbitration, etc.);
- Independence from the industry;
- ADR Chambers provides services to multiple industries and not dependent nor tied, nor governed by industry professionals<sup>24</sup>;

<sup>20</sup> In addition, if requested by all parties, ADR Chambers will appoint the mediator for the parties.

<sup>21</sup> According to the 2011 Annual Report, the average time for completion of an investigation was 6.6 months, with the shortest period being 3 months and the longest 11 months. Of the 32 final reports issued during the period under review, 13 were issued within that time frame, while 19 exceeded it. ADRBO continues to strive to streamline its case processing and aims to complete all investigations well within the 180-day time limit. Upon acceptance of a file, Investigators are required to commit to completing the investigation within three months.

<sup>22</sup> ADR Chambers now offers expedited arbitration and recently launched the brand new Expedited Arbitration Rules. Expedited Arbitrations are efficient and cost sensitive. There's a fixed fee so parties know exactly what they're paying and a fixed time frame so parties know exactly how long the arbitration will take.

<sup>23</sup> OBSI investigators are employees of OBSI.

<sup>24</sup> Further to various meetings with ADR Chambers, we understand the banking business only makes up a very small percentage of their overall business.

- ADR Chambers' professionals are independent (hired as contractors);
- Experience and qualifications of the ADR professionals; many lawyers and judges with 20+ years of industry experience; and
- Subject to periodic audits of its services and independent review (also complete random testing of investigations and recommendations to ensure quality of service);
- Access to face to face mediation services for all investors across Canada.

One of the criticisms ADR Chambers has faced is that it is a for-profit company and thus not impartial or independent. However, we view the fact that the ADR Chambers' professionals are all independent contractors as being an equally appropriate way to test its independence. Unlike OBSI, ADR Chambers is not dependent on any one particular industry (if other Banks decide to move to a different service provider, OBSI will have significant funding issues).<sup>25</sup> Similarly, some have suggested that ADR Chambers is not impartial because it is being paid by the banks. However, the data suggests the contrary and in fact, we understand from our discussions with ADRBO, that it has made more recommendations in favour of clients than it has in favour of banks. Anecdotally, this percentage is higher for ADRBO than it is for OBSI's record of recommendations in favour of clients vs. banks.<sup>26</sup> In our view, a more telling way to test independence is by the seniority and experience of the people doing the investigations and whether these individuals are providing a fair and independent decision.

The main disadvantage of ADR Chambers was the proposed fee structure to partnering with PMAC Members. The proposal at the time incorporated an ongoing retainer for Portfolio Managers (i.e. minimal \$1000/year) which we did not think was acceptable given the low volume of complaints and anticipated minimal use of their services.

### **3. ADR Institute of Canada**

The ADR Institute of Canada (the "ADR Institute") is a national non-profit organization that provides national leadership in the development and promotion of dispute resolution services in Canada and internationally. With over 1700 members, its professionals provide dispute resolution services across Canada, including mediation and arbitration services. ADR Institute regularly assists organizations of all kinds in developing and administering ADR programs. ADR Institute also has available six regional affiliates across the country, which we found to be important for our Members in other provinces.

The advantages of the ADR Institute as a partner versus the other options considered were as follows:

- Broad national recruiting approach from among their 1700 members with an impressive balance of industry expertise, mediation/arbitration skills, and regional presence
- Individual screening of roster members ensures knowledge specific to the portfolio management industry and mediation/arbitration expertise
- Third party/non-profit service provides optimum independence and objectivity
- No annual retainer; service available to members at no cost and service billed based on use rather than annual levy

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<sup>25</sup> In our view, mandating the use of OBSI by Portfolio Managers should not be a means of mitigating this risk.

<sup>26</sup> 36% of ADRBO recommendations are in favour of the complainant versus 29% by OBSI (see Navigator Company Report on OBSI - 2011 Independent Review). This information has been provided by ADR Chambers pursuant to its last independent audit. We note that The Navigator Company Report on OBSI conducted in 2011 highlights that they found a couple of examples of banking services complaints where OBSI had found in favour of the bank, because the investigator was satisfied that the bank had adhered to its own procedures. In these examples, the Navigator Company thought OBSI had been too accepting of the bank's customary practice – without apparently testing if those procedures were consistent with the relevant law, regulatory or code of practice requirement – or even objectively fair.

ADR Institute is also a professional body that has a regulatory framework which includes standards for education and practice including a Code of Ethics and a Mediator's Code of Conduct. This framework, (which includes a Discipline and Complaint Procedure) provides the public with an important measure of protection. Complaints can be made against any practitioner who is alleged to have breached the Code. As a member of the Institute you are a member of a self-regulating and highly respected professional body. In addition, it has recognized practice designations that include the Chartered Mediator (C. Med.), Chartered Arbitrator (C. Arb.), and Qualified Mediator designations. These designations assist the public to choose a practitioner who is practising at a specific level and whose qualifications have been reviewed by a professional body for enhanced quality assurance. Its National Mediation Rules and National Arbitration Rules are widely accepted throughout Canada for the resolution of commercial disputes.

Given the breadth, scope and quality of service offered by the ADR Institute, we did not see any major disadvantages with using their service.

#### **4. PMAC's Decision**

After a careful evaluation of the options reviewed, PMAC partnered with the ADR Institute. We felt their service offerings were exemplary and in selecting a professional who is a member of the ADR Institute you are selecting someone who is a member of an established and recognized professional association. Our Members' clients would be assured of the mediator or arbitrator's commitment to upholding the ADR Institute's Code of Conduct and Code of Ethics and would also have an avenue of redress should standards of practice fall below a certain standard. We also saw many benefits of partnering with ADR Chambers; they were our second choice.

The PMAC / ADR Institute Dispute Resolution Program was launched in January 2012.

The objectives of the partnership are:

- Provide dispute resolution services to Members independent of the Association and its membership that adhere to professional standards and ethics considered best practice in the ADR field;
- Provide access to a large roster of qualified, knowledgeable mediators with specialized industry knowledge and experience to ensure investors have a variety of professionals from which to choose to optimize independence and client satisfaction;
- Deliver dispute resolution services across Canada; and
- Provide access to a cost effective service that provides value for services utilized on a user fee basis only with no ongoing retainer.

The ADR Institute can assist Members and their clients, at their option, in sourcing the ADR professional best suited to their needs according to practice area, skill level, location or any number of additional criteria. The roster of carefully selected ADR professionals is available to Members online. These professionals have agreed to provide services at preferred rates as part of the PMAC program requirements. In addition, ADR Institute has appointed an administrator for aiding PMAC Members. We have also opened up use of the PMAC / ADR Institute Dispute Resolution Program to non-members as well as to members of other similar industry associations.<sup>27</sup>

The PMAC / ADR Institute program allows Members and clients to select the level of service that is required with regard to the identification, selection or appointment of a suitable mediator or arbitrator. Resolving disputes involving investments for clients of Portfolio Managers can be challenging, given the complexity of the issues and high account values involved. It would be essential that any third party dispute resolution professional have the knowledge, experience, skills set and expertise necessary to mediate issues that may arise

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<sup>27</sup> For example, the Alternative Investment Management Association (AIMA) Canada.

among these types of clients and this expertise will vary depending on the nature of client mandates. This will be further discussed below.

Since the launch date, no complaints<sup>28</sup> have been brought forth to the ADR Institute by clients of our Members. While there have been some general inquiries made to the ADR Institute by Members and non-members about fees, process, etc., no actual use of the service has taken place.<sup>29</sup>

## **D. A Review of the OBSI Proposal**

### **1. The Rationale for the OBSI Proposal**

The CSA identified the following goals as its rationale for the OBSI Proposal:

- a) *Independence of dispute resolution service and consistency in outcome and expectations*
- b) *Complaints handled to a uniform standard*
- c) *Reduce investor confusion*
- d) *Eliminate perception that competition for business from registered firms might influence recommendations of for-profit dispute resolution service providers*

We respond to each in more detail below.

#### **a) Independence of dispute resolution service and consistency in outcome and expectations**

We acknowledge that there has been some tension over the last few years regarding OBSI's independence (i.e. governance, board, funding of industry) and some efforts have been made to address these issues.<sup>30</sup> However, the inherent structure of having employees versus independent contractors creates an organizational bias.

Regarding the objective of seeking consistency in outcome and expectations, we believe this objective requires some clarification. We view consistency as meaning achieving the same outcome. In our view, achieving the same outcome, doesn't mean the same thing as achieving a good or right outcome and isn't a predictor of the quality of the outcome. While there may be some benefits to the consistency of handling straightforward (and perhaps, systemic) complaints by retail banking investors, we don't see this being an outcome that is crucial from the perspective of Portfolio Managers. Dispute resolution recommendations are not case law building precedents but rather are confidential decisions where the investor is expecting fairness and expediency. We believe that an investor wants a fair process, competent professionals assisting with the dispute resolution process, a timely and efficient resolution and outcome. We don't believe the investor is looking for the same result as that of another investor. We would argue that the process is what needs to be consistent and not the outcome. We believe that setting consistent standards, such as the Federal Government opted to do, is more important for ensuring consistency than mandating a single service provider.

#### **b) Complaints handled to a uniform standard**

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<sup>28</sup> As at January 31, 2013.

<sup>29</sup> We note that the IE Report indicates two firms have used the services of the ADR Institute. We have confirmed with each of these respondents that the service was not utilized and the question was misinterpreted by the respondents as asking if they would use such services.

<sup>30</sup> Namely, from the client side, there appear to be issues with respect to OBSI's independence due to perceived conflict of industry funding and a power imbalance between retail clients complaining against large financial institutions. Similarly, there have also been a number of complaints that OBSI is pro-client and fails to apply appropriate legal standards in assessing liability/damages.



We agree that complaints should be handled to a uniform standard but we do not believe that mandating one service provider is the only way to ensure or achieve a uniform standard of handling complaints. Instead, we believe the correct approach is to require dispute resolution service providers follow a set of standards to ensure an accessible, accountable, impartial, and independent dispute resolution process. In our view, requiring complaints to be handled to a "uniform" standard within a single organization is not the optimal approach, nor is it an appropriate rationale for endorsing a monopoly of service.

For instance, the ADR Institute is an established and recognized organization that has, for many years set best practices in ADR practice. It has adopted National Mediation Rules and National Arbitration Rules that are widely accepted throughout Canada for the resolution of commercial disputes. Mediators and arbitrators must uphold the ADR Institute's Code of Conduct and Code of Ethics as well as his or her own professional body's standards (i.e. Lawyers must adhere to their own Rules of Conduct). In the Federal Model, it is contemplated that in the Financial Consumer Agency of Canada will conduct an in-depth review of all external complaints bodies prior to their consideration for approval by the Minister of Finance, and then monitor such bodies on an ongoing basis and enforce compliance with new, high standards applicable to these approved bodies.

In our view, so long as each dispute resolution provider meets a set of approved standards and follows best practices in the industry within an established national framework, complaints can be handled to a standard that meets the main objective of providing a suitable mechanism for investors to seek a resolution to a complaint.

### ***c) Reduce investor confusion***

We also do not see how imposing a monopoly on these services is the solution to any current or potential investor confusion. Firstly, there is minimal data on private clients and institutional clients being confused as to whom they can take a complaint to. Secondly, the requirement in section 13.16 requires the registrant to inform the person or company as soon as possible of how to contact and use the dispute resolution or mediation services which are provided to the firm's clients. This would suggest that the client does not even need to do any individual research should they chose not to, to ascertain his or her dispute resolution options. We suspect this was intentional on the part of the regulators. In short, we do not believe this is a compelling basis for the direction the CSA has taken in proposing to mandate OBSI. Further, we are of the view that for clients of Portfolio Managers, confusion would be extremely unlikely.

In Canada, we are already in a multiple ombudsman environment. Companies themselves frequently have internal ombudsman and within the financial services industry there are multiple ombudsmen's:

- Financial Services OmbudsNetwork (the FSON)
- Canadian Life and Health Insurance OmbudService (CLHIO)
- General Insurance OmbudService (GIO)
- OBSI and the ADR Chambers Banking Ombudsman Office (ADRBO).

There will always need to be some reliance on companies providing information to their customers on external ombudsman services and regulators overseeing that this communication is occurring.

### ***d) Eliminate perception that competition for business from registered firms might influence recommendations of for-profit dispute resolution service providers***

We also don't believe this objective warrants granting OBSI a monopoly on service. In fact, a competitive environment for this type of service would only drive up the service level and improve the quality and efficiency of dispute resolution services provided to the financial

industry. We don't see how driving small players out of the industry and reducing competition is beneficial to investors. In our view, this arguably amounts to an infringement on the right of investors to a broader avenue of recourse. The OBSI Proposal in effect limits an investors private rights to a broader range of remedies (one being that mediation is no longer an available recourse to investors under the OBSI Proposal). If the ultimate goal is to enhance investor protection, we would argue that investors rights are actually being compromised by this proposal.

We also note that if this is a CSA Concern, there are not-for-profit dispute resolution service providers available such as the ADR Institute.

## **2. PMAC's Concerns with the OBSI Proposal**

We acknowledge the benefits of a financial ombudsman service for some investors and believe such a service has the potential to improve consumer trust and confidence. However, we continue to have concerns with OBSI as the sole dispute resolution provider for Portfolio Managers. Our concerns are described below.

- **Proven low complaint volume among Portfolio Managers indicates we will have limited use of OBSI services** -- As outlined throughout this submission, the level of complaints received by our Members' clients are so low that we don't anticipate using OBSI's services. By far, any complaints received are handled effectively and efficiently internally by our Members and there is rarely a need to seek the help of an external third party dispute resolution service provider. For this reason, we strongly oppose paying fees to OBSI for a service we will seldom require.
- **Expertise and qualifications of OBSI staff and investigators** -- One of the key concerns we have with the OBSI Proposal is that the expertise and qualifications of OBSI staff and investigators are not suited to handle complaints from sophisticated, accredited and institutional clients. We don't believe that OBSI has the requisite expertise on hand nor experience to respond to complex complaints.<sup>31</sup> In addition, the OBSI terms of reference define complainant as any small business or individual Customer of a Participating Firm or it's Representative. OBSI's staff and investigators are not qualified mediators or arbitrators. This is also evident by OBSI's low mandate per amount of complaint (cap of \$350,000) per claim.<sup>32</sup> For our Members' institutional clients, the majority have institutional accounts ranging from \$10 million to over \$50 million. Any potential complaint would very likely exceed the threshold of \$350,000 that OBSI could consider. These types of clients would also likely seek experienced counsel to handle any complaints relating to their advisory relationship.

Similarly, a Portfolio Manager must consider whether an OBSI investigation process is going to be well suited to understand and respond to questions related to fiduciary duty. While OBSI staff may be familiar with the broker-dealer business model, they may not understand how a portfolio management firm operates and the regulatory framework in which the client relationship is guided.

When asked what would be of most importance if members continued to have the option of selecting a dispute resolution service provider in the event of an unresolved complaint, approximately 90% of respondents indicated that a provider that is

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<sup>31</sup> In fact, as stated in the 2011 OBSI Annual Report, the investment team includes five lawyers; two Chartered Financial Analysts (CFAs); one completed CFA Level III; five CFA Level III candidates; one CFA Level II candidate; three Certified Financial Planners (CFPs); four Fellows of the Canadian Securities Institute (FCSIs); two Canadian Investment Managers (CIMs); and one Derivatives Market Specialist (DMS).

<sup>32</sup> The 2011 OBSI Annual Report indicates that the average compensation paid per investment complaint was \$16,118. In the portfolio management business, given the high mandates and incentive to preserve the client relationship, any complaints with this average quantifiable loss would be addressed internally.

independent and impartial and that offers professionals with specific expertise of securities regulation (i.e. NI 31-103) including portfolio management industry experience would be most important in the selection process.

- **Independence issues** -- PMAC believes that the independence of a dispute resolution service provider for investors is of paramount importance. One of the reasons we selected the ADR Institute for our members and their clients was because of the staffing structure and the benefit of having an independent contractor base of mediators and arbitrators versus an employee structure. We would argue that even when an organization itself claims it is independent, the inherent structure of having employees versus independent contractors creates an organizational bias. OBSI's staff and investigators are employees of OBSI. Conversely, ADR Chambers and ADR Institute both have professionals (mediators and arbitrators) available on a contract basis and these individuals are not employees of these organizations. We would argue that professional individual independence is critical to offering services that are truly impartial and independent.
- **Average resolution time for complaints is too long** -- One of the main challenges facing OBSI is the resolution time required to resolve a complaint. The average time frame for a straight forward investment complaint in 2011 was 238 days.<sup>33</sup> For all other investment complaints, the average resolution time frame was 290 days (over 9 months).<sup>34</sup> In our view, these time frames are unacceptably long. As stated above, the majority of time spent on complaints is on the "investigation" phase. While these time frames include factors outside of OBSI's control, such as insufficient firm or client cooperation, failure to receive requested documents or information, and delays in the clients or firms representatives making themselves available for interviews, this process needs to become more effectively and efficiently handled. It is imperative that OBSI evaluate all ways in which its processes can be streamlined and made quicker without reducing standards of service / quality. This is one area where setting consistent standards is crucial. As noted above, the Federal Government's proposals would require external complaints bodies to resolve complaints within 120 days.
- **OBSI Terms of Reference** -- It is not clear whether or not OBSI will deal with all complaints. The OBSI Proposal seems to imply a two tiered system (i.e. matters that OBSI will deal with and those that they will not). This would suggest that there will still be complaints that fall outside scope of OBSI's mandate and thus, the potential for registrants to consider other options. In effect, if our Members' clients' complaints fall outside the OBSI mandate, how will these be accounted for in the fee model? These issues and other related implications were not adequately addressed in the OBSI Proposal.
- **OBSI's Focus on Investigations** -- We have concerns with the OBSI investigative process as it would relate to potential complaints from clients of Portfolio Managers. Specifically, in relation to the current and proposed wording of the requirement to provide dispute resolution in section 13.16. We understand that the key focus of the OBSI's process is centered on investigations of complaints (information gathering).<sup>35</sup> In the Ombudsman model, staff review and investigate unresolved complaints from clients about banking and investment products and services. The investigation is then followed by an investigation report of findings. This is largely the focus of the OBSI process (as opposed to a mediation process) because the investors who bring complaints (typically, banking retail clients) perceive an imbalance of power to the entity to which they are bringing forth a complaint. While we acknowledge that in

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<sup>33</sup> See 2011 OSBI Annual Report at p.78.

<sup>34</sup> *Ibid* at p.78.

<sup>35</sup> *Ibid* at p.9.

some cases, this may be appropriate, it is not in all cases the best process for investors. In our view, the focus on investigations as a dispute resolution model has its limitations and in particular, would not meet the needs of Portfolio Manager's clients.

We believe that for our Members, there is less value and utility in the focus being on the "investigation" aspect of the OBSI process because clients of Portfolio Managers are generally sophisticated clients and the production of documentation is straight forward (the relationship is governed by securities rules that require stringent documentation). For instance, the relationship disclosure information (RDI) rules along with the books and records requirement minimize any hurdles in collecting information that would form part of an investigation process.<sup>36</sup> Portfolio Managers must provide clients with all information that a reasonable investor would consider important about their relationship with the adviser/dealer. This includes all costs for the client of operating the account, the costs that the client will incur in buying, holding and selling investments, and the compensation paid to the Portfolio Manager for securities purchased through the adviser or dealer. These requirements set the framework for a very well documented and factually supported client / Portfolio Manager relationship.

In addition, the types of complaints reported by Portfolio Managers in the last five years indicate that the nature of complaints (for example, diminishing returns) tend to lend themselves to being resolved internally without the need for an external third party dispute resolution service. Portfolio Managers are also more committed to the quick resolution of any type of complaint because of the nature of the advisory relationship.

Moreover, investigations impact the efficiency and expediency with which certain complaints can be resolved and in particular, any complaints arising from the clients of our Members. We note that the OBSI 2011 Annual Report indicates that the average time spent in the "investigation phase" for investment complaints was 116 days (nearly 4 months).<sup>37</sup> In our view, mediation is a much more valuable process for clients of Portfolio Managers since the clients (i.e. institutional clients and many private high net worth clients) will understand the issues, have a well documented relationship with their adviser and accordingly, need to rely less on the investigation process. Mediation works well for parties who want to resolve the dispute and continue carrying on business together and resume the long standing relationship efficiently and expeditiously.<sup>38</sup> Mediation, we would argue, is in essence tailored to provide this function with some of the key benefits being:

- preservation of business relationships;
  - arrangements may be made quickly;
  - process usually takes one day or less;
  - simple and easy process;
  - confidentiality;
  - process non-binding;
  - the outcome is within the control of the parties; and
  - high level of satisfaction.<sup>39</sup>
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- **Current OBSI Fee Model** -- PMAC does not support any dispute resolution service model where fees are charged based on a firm's size of business. We considered this issue when embarking on our own evaluation of existing dispute resolution service

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<sup>36</sup> See Section 14.2 and 11.4 of NI 31-103.

<sup>37</sup> See Appendix I - Statistical Data of the 2011 OBSI Annual Report.

<sup>38</sup> This is similar to long standing commercial contracts where it is common business practice to include an arbitration clause (meant to preserve the terms of the agreement and the business relationship).

<sup>39</sup> See: <http://www.adrcanada.ca/about/faq.cfm>.

providers in 2010 and this remains a central concern for our membership. We reiterate the important fact that Portfolio Managers do not have the complaint volume to support this type of fee structure.

The OBSI Proposal seeks to mandate the use a service on Portfolio Managers without providing any detailed information on the funding model that will be used to support this service. While it remains unclear as to how Portfolio Managers would be billed for a service they would likely never need, the current OBSI funding model requires participating firms to pay a annual levy based on the size of their business or assets under management. In our view, requiring Portfolio Managers (who have a proven low complaint volume) to fund a service they will likely not use is in effect a form of compulsory subsidization. Essentially, if the current OBSI fee model was imposed on Portfolio Managers, this would result in a tremendous fee surplus for OBSI's infrastructure, which would be of no benefit to the client's of Portfolio Managers. Bottom line: we should not be mandated to pay for a service we won't utilize.

We strongly oppose such a fee model and do not believe the portfolio management industry should be used as a funding mechanism for OBSI. This is an unnecessary cost for PMs who have proven very low complaints statistics. Instead, it is our contention that any dispute resolution service provider model used by Portfolio Managers should employ a user-based fee for this type of service. This is the most equitable fee model for this type of service is a fee-for-service funding model, which would be based on use by a particular member as opposed to the size of a particular member.

- ***OBSI Industry Reputation and Other Challenges*** -- OBSI has not gone without critique over the last few years by the financial industry. It was not too long ago that sources close to OBSI say its board of directors approved a scenario that would see its office closed unless Ottawa prevented banks from ignoring the service and choosing their own complaints handlers.<sup>40</sup> With the departure of RBC and TD, this left OBSI facing some financial vulnerabilities. The reality is that OBSI was and continues to be a forum created to service clients of the banking system. While some banks have committed to remain with OBSI for the 2013 fiscal year, it is unclear what will happen once the Federal Government proceed with its proposals. OBSI was created in 1996 at the suggestion of the banks, which preferred the arrangement of an industry ombudsman rather than a formal government department.<sup>41</sup> We continue to believe that OBSI should be given the opportunity to continue to fully implement the recommendations from the 2011 Independent Review by the Navigator Company. If successful, we expect they will earn more client mandates through normal competitive market processes and the level of service experienced by all investors using various dispute resolution services will collectively rise.

We also note that OBSI continues to face challenges with its operating budget and available resources. As the Navigator Report identifies, OBSI has and continues to experience a 'resource lag'. This is evident in the Board's decision in 2010 to fund a one off project to clear the backlog of investment cases.<sup>42</sup> As such, we do not feel it is the time in OBSI's business lifecycle to expand its mandate. It is in investors' interests to strengthen OBSI, its process, the statutory framework of how OBSI operates but expanding the mandated use of OBSI will not serve to overcome OBSI's current challenges. In fact, we believe it will actually impair OBSI's ability to move forward.

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<sup>40</sup> "Bank ombudsman considers closing operations", by Grant Robertson - Banking Reporter, Globe and Mail, Sep. 06 2012.

<sup>41</sup> Ibid.

<sup>42</sup> See Navigator Company Report on OBSI - 2011 Independent Review at p.12.

## **E. Other Dispute Resolution Service Options**

We believe it is important to identify and evaluate all of the options available for dispute resolution services and thus, we highlight several below.

### **1. The Federal Model**

In our view, it was a disappointment that the OBSI Proposal was out of step with the national direction in Canada on the selection of third party dispute resolution service providers in the financial industry.

In the 2010 Federal Budget, the Government recognized the need to formalize, through legislation, the requirement for banks to be a member of an approved external complaints body (the "Federal Model") but not necessarily OBSI.<sup>43</sup> The *Sustaining Canada's Economic Recovery Act* received Royal Assent in December 2010, and it amended the *Bank Act* to establish the requirement that banks belong to an external complaints body incorporated either under Part II of the *Canada Corporations Act* or under the *Canada Business Corporations Act* and that is approved by the Minister of Finance. The purpose of external complaints bodies is to deal with complaints made by customers of banks. The amendments also provided authority to set out, in regulations, clear criteria to govern the approval of an external complaints body.

The proposed Approved External Complaints Bodies (Banks and Authorized Foreign Banks) Regulations<sup>44</sup> (the "Proposed Regulations") establish the criteria for ministerial approval, the criteria for maintaining approval and the obligations of banks in respect of external complaints bodies. The Proposed Regulations specify that, to be an approved external complaints body, the applicant must be operated in a manner that is consistent with the standards of good character and integrity and must have policies and procedures, as well as terms of reference that would enable it to meet the requirements for maintaining approval. With respect to maintaining approval, the Proposed Regulations would require that an approved external complaints body be accessible, accountable, impartial, and independent.

Furthermore, it would need to discharge its functions and perform its activities in a transparent, cooperative, effective and timely manner. The Financial Consumer Agency of Canada is tasked with conducting an in-depth review of all external complaints bodies prior to their consideration for approval by the Minister of Finance, and then monitor such bodies on an ongoing basis and enforce compliance with these new, high standards. The proposed Regulations would require an external complaints body to resolve complaints within 120 days, compared to the current industry standard of 180 days.

We met with Department of Finance officials on February 6, 2013 to discuss the Federal Model and we applaud the Federal government for moving in this direction. We endorse a multi-provider model and believe that the benefits of allowing for choice and selection of professional also meet the objectives identified in the OBSI Proposal.

### **2. The Dispute Resolution Regime in Quebec**

The OBSI Proposal notes that section 13.16 of NI 31-103 carves out the Province of Quebec from the independent dispute resolution service requirement. Firms registered in Quebec have been since 2002, and continue to be, subject to the dispute resolution provisions set

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<sup>43</sup> On October 26th, 2011, TD Bank announced its withdrawal from OBSI for banking complaints. RBC Royal Bank was the first bank to announce its withdrawal in October of 2008.

<sup>44</sup> See Gazette, Vol. 146, No. 28 — July 14, 2012, Approved External Complaints Bodies (Banks and Authorized Foreign Banks) Regulations, Statutory authority, Bank Act, Sponsoring department, Department of Finance REGULATORY IMPACT ANALYSIS STATEMENT available at: <http://www.gazette.gc.ca/rp-pr/p1/2012/2012-07-14/html/reg2-eng.html>.

out in the *Securities Act* (Quebec) (the Quebec Act).<sup>45</sup> In this model, the l'Autorité des marchés financiers (AMF) may review any complaints filed with dealers or advisers if a complainant is dissatisfied with the complaint examination procedures or its outcome (the "Quebec Model"). If the complainant requests the dealer or advisor forward a copy of the complaint to the AMF, the AMF has the discretion to step in as a mediator if the parties agree. The AMF will examine the complaint and may, in certain cases, offer the parties a reconciliation or mediation service if all parties desire. This service is free of charge. Dealers and advisers must submit to the AMF a report outlining the number and nature of complaints received via the Complaint Reporting System (CRS), for which a user ID and password issued by the AMF is required.

The AMF has allocated a section of its website<sup>46</sup> to providing information to registrants on their complaint examination obligations and to investors on how they can make a complaint and seek redress from a registrant. In particular, information can be found via the Internet regarding reporting obligations to the AMF and its Complaint Reporting System (CRS), which helps dealers and advisers better comply with their obligations. We query whether the CSA has evaluated the Quebec Model and the advantages or disadvantages of adopting a similar model in each of its jurisdictions. We believe this option is worth evaluating to determine whether the CSA could create this type of service for registrants who are not members of IIROC or the MFDA. We understand from certain of our Members that dealing with the AMF for complaint handling has been positive.

## **F. A Review of Dispute Resolution Services in Other Jurisdictions**

A review of other financial dispute resolution services around the world clearly reveals that most jurisdictions either do not mandate the use of a financial ombudsman for Portfolio Managers or where they do, have specific carve outs for institutional clients. We believe the OBSI Proposal is out of step with the international direction of how Portfolio Managers are directed within these foreign dispute resolution models. While the OBSI Proposal made reference to jurisdictions such as Australia and the UK, it did not include a detailed review of the requirements and processes in these jurisdictions. Most surprisingly, the OBSI Proposal makes no reference to the process or requirements currently in force in the United States.

We have included this information below. Please see the attached appendices for an overview of the dispute resolution services in the United Kingdom (Appendix B), United States (Appendix C) and Australia (Appendix D).

### **1. United Kingdom**

As is the experience in Canada, UK firms have an enduring relationship with their clients and aim to resolve any complaints amicably and generally, do so internally without the need to escalate to a third party service provider. For those complaints that are not resolved internally, the Financial Ombudsman Service (the "FOS") provides a dispute resolution service that is an alternative to the courts, to address complaints from consumers about businesses providing financial services. It was established by the UK Parliament in 2001 as an amalgamation of ombudsman schemes in different parts of the financial services sector, and provides a free service to consumers.

Eligible complainants under the FOS model include complaints to advisers from private clients but exclude institutional clients.<sup>47</sup> Effectively, any regulated activity is caught which includes amongst other things managing and advising on investments and arranging/executing investment transactions. However, it is noteworthy that the availability of the FOS is limited to "eligible complainants" and explicitly excludes institutional investors.

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<sup>45</sup> See sections 168.1.1 to 168.1.3 of the *Securities Act* (Québec).

<sup>46</sup> <http://www.lautorite.gc.ca/en/complaint-examination-obligations.html>.

<sup>47</sup> See DISP 2.7 of the FOS Handbook at <http://fsahandbook.info/FSA/html/handbook/DISP/2/7#D158>

The rationale for this is that complaints falling outside the scope of eligible complaints, such as the larger commercial disputes, should not be covered by the compulsory complaints-handling scheme as there are already alternative dispute-resolution mechanisms available to firms for dealing with these. As is the case in Canada, the nature and scale of institutional complaints in the UK require specific expertise typically available through the court system and the FOS is not set up to respond to these types of complaints. Also, the FSA took the view that complaints arrangements should be designed primarily to assist those who are least able to sustain financial loss, and who do not have the resources to pursue their claims before the courts.<sup>48</sup> We note that there has been no demand from any stakeholder to change this position during the recent revision of the UK's *Financial Services Act*.

Other features of the FOS model include:

- cap on award limit increased from £100,000 to £150,000 ((C\$235,000) for complaints on or after January 1, 2012.
- Generally, the time limits to bring forth a complaint to the FOS are: six months from the business sending the consumer a final response to his complaint (which has to mention the six-month time limit); and six years from the event the consumer is complaining about (or – if later – three years from when the consumer knew, or could reasonably have known, they had cause to complain).

The FOS is funded via fees and charges levied on financial services firms. A flat-rate case fee of £500 is charged to a firm on all cases, regardless of the outcome. The case fee is only charged if the complaint received about the firm is converted into a case, and it is payable when the case is resolved. A firm is not charged for the first three cases it is involved in that the FOS takes up within a year, but is charged for subsequent cases thereafter.<sup>49</sup>

In addition to the case fee income, financial services firms pay an annual levy to the FOS. The levy is fixed by the Financial Services Authority and is apportioned amongst businesses, based on the FOS's forecast of how its resources will be allocated amongst industry sectors. We understand that broadly about 20% of costs are raised from a levy based on the size of the firm and the remaining 80% of costs are recovered from case fees.<sup>50</sup> We note the approach taken by the FOS in that they are a "demand led" organization so forecasting the volume of complaints likely to be referred to them is a crucial part of their planning.<sup>51</sup>

Generally, we view the FOS model as a more balanced model as compared to the OBSI Proposal because it recognizes that advisers' clients have a different profile and correspondingly, have different needs in the dispute resolution space. We also believe the funding model seems to strike a more equitable balance between use of service and fees allocated and places emphasis on volume of complaints and where the demand for service is. We consider this to be an important part of the FOS funding model.

More information on the FOS can be found in Appendix B.

## **2. United States**

There is no requirement in the U.S. for advisers to make dispute resolution services available to their clients. Similarly, there are no regulatory requirements for the content and format of arbitration clauses in advisory agreements. Clients of investment advisers may elect to have disputes arbitrated either through a pre-dispute or post-dispute agreement regarding a resolution forum. Under the Financial Industry Regulatory Authority

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<sup>48</sup> See FSA Consultation Paper available at <http://www.fsa.gov.uk/pubs/cp/cp04.pdf>

<sup>49</sup> Next year it is proposed that the case fee will be £525 (win or lose) but no case fees will be charged for the first 25 cases.

<sup>50</sup> The Association of Private Client Investment Managers and Stockbrokers.

<sup>51</sup> See presentation titled "The role of the Financial Ombudsman Service in the UK redress landscape" by Caroline Wayman, Principal Ombudsman And Legal Director Financial Ombudsman Service Edinburgh, November 2012.



(FINRA) rules, customers of broker-dealers can compel broker-dealers to arbitrate disputes.<sup>52</sup> Unlike the ombudsman model, FINRA's dispute resolution program includes arbitration and mediation. Disputes, claims or controversies arising out of business dealings with any FINRA brokerage firm can be resolved in arbitration or mediation. Recently, FINRA announced that investment advisers (IAs) which are not FINRA members can voluntarily access FINRA's arbitration and mediation<sup>53</sup> forum to resolve their disputes. Currently, such disputes are resolved in court or in non-FINRA dispute resolution forums. With respect to arbitration, FINRA will accept these disputes on a voluntary, case-by-case basis if the parties meet certain conditions (see Appendix C).

Advisers in the U.S. generally use either the American Arbitration Association® or JAMS for any unresolved complaints. A review of these organizations indicates the sheer breadth of services and expertise available to advisers in the U.S. to meet their dispute resolution needs.

Each is summarized below.

*a) American Arbitration Association*

The American Arbitration Association (AAA) is a not-for-profit organization with offices throughout the U.S. AAA has a long history and experience in the field of alternative dispute resolution, providing services to individuals and multi-industry organizations who wish to resolve conflicts out of court. Additional AAA services include the design and development of alternative dispute resolution programs for corporations, unions, government agencies, law firms, and the courts. AAA also provides education and training services.

AAA's services are administered by professional case managers and a roster of expert arbitrators and mediators with expertise in large, complex cases involving lending, secured transactions, investments, and other financial transactions and relationships, including wills and trusts. Special rules and panels have been developed for certain types of disputes (i.e. Commercial Finance, Alternative Investments, Securities, etc.). AAA levies its fees in a variety of ways according to service offered and also by industry.<sup>54</sup>

*b) JAMS*

JAMS represents itself as the largest private alternative dispute resolution (ADR) provider in the world. With its prestigious panel of neutrals, JAMS specializes in mediating and arbitrating complex, multi-party, business/commercial cases – those in which the choice of neutral is crucial.<sup>55</sup>

The experienced neutrals of the JAMS Financial Markets Group are uniquely qualified to resolve complex securities and financial markets disputes. The panel includes some of the most prominent dispute resolution experts from across the United States, including retired federal, state trial and appellate judges and former litigators. Panelists have years of dispute resolution experience and relevant industry expertise and receive ongoing training

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<sup>52</sup> FINRA is the largest independent regulator for all securities firms doing business in the United States. See Rule 12200 of the FINRA Code of Arbitration Procedure for Customer Disputes. FINRA requires investment advisers to arbitrate investor and industry disputes when the IA is dually registered with FINRA and the dispute arises in connection with the IA's business activities as a FINRA member or associated person (see FINRA Rules 12200 and 13200).

<sup>53</sup> FINRA's mediation program has achieved an 80% success rate — parties who mediate in our forum resolve four out of every five cases. See: <http://www.finra.org/arbitrationandmediation/arbitration/specialprocedures/p196162>.

<sup>54</sup> For more information, see: <http://www.adr.org/aaa/faces/services/fileacase/fees>.

<sup>55</sup> For a description of the types of financial matters complaints heard by JAMS, see: <http://www.jamsadr.com/financial/>

in financial markets litigation and ADR and have handled thousands of high profile matters involving the world's largest investment banks, securities firms, commercial banks, institutional investors, hedge funds and private equity firms.

With respect to the cost of services, when a consumer initiates an arbitration against a company, for example, the only fee required to be paid by the consumer is \$250, which is approximately equivalent to current Court filing fees. All other costs must be borne by the company including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services.

### **3. Australia**

In Australia, all financial service providers (FSPs) have the ability to choose their own external dispute resolution provider.<sup>56</sup> Australia does have in place (as a condition of business) the requirement for various FSPs to implement internal and external dispute resolution services. There are currently two competing external dispute resolution schemes (EDR): the Credit Ombudsman Service Limited (COSL) and the Financial Ombudsman Service (FOS).<sup>57</sup> Both the FOS and COSL are approved by the Australian Securities and Investments Commission (ASIC) and both receive complaints against FSPs who are members of their respective schemes. Both the FOS and COSL focus their services on conciliation processes or they may investigate the dispute and issue a written decision on the case which is binding on the financial services provider. Similar to the Canadian Federal Model, there are multiple providers operating in competition to meet the needs of the investing public in Australia.

ASIC imposes certain licensing requirements on FSPs such as financial planners/advisers and credit brokers, for example, to become a member of an external dispute resolution service for consumers of these financial services to complain to - after having had the matter first addressed by the internal service provider.<sup>58</sup> Financial advisers/planners, brokers dealings in financial products are required to have an EDR process in place, however, FOS per se is not mandated - it is one solution.

Finally, the Australian dispute resolution service requirements for the financial system are generally aimed at retail clients.<sup>59</sup> Therefore, we understand, for example, that "Wholesale Fund Managers" (akin to portfolio managers) do not have to have an EDR in place if they are only servicing non-retail clients.

More information on the dispute resolution services in Australia can be found in Appendix D.

## **G. Conclusion**

PMAC believes OBSI plays an important role in the resolution of retail client complaints in the banking and investment industry. However, we do not believe it is in investors' best interests to have all investor complaints funneled into one sole dispute resolution service provider, given the variety of sizes and complexity of investment mandates. We believe Portfolio Managers and their clients should continue to have choice in the service provider and professional they use to resolve complaints that cannot be resolved internally. This conclusion was reached for the following reasons:

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<sup>56</sup> For example, superannuation funds (i.e. retail pension system) may use the Superannuation Complaints Tribunal or the Financial Ombudsman Services as the external dispute resolution services.

<sup>57</sup> A summary of the Australian FOS approach can be found at: [http://fos.org.au/centric/the\\_circular\\_7\\_home/financial\\_advice\\_and\\_planning.jsp](http://fos.org.au/centric/the_circular_7_home/financial_advice_and_planning.jsp).

<sup>58</sup> See ASIC Regulatory Guide 139: pages 4 - 8 which highlights who (which operators) in Australia must have an external dispute resolution in place.

<sup>59</sup> See ASIC Regulatory Guide 139.1 - [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rq139-published-20-4-2011.pdf/\\$file/rq139-published-20-4-2011.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rq139-published-20-4-2011.pdf/$file/rq139-published-20-4-2011.pdf).

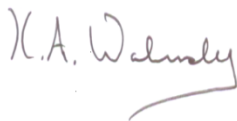
- Portfolio managers have low complaint volume and rarely require the services of 3<sup>rd</sup> party dispute resolution service providers;
- OBSI's current mandate of claimed losses under \$350K is not suitable for clients of Portfolio Managers which have large investable asset bases with potentially large claimed losses. The current OBSI cap is not suitable for these investors;
- In the few cases that Portfolio Managers and their clients may need the services of a third party dispute resolution service, mediation services may be the most effective and efficient method of dispute resolution, providing quicker resolution while potentially restoring the business relationship; OBSI is not resourced nor experienced in providing this service however, there are alternative service providers in Canada that are;
- OBSI's structure, expertise and experience may be well suited for retail financial services clients, consistent with most international ombudsman services. We suggest that any broadening of this mandate at this time is out of step with other international ombudsman mandates.
- OBSI is clearly committed to implementing many of the recommendations from the independent consultant report and improving its overall service to its clients. We recommend its focus continue to be on meeting these objectives versus broadening its customer base beyond its core competencies; and
- Portfolio managers' limited use of 3<sup>rd</sup> party services lends itself to a user-fee based payment model. OBSI is not currently set up administratively to bill clients in this manner.

We urge the CSA to thoroughly consider all of the issues raised in this submission and we recommend you undertake a careful reevaluation of OBSI's current mandate against the service offerings of other reputable and established dispute resolution service providers in Canada. We believe multiple qualified providers and investor choice is in the best interests of all Canadian investors.

We would be pleased to meet to discuss the comments in this submission. If you have any questions or concerns regarding our submission, please do not hesitate to contact Katie Walmsley ([kwalmsley@portfoliomanagement.org](mailto:kwalmsley@portfoliomanagement.org)) at (416) 504-7018 or Julie Cordeiro ([jcordeiro@portfoliomanagement.org](mailto:jcordeiro@portfoliomanagement.org)) at (416) 504-1118 ext 202.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley  
President, PMAC



Scott Mahaffy  
Chair, Industry, Regulation & Tax Committee  
Vice President Legal, MFS McLean Budden Limited



**PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA  
MEMBERSHIP LIST  
2013**

Aegon Capital Management Inc.	Jarislowsky, Fraser Limited
Adroit Investment Management Ltd.	Jones Collombin Investment Counsel Inc.
AGF Investments Inc.	Kerr Financial Advisors Inc.
Aldersley Securities Inc.	LDIC Inc.
Alitis Investment Counsel Inc.	Legg Mason Canada Inc.
AMG Canada	Leith Wheeler Investment Counsel Ltd.
ATB Investment Management Inc.	Leon Frazer & Associates Inc.
Aurion Capital Management Inc.	Lester Asset Management
Avenue Investment Management Inc.	Letko Brosseau & Associates Inc.
Barometer Capital Management Inc.	Longview Asset Management Ltd.
Barrantagh Investment Management Inc.	Lorne Steinberg Wealth Management Inc.
Baskin Financial Services Inc.	Louisbourg Investments Inc.
Beaujolais Private Investment Management	Macdonald, Shymko & Company Ltd.
Bellwether Investment Management Inc.	Mackenzie Global Advisors
Beutel, Goodman & Company Ltd.	Manitou Investment Management Ltd.
BlackRock Asset Management Canada Limited	Manulife Asset Management
Bloom Investment Counsel, Inc.	Marquest Asset Management Inc.
BMO Asset Management Inc.	Martin, Lucas & Seagram Ltd.
BMO Harris Investment Management Inc.	Mawer Investment Management Ltd.
BNP Paribas Investment Partners Canada Ltd.	McElvaine Investment Management Ltd.
Brandes Investment Partners & Co.	MD Physician Services Inc.
Bull Capital Management Inc.	MFS McLean Budden
Burgundy Asset Management Ltd.	Milestone Investment Counsel Inc.
Bush Associates Ltd.	Mirador Corporation
C.A. Delaney Capital Management Ltd.	Montrusco Bolton Investments Inc.
C.F.G. Heward Investment Management Ltd.	Morgan Meighen & Associates Ltd.
Campbell & Lee Investment Management Inc.	Morguard Financial Corporation
Canoe Financial L.P.	Newport Investment Counsel Inc.
Canso Investment Counsel Ltd.	Nexus Investment Management Inc.
Cardinal Capital Management Inc.	Northwood Family Office LP
Celernus Investment Partners Inc.	NT Global Advisors, Inc.
CGOV Asset Management	Pacific Spirit Investment Management Inc.
CIBC Global Asset Management Inc.	Patient Capital Management Inc.
CIBC Private Investment Counsel	Patrimonica Inc.
Cockfield Porretti Cunningham Investment Counsel Inc.	Perennial Asset Management Corp.
Coerente Capital Management Inc.	Perisen Capital Management Ltd.
Coleford Investment Management Ltd.	Picton Mahoney Asset Management
Connor, Clark & Lunn Investment Management Ltd.	Pier 21 Asset Management Inc.
Cordiant Capital Inc.	Pimco Canada Corp.
Cougar Global Investments LP	Portfolio Management Corporation
Covenant Capital Management Inc.	Portland Investment Counsel Inc.
Crestridge Asset Management Inc.	RP Investment Advisors
Crystal Wealth Management System Ltd.	Rae & Lipskie Investment Counsel Inc.
	RBC Phillips, Hager & North Investment Counsel

Cypress Capital Management Ltd.  
 Davis-Rea Ltd.  
 De Luca Veale Investment Counsel Inc.  
 Dixon Mitchell Investment Counsel Inc.  
 Doherty & Associates Investment Counsel  
 Duncan Ross Associates Ltd.  
 Echlin Investment Management Ltd.  
 18 Asset Management Inc.  
 Empire Life Investments Inc.  
 ETF Capital Management  
 Evans Investment Counsel  
 Excel Investment Counsel Inc.  
 Exponent Investment management Inc.  
 Falcon Asset Management Inc.  
 Fiera Sceptre Inc.  
 Focus Asset Management  
 Foster Asset Management Inc.  
 Foyston, Gordon & Payne Inc.  
 Galibier Capital Management Ltd.  
 Galileo Global Equity Advisors Inc.  
 Genova Private Management Inc.  
 Genus Capital Management Inc.  
 GFI Investment Counsel Ltd.  
 GLC Asset Management Group Ltd.  
 Global Wealth Builders Ltd.  
 Globeinvest Capital Management Inc.  
 Gluskin Sheff & Associates  
 Greystone Managed Investments Inc.  
 Groundlayer Capital Inc.  
 Gryphon Investment Counsel Inc.  
 Guardian Capital LP  
 Heathbridge Capital Management  
 Hélène Dion Investment Management Inc.  
 Hesperian Capital Management Ltd.  
 Highstreet Asset Management Inc.  
 Highview Asset Management Inc.  
 Hillsdale Investment Management Inc.  
 Horizons Investment Management Inc.  
 Howard, Barclay & Associates Ltd.  
 HSBC Investments (Canada) Ltd.  
 IA Clarington Investments Inc.  
 Independent Accountant's Investment Counsel Inc.  
 Integra Capital Ltd.  
 J.C. Hood Investment Counsel Inc.  
 J. Zechner Associates Inc.  
 Rempart Asset Management Inc.  
 Richmond Equity Management Ltd.  
 Ridgewood Capital Asset Management Inc.  
 Rogan Investment Management Ltd.  
 Rondeau Capital Inc.  
 Russell Investments Canada Ltd.  
 Scotia Asset Management L.P.  
 Sharp Asset Management Inc.  
 Silver Heights Capital Management Inc.  
 Sionna Investment Managers  
 Sprung & Co. Investment Counsel Inc.  
 Standard Life Investments Inc.  
 Stanton Asset Management Inc.  
 State Street Global Advisors, Ltd.  
 Steadyhand Investment Management Ltd.  
 Stonegate Private Counsel  
 Strathbridge Asset Management Inc.  
 Stylus Asset Management Inc.  
 Successful Investor Wealth Management Inc.  
 Summerhill Capital Management Inc.  
 T.E. Investment Counsel Inc.  
 Taylor Asset Management  
 TD Asset Management Inc.  
 TD Harbour Capital (Division of TD Waterhouse  
 Private Investment Counsel Inc.)  
 TD Waterhouse Private Investment Counsel Inc.  
 Tetrem Capital Management Ltd.  
 TFP Investment Counsel Corp.  
 Thornmark Asset Management Inc.  
 Toron Investment Management  
 TriDelta Investment Counsel  
 Tulett, Matthews & Associates  
 UBS Global Asset Management (Canada) Co.  
 University of Toronto Asset Management  
 Vancity Investment Management Ltd.  
 Venable Park Investment Counsel Inc.  
 Vestcap Investment Management Inc.  
 Vision Wealth Management Ltd.  
 W.A. Robinson & Associates Ltd.  
 Waterstreet Family Capital Counsel Inc.  
 Watson Di Primio Steel Investment  
 Management Ltd.  
 Watt Carmichael Private Counsel Inc.  
 West Face Capital Inc.  
 Wickham Investment Counsel Inc.

**APPENDIX A**  
**PMAC Comparison of Dispute Resolution Service Providers**  
(2009 - 2010; Updated 2013)

<b>Standards/Policies/Procedure/Services</b>	<b>OBSI</b>	<b>ADR Chambers</b>	<b>ADR Institute of Canada</b>
<b>Personalization/Customization of ADR Services (i.e. will customize service for client situation- negotiation/ mediation/ ombudsman/ med &amp; arb/early neutral evaluation, etc.)</b>	<ul style="list-style-type: none"> <li>- Specializes in Ombudsman/Investigation Services only</li> <li>- Mediation not provided</li> <li>- No Chartered Mediators (C. Med.) or Chartered Arbitrators (C. Arb) on staff</li> <li>- Objective to provide recommendation that supports a fair outcome</li> </ul>	<ul style="list-style-type: none"> <li>- Customizes dispute resolution services for parties</li> <li>- Services include Investigation, Mediation, Arbitration, Neutral Evaluation, Med/Arb, and Fairness Monitoring</li> <li>- Large roster of C. Med. And C. Arb. qualified professionals across Canada</li> <li>- Objective of restoring relationship and addressing conflict</li> <li>- ADR Chambers Ombudsman Office (ADRBO) available for banking disputes</li> </ul>	<ul style="list-style-type: none"> <li>- Professional selected customizes dispute resolution service provided for parties</li> <li>- Regularly uses full spectrum of ADR services</li> <li>- Over 1700 qualified independent mediators from across Canada</li> <li>- Objective of restoring relationship and addressing conflict</li> </ul>
<b>Monetary Limit on Claimed Losses</b>	\$350,000	No limit	No Limit
<b>Qualifications of Investigation/ Mediation/ Arbitration Professionals</b>	<p>Over 150 years combined experience; Investment team consists of 5 lawyers, 2 CFAs, 1 completed CFA Level III, 5 CFA Level candidates, 1 CFA Level II candidate, 3 CFPs, 4 FCSIs, 2 CIMs, 1 Derivative Market Specialist (many staff possess multiple designations)</p> <ul style="list-style-type: none"> <li>- Employee/staff model vs. independent contractor</li> </ul>	<p>Retired judges, retired lawyers, many with 20 + years' experience</p> <ul style="list-style-type: none"> <li>- Alternative Dispute Resolution Professionals (C. Med. &amp; C. Arb.)</li> <li>- Broad range of industry experience</li> <li>- Many lawyers &amp; judges possess ADR designation</li> <li>- Independently contracted</li> </ul>	<p>Retired judges, retired lawyers, many with 20 + years' experience</p> <ul style="list-style-type: none"> <li>- Alternative Dispute Resolution Professionals (C. Med. &amp; C. Arb.)</li> <li>- Broad range of industry experience</li> <li>- Many lawyers &amp; judges possess ADR designation</li> <li>- Independently contracted</li> </ul>
<b>Access to Services - Provided Locally Across Canada</b>	Much of process conducted by phone and written correspondence	Mediation/Arbitration conducted locally in person and/or via video conference across Canada	Mediation/Arbitration conducted locally in person and/or via video conference across Canada
<b>Choice of Dispute Resolution Professional</b>	OBSI assigns staff to cases	Both parties to dispute can have choice of Dispute Resolution Professional	Both parties to dispute can have choice of Dispute Resolution Professional
<b>Fees</b>	Based on several factors including AUM , number of registered advisers with current client base (all in fee regardless of usage); indicated concern with user fee model in meeting due to administration	<p>Customized programs available for annual fee which provides listing as a participating entity on ADRC-FS Website, intake and administration</p> <ul style="list-style-type: none"> <li>- Hourly rate available on an as use basis for investigation and mediation</li> </ul>	<p>Customized services available</p> <p>No annual fee for services</p> <ul style="list-style-type: none"> <li>- Hourly rate available on an as use basis for investigation and mediation</li> </ul>
<b>Independence &amp; Governance</b>	Joint Industry & independent board but governance very tied to banking and broker/dealer industry	Services multiple industries; largest independent (i.e. non industry tied) ADR provider in Canada	Independent non- profit association with 1700 independent ADR professionals

Standards/Policies/ Procedure/Services	OBSI	ADR Chambers	ADR Institute of Canada
<b>ADR Standards/Best Practices /Quality of Service</b>	<p>OBSI agrees to follow Guidelines for Joint Forum of Financial Market Regulators</p> <p>Unclear if individual staff sign off on specific standards or codes (vs. corporate )</p> <p>Primary experience in retail banking and retail investments</p> <p>All decisions reviewed by one ombudsman</p>	<p>All professional agree to follow ADR Chambers Arbitration Rules, Expedited Arbitrations Rules and/or International Arbitration Rules, Arbitrators are also comfortable conducting arbitrations under other rules (or ad hoc) as the situation (and clients) demand</p> <p>Broad experience in industry</p> <p>For ADRBO, all decisions reviewed by one ombudsman</p>	<p>All professionals agree to follow National Mediation Rules and National Arbitration Rules including a Code of Conduct</p> <p>- Many professional continue to be governed by professional standards of law society or Canadian Institute of Chartered Accountants</p> <p>Roster of individuals recruited screened for asset management experience and mediation/arbitration training and experience</p>
<b>Resolution Time</b>	<p>OBSI 2011 Annual Report; 289 days on average for investment complaints</p>	<p>Not known however mediation known for speedier resolution</p> <p>ADRBO 2011 Annual Report; average time for completion of an investigation was 6.6 months, with the shortest period being 3 months and the longest 11 months</p> <p>- Of the 32 final reports issued during the period under review, 13 were issued within that time frame, while 19 exceeded it</p>	<p>Not known however mediation known for speedier resolution</p> <p>No use of service by PMAC members to date</p>

## APPENDIX B

### Summary of Dispute Resolution Requirements in the U.K.<sup>60</sup>

	<b>Advisers &amp; Broker / Dealers</b>
<b>Regulatory Requirement to Provide ADR</b>	<p><b>ADVISERS</b> -- YES. Managing investments is one of the types of regulated activities that fall under the compulsory jurisdiction of the FOS.<sup>61</sup></p> <p><b>BROKER / DEALERS</b> -- YES. Dealing in investments as agent (buying, selling, subscribing for or underwriting designated investments as agents) is one of the types of regulated activities that fall under the compulsory jurisdiction of the FOS.</p>
<b>Mediation / Arbitration</b>	<p>The Ombudsman will attempt to resolve complaints at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation or investigation.</p>
<b>Dispute Resolution Forum</b>	<p>The Financial Ombudsman Service (the "FOS") provides a dispute resolution service that is an alternative to the courts, to address complaints from consumers about businesses providing financial services. It was established by the UK Parliament in 2001 as an amalgamation of ombudsman schemes in different parts of the financial services sector, and provides a free service to consumers.</p> <p>The FOS is a statutory dispute-resolution scheme for complaints about financial products such as bank accounts, loans, insurance and investments. It was set up in 2001, under the provisions of Part XVI and Schedule 17 of the Financial Services and Markets Act 2000, as the amalgamation of its predecessor ombudsman schemes (and its jurisdiction was later extended by Section 59 of the Consumer Credit Act 2006). The FOS provides an alternative dispute resolution service to the Court system for addressing potential consumer harm, and to award redress where harm has been found. There is no other organization in the UK that provides this service or has the powers of the FOS.</p> <p>It deals with complaints covering a wide range of financial products. The FOS normally classifies complaints into three broad product families – banking, insurance and investment – which are in turn divided into 18 product types (ex., mortgage cases are in the banking product family). When mass claims arise in relation to a particular product they are analyzed separately. So, currently, payment protection insurance cases are analyzed separately from other insurance. Previously, mortgage endowments were analyzed separately from other investments.</p> <p>In 2011-12, the FOS dealt with over 1.25 million enquiries split equally between those received by telephone and post. If such complaints cannot be resolved between the business and the consumer, the FOS will take them on as cases (this occurs to around 1 in 5 of the complaints received). Cases are initially subject to an informal adjudication between the consumer and the business, managed by the FOS.</p> <p>If a case cannot be settled through adjudication it can progress to consideration by</p>

<sup>60</sup> The summary provided in this appendix is provided for information purposes only. Reference should be made to the specific requirements and sources cited.

<sup>61</sup> The complaints handling rules are set out in a section of the FSA Handbook of Rules and Guidance called DISP. See: <http://fsahandbook.info/FSA/html/handbook/DISP>.



	<p>an Ombudsman for a final decision. There are currently 71 ombudsmen in the Service, acting as impartial decision-makers fulfilling an equivalent role to a judge or court. Consumers can accept the Ombudsman's decision, or take their case to court. If a consumer accepts the Ombudsman's decision, it becomes legally binding on the consumer and financial business.</p>
<p><b>Eligible Complaints</b></p>	<p>The availability of the FOS is limited to "eligible complainants" which, broadly, includes private clients and <b><u>excludes institutional clients</u></b>.<sup>62</sup></p> <p>The FOS can instruct a business subject to its jurisdiction to compensate consumers for losses of up to £150,000 (c.C\$235,000). Any compensation in excess of this amount could only be obtained, without the agreement of the relevant firm, through the Court system.</p> <p>The process in the UK requires the complaint to be made to the relevant financial services firm initially. The firm is expected to respond to the complainant and, if the consumer remains dissatisfied after receiving the firm's response or the firm has not responded substantively to the complaint within 8 weeks, the complainant has the right to refer the complaint to the FOS.</p> <p>Generally, the time limits are: six months from the business sending the consumer a final response to his complaint (which has to mention the six-month time limit); and six years from the event the consumer is complaining about (or – if later – three years from when the consumer knew, or could reasonably have known, they had cause to complain).</p>
<p><b>Fee Model</b></p>	<p>The FOS is funded via fees and charges levied on financial services firms. A flat-rate case fee of £500 is charged to a firm on all cases, regardless of the outcome. The case fee is only charged if the complaint received about the firm is converted into a case, and it is payable when the case is resolved. A firm is not charged for the first three cases it is involved in that the FOS takes up within a year, but is charged for subsequent cases thereafter.</p> <p>In addition to the case fee income, financial services firms pay an annual levy to the FOS. The levy is fixed by the Financial Services Authority and is apportioned amongst businesses, based on the FOS's forecast of how its resources will be allocated amongst industry sectors.</p>

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<sup>62</sup> See DISP 2.7.9.

## APPENDIX C

### Summary of Dispute Resolution Requirements in the U.S.<sup>63</sup>

	<b>Advisers</b>	<b>Broker / Dealers</b>
<b>Regulatory Requirement to Provide ADR</b>	<p>NO</p> <p>There are also no regulatory requirements for the content and format of arbitration clauses in advisory agreements.</p> <p>Clients of investment advisers may elect to have disputes arbitrated either through a pre-dispute or post-dispute agreement regarding a resolution forum.</p>	<p>Broker-dealer customers typically are required by contract with their broker-dealers to arbitrate any eligible dispute against a broker-dealer and its associated persons upon demand through the FINRA arbitration forum.</p> <p>FINRA IM 12000 (“Failure to Act Under Provisions of Code of Arbitration Procedures for Customer Disputes”).</p> <p>Under FINRA rules, customers of broker-dealers can compel broker-dealers to arbitrate disputes. <u>See</u> Rule 12200 of the FINRA Code of Arbitration Procedure for Customer Disputes. <u>See also infra</u> discussion of arbitration and mediation of customer disputes with broker-dealers.</p>
<b>Mediation / Arbitration</b>	<p>YES</p> <p>The American Arbitration Association® (AAA), is a not-for-profit organization with offices throughout the U.S. AAA has a long history and experience in the field of alternative dispute resolution, providing services to individuals and organizations who wish to resolve conflicts out of court.</p> <p>JAMS</p>	<p>Customers may also pursue the resolution of a securities dispute through mediation. Pursuant to FINRA rules, mediation is conducted on a voluntary basis and is not binding on the parties.</p> <p>See FINRA Manual, Code of Mediation Procedure, Rule 14000 <u>et seq.</u></p>
<b>Dispute Resolution Forum</b>	<p>AAA, JAMS or FINRA**.</p> <p>**On January 16, 2013, FINRA announced that investment advisers (IAs) may now avail themselves on a voluntary basis of FINRA’s system to resolve disputes with their customers — even though currently FINRA does not have regulatory authority over investment advisers.<sup>64</sup></p>	<p>FINRA represents itself as operating the largest dispute resolution forum in the securities industry to assist in the resolution of monetary and business disputes between and among investors, brokerage firms and individual brokers.</p>

<sup>63</sup> The summary provided in this appendix is provided for information purposes only. Reference should be made to the specific requirements and sources cited.

<sup>64</sup> FINRA Guidance on Disputes between Investors and Investment Advisors who are not FINRA-regulated Firms -- See: <http://www.finra.org/arbitrationandmediation/arbitration/specialprocedures/p196162>. FINRA will arbitrate disputes between such investment advisers and investors on a voluntary, case-by-case basis if (i) the parties

<p><b>Eligible Complaints</b></p>	<p>Under FINRA's voluntary system for IAs, with respect to arbitration, FINRA will accept these disputes on a voluntary, case-by-case basis if the parties meet the following conditions:</p> <ul style="list-style-type: none"> <li>• The IA and investor submit a post-dispute agreement to arbitrate.</li> <li>• The IA or other parties agree to pay all arbitration surcharge fees.</li> <li>• The investor files a special written submission agreement to submit the dispute to FINRA Dispute Resolution that is: <ul style="list-style-type: none"> <li>○ Signed by <u>all</u> parties to the arbitration (including all investor parties and all IA parties).</li> <li>○ Signed <u>after</u> the events occurred that gave rise to the underlying dispute.</li> </ul> </li> </ul> <p>The special submission agreement requires the parties to acknowledge that:</p> <ul style="list-style-type: none"> <li>• FINRA cannot enforce awards entered against non-member IAs and/or their employees (because FINRA is not a Self-Regulatory Organization for IAs). <ul style="list-style-type: none"> <li>○ Prevailing parties may enforce awards entered against non-member IAs and/or their employees in a court of competent jurisdiction pursuant to applicable state or federal law.</li> </ul> </li> <li>• FINRA may bar the IA from the forum in future cases if an IA fails to pay any award, settlement agreement, or FINRA fees.</li> <li>• FINRA and its arbitrators and mediators will be held harmless from liability arising in connection with the resolution of the parties'</li> </ul>	<p>Cases must involve investor and an individual or entity registered with FINRA, such as cases between investors and brokers, between investors and brokerage firms, and between investors and brokers and brokerage firms.</p> <p>The claim is filed within 6 years from the time the events giving rise to the dispute occurred.</p>
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submit a post-dispute agreement to arbitrate, (ii) the parties agree to pay all arbitration surcharge fees and (iii) the investor files a special written submission agreement signed by all parties to the arbitration. The special written submission agreement requires the parties to acknowledge, among other things, that FINRA may bar the investment adviser from the forum in future cases if it fails to pay any award, settlement agreement or FINRA fees and that FINRA cannot enforce awards entered against non-member investment advisers. Thus, the prevailing party may need to enforce an award against a non-member investment adviser in a court of competent jurisdiction. Final awards will be made publicly available.

	<p>dispute.</p> <ul style="list-style-type: none"> <li>• Disputes involving IAs will be administered in accordance with the SEC approved FINRA Codes of Arbitration Procedure.</li> <li>• The final award will be made publicly available.</li> </ul>	
<p><b>Fee Model</b></p>	<p>In most cases, each AAA and JAMS arbitrator sitting on a panel is paid an hourly rate for his/her arbitration services (typically \$400/hour to \$600/hour).</p>	<p>FINRA arbitration panels are paid a flat fee per three-hour hearing session (which can range from \$50/session to \$1,000/session, depending on the dollar amount at issue and the number of arbitrators on the panel). As part of the post-dispute agreement, however, the parties must decide which party or parties will be responsible for paying the FINRA forum fees.</p> <p><u>FINRA Fees for Arbitration</u>  The party filing a claim must pay a filing fee at the time the party files a Statement of Claim. The amount of this fee is based on the total amount of the claim including any punitive and treble damages requested, but excludes interest and expenses.  Customer Code Rule <a href="#">12900</a>  Industry Code Rule <a href="#">13900</a></p> <p><u>FINRA Fees for Mediation</u>  Once the parties agree to mediate, each side pays a Mediation Filing Fee to FINRA—an administrative fee based on the amount of the claim. In addition, the Mediator's Fee is a charge for the mediator's services. Mediators set their own rates, which can be an hourly fee or a flat fee.</p>

## APPENDIX D

### Summary of Dispute Resolution Requirements in Australia<sup>65</sup>

	<b>Financial Service Providers</b>
<b>Regulatory Requirement to Provide ADR</b>	<p>Certain "Financial Service Providers" must provide external dispute resolution services to their clients. For example, a financial planner, adviser, and Credit broker (and other intermediaries) are required to be a member of an external dispute resolution (EDR) scheme.<sup>66</sup> Before an EDR scheme can consider a complaint or dispute, the Financial Service Provider must be given an opportunity to resolve the dispute internally with the investor (internal dispute resolution (IDR)). If investor is not satisfied with the outcome from IDR, he/she can lodge a complaint or dispute with the relevant EDR scheme.</p> <p>There are two EDR Schemes in Australia:</p> <ul style="list-style-type: none"> <li>• the Credit Ombudsman Service Limited (COSL) at <a href="http://www.cosl.com.au">www.cosl.com.au</a></li> <li>• the Financial Ombudsman Service (FOS) at <a href="http://www.fos.org.au">www.fos.org.au</a><sup>67</sup></li> </ul> <p><b>Membership of the Financial Ombudsman Service is open to any financial services provider carrying on business in Australia.</b></p>
<b>Mediation / Arbitration</b>	<p>NO.</p> <p>Both the FOS and COSL focus their services on conciliation processes or they may investigate the dispute and issue a written decision on the case which is binding on the financial services provider.</p>
<b>Dispute Resolution Forum</b>	<p>The FOS came into effect on 1 January 2010.</p> <p>FOS is not a government agency, but it is a non-profit organisation and it is regulated by the Australian Securities and Investments Commission (ASIC).</p>
<b>Eligible Complaints</b>	<p>Refer to section 4.2 in the Terms of Reference for FOS for the types of complains FOS can hear: <a href="http://www.fos.org.au/centric/home_page/about_us/terms_of_reference_b">http://www.fos.org.au/centric/home_page/about_us/terms_of_reference_b</a>.</p> <p>Cap on claims of no more than \$288,000 CAD.</p> <p>Six years from the date of the cause of action or from when the consumer should have reasonably known of all the facts.</p> <p>There are certain exclusions from jurisdiction and certain proceedings current in another forum are also excluded.</p>
<b>Fee Model</b>	<p>At the time of application to the FOS, a total fee of up to \$495 (inc GST) is payable by credit card. This covers a \$220 application fee and a variable base levy which covers</p>

<sup>65</sup> The summary provided in this appendix is provided for information purposes only. Reference should be made to the specific requirements and sources cited.

<sup>66</sup> See *National Consumer Credit Protection Act 2009*.

<sup>67</sup> A summary of the Australian FOS approach can be found at [http://fos.org.au/centric/the\\_circular\\_7\\_home/financial\\_advice\\_and\\_planning.jsp](http://fos.org.au/centric/the_circular_7_home/financial_advice_and_planning.jsp).

the certain membership period. The FOS also charges additional fees including a user charge and case fees. The FOS website makes available a [calculator](#) as a guide for estimating what the base levy may be (the base levy can vary according to the size of your business).

For more information on the FOS Fee Model, see:

[http://www.fos.org.au/centric/home\\_page/members/apply\\_for\\_membership/financial\\_services\\_providers.jsp](http://www.fos.org.au/centric/home_page/members/apply_for_membership/financial_services_providers.jsp)

# **APPENDIX E**

## **IE REPORT**



**PMAC Member Survey**

**CSA Proposal to Mandate OBSI as  
Dispute Resolution Service Provider**

**February 15, 2013**



## Table of Contents

- Methodology
- Survey Participants' Profile
- Key Takeaways
- Survey Results
- Selected Cross-tabulations: Results by firms size, nature of business and complaint history

## Background & Methodology

- Canadian Securities Administrators (CSA) recently released a consultation paper (CSA Proposal - OBSI Dispute Resolution Service - NI-31-103) which, in summary, proposes that all dealers and advisors outside of Quebec be mandated to utilize the OBSI (“Ombudsman for Banking Services and Investments”) dispute resolution services.
- PMAC has opposed this direction for several years due to a typically low volume of complaints among members, and the fact that the majority of complaints are resolved internally without the need for professional mediation or arbitration services.
- PMAC has undertaken a survey of its 170 members in order to gather information on their experience with customer complaints over the last 5 years.
  - The survey included 27 questions with quantifiable results and a number of open-ended questions.
- Investor Economics Inc. (IEI) was provided confidential access to download the results of the survey in order to assist PMAC with analysis and results presentation.
- All information gathered will be kept confidential and only summarized in aggregate with no individual company information displayed.

## Survey Participants' Profile

- 135 PMAC members completed the survey, a 79% response rate.
- The responding firms represent a wide range of firms managing assets for a mix of institutional and private clients.
  - 30% of respondents had no institutional clients while only 6% had no private clients.
- Firms who managed more than 50% of their assets for private clients made up 68% of all respondents, while firms with greater than 50% of their assets managed for institutional clients made up 32% of respondents.
- One third of all respondents had less than \$300 million in assets under management (AUM). These firms were dominated by private client focused businesses.
  - 21% of respondents had AUM greater than \$10 billion.
- 18 respondents (13%) were affiliated with a company currently utilizing OBSI. Of those, only 5 had a clear recommendation to use OBSI.

## Survey Participants' Profile (Continued)

- Analyzing respondent AUM totals, clients and advisor counts revealed the following:
  - Institutional AUM of responding firms totaled \$609 billion.
    - Average AUM per client of \$100 million.
  - Investor Economics tracks the institutional market and places total institutional assets that are managed externally at \$1.147 trillion as at June 2012.
    - Survey respondents represented 53% of total institutional assets
  - Private client AUM totaled \$77 billion.
    - Average AUM per client of \$1.2 million.
    - Separating out firms with private client assets in excess of 75% of firm AUM resulted in an average AUM per client of \$964,000.
  - Investor Economics tracks the private investment counsel business and places total channel assets at \$168 billion as at June 2012.
    - Survey respondents produced a sample size of about 46% of total channel assets.
  - On average, when all firms are included, private client advisors deal with 58 clients.
    - On average, private client advisors at firms with private client assets in excess of 75% of firm managed relationships with 86 clients.

## Executive Summary

- The respondents to the PMAC survey represented a cross-section of Canadian institutional and private client portfolio management firms.
- Irrespective of the nature of the firms' business, the number of complaints made by clients can be classified as very low.
- Portfolio managers identified the fiduciary nature of client relationships and the existence of investment policy statements/guidelines as primary reasons for the low level of complaints.
- Private client firms reported more complaints than institutional firms due to a significantly higher number of clients.
- Suitability of investments, diminished returns and trade errors were the most frequently cited reasons for submitting a complaint.
- The majority of complaints were resolved internally and only a small number of complaints were referred to a third-party for resolution.
- Respondents identified independence, objectivity, industry knowledge and experience as being the most important factors in selecting a third-party dispute resolution provider.
- Concerns expressed about the OBSI proposal focused on lack of expertise, non-availability of choice and the belief that a universal process would meet the needs of all nature of clients.
- The main benefit of the OBSI proposal was seen as the absence of costs to be incurred by the client making the complaint.

## Key Takeaways

- Survey respondents (135 members) represented institutional and private portfolio management (PM) firms across a mix of firm sizes in terms of AUM. This response pattern enabled IEI to examine complaint experience under a range of situations related to business size and structure.
- Tabulation of complaint counts and economic sizing indicated a very low level of complaints; 98% of respondents reported zero institutional client complaints in 2012, while 90% reported zero private client complaints 2012.
  - In 2012, 2 of 135 respondents had institutional complaints while 12 of 135 respondents had private client complaints.
  - In the years between 2008 and 2011, 7 firms had institutional complaints and 22 of 135 had private client complaints.
- Of the firms that received complaints in the past five years, only 4 firms reported use of a third-party dispute resolution provider.
  - Third party dispute resolution providers were utilized to address 11 individual complaints.
    - OBSI was used for 5 complaints, 3 of which were through OBSI affiliated firms. The remaining 6 were split between AMF, law firms and PMAC/ADR Institute of Canada Dispute Resolution Service.
  - Firms with an institutional share of AUM of 24% or less had 6 complaints in the past 5 years.
    - Of the 6 complaints, 3 were by private client only firms with none using OBSI.
  - Firms with institutional AUM in excess of 75% utilized OBSI twice in the past five years.

## Key Takeaways (Continued)

- One firm filed an insurance claim under the corporate Financial Institution Bond insurance policy between 2008 and 2012.
  - One firm filed a claim under the professional liability policy on errors and omissions during the same period.
- The low level of complaints across respondent firms yielded no material correlations to business structure, business size or a firm's advisor count for 2012 or the years between 2008 and 2011.
  - Private client firms reported more complaints than institutional firms due to a significantly higher number of clients.
- The nature of the discretionary management business and the dynamics of the client/firm relationship was a common factor in explaining the low level of complaints among PM firms.
  - These factors were also frequently identified as the key differentiator with other financial services firms using OBSI.
  - The fiduciary character and fee-based nature (versus transactional or higher level of fees) of the business were identified as key elements in creating a relationship where expectations are well aligned and, hence, complaints are less likely to occur than in intermediated channels.
  - These indicators were consistent between institutional and private clients and across firms of all sizes.

## Key Takeaways (Continued)

- For firms in the \$1 billion to \$10 billion AUM categories, the investment management agreements were the most cited reason for lower complaint volumes.
  - These firms also identified the investment policy statement more often than firms in other size categories.
  - Firms with the highest institutional AUM also cited these reasons.
- In the relatively few cases where complaints were reported, attaching the specific nature of complaints to firm characteristics yielded few clear relationships.
- Suitability and diminished returns were the most common complaints overall (9 each).
  - Firms with \$10+ billion in AUM reported the highest number of suitability complaints (5 firms).
  - Firms in the 1-24% institutional category reported the highest amount of suitability issues (6 firms) and diminishing returns (5 firms).
  - Private client only firms reported a total of 5 complaints, each one of different nature.



## Key Takeaways (Continued)

- “No cost” to the client was cited most often as the benefit to clients of the OBSI process (56% of respondents saw this as a benefit).
  - This response was chosen most often by firms in the lowest AUM range.
  - The benefit was least popular with firms in the \$3 billion to \$10 billion category.
  - “No cost” to the client was the most cited benefit for firms that were private client only.
  - 8 of 9 additional written-in comments discounted the presence of any value to clients.
- Lack of expertise (73% of respondents), lack of choice (65%) and the assumption that one service provider could meet the needs of all clients (68%) were the most frequent concerns of OBSI for participants in the survey.
  - These three concerns were the top choice in most AUM categories.
  - No accountability and time to complete investigations were the factors of most importance to firms in the lowest and highest AUM categories.
- 28 of 135 respondents provided written-in comments on concerns. These aligned with the factors identified above as reasons for there being a low volume of complaints.
  - Generally, most felt the complaint volume experience in the PM business was so low it was hard to justify mandating a process that could add to the operating cost of the firms.

## Key Takeaways (Continued)

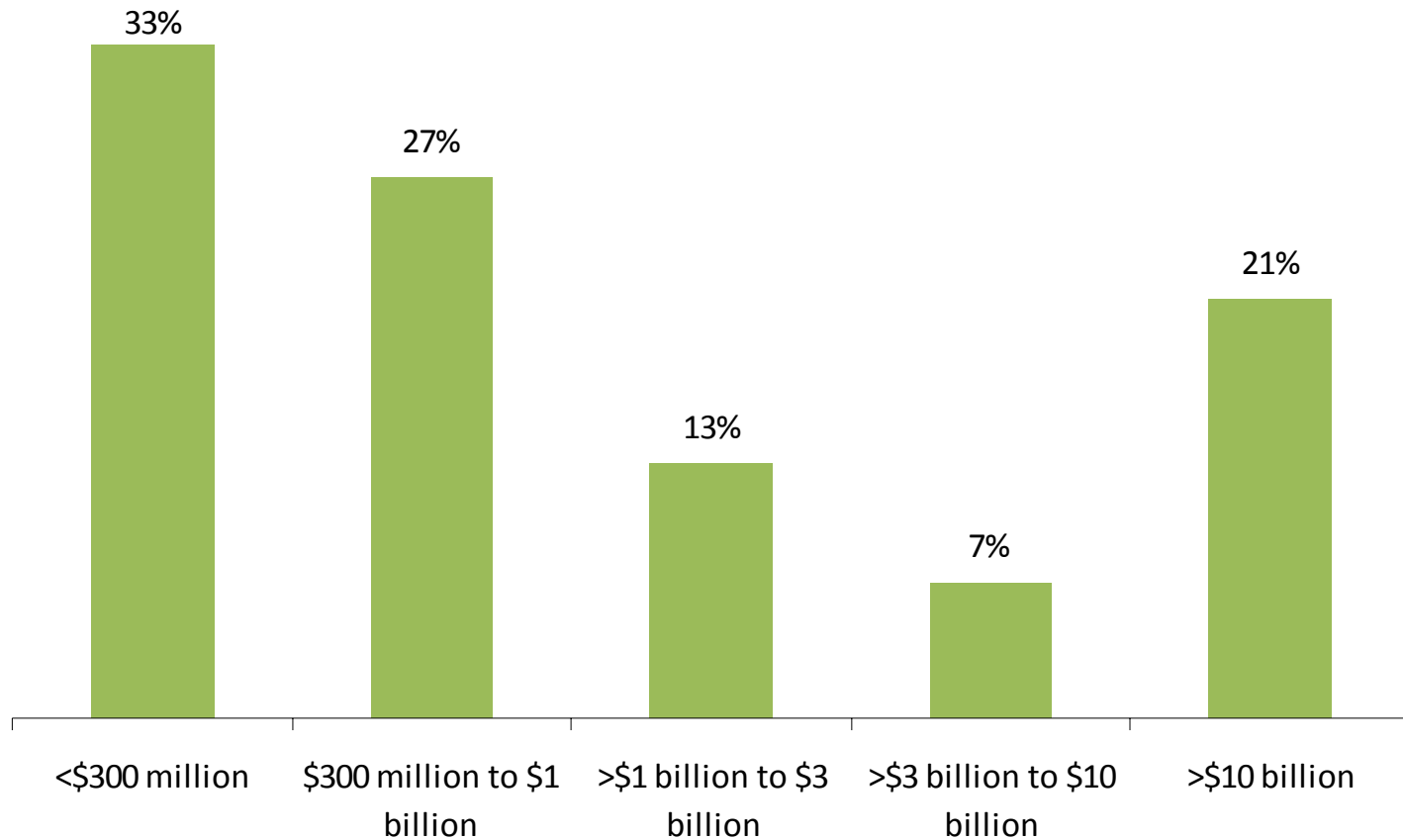
- Most survey respondents indicated that the fairest fee-model for OBSI services would be one based on the use of service (82% of respondents marked the answer).
  - The answer was similar for firms that had received a complaint and those that had not.
  - Answers were similar across all respondent firms, although those that had received complaints preferred a fee model that would only be paid on the private client portion of the business.
- When ranking the relative importance of a dispute resolution service provider, respondents indicated:
  - The most important factor was that the provider was independent and impartial. Firms with prior complaints saw this as marginally more important than those without prior complaints (94% vs. 89%).
  - Expertise in securities regulation, including portfolio management industry experience, was the next most important factors cited by respondents. Firms with no historical complaints found this slightly more important than firms with past complaint experience (93% vs. 87%).
  - 86% of respondents found timeliness to be very important.
  - A provider that allows clients to choose from a roster of qualified professionals with industry knowledge and mediation experience was found to be the least important factor for firms (14% respondents marked as 'not important'). The results were almost identical for firms with past complaints and no past complaints.
  - Comments left by respondents stressed the need for a resolution provider to be knowledgeable of the industry and an understanding of the dynamics that exist in the discretionary management relationship.



**PMAC Survey Results**

# What is Your Firm's Total Assets Under Management (AUM) as at December 31, 2012?

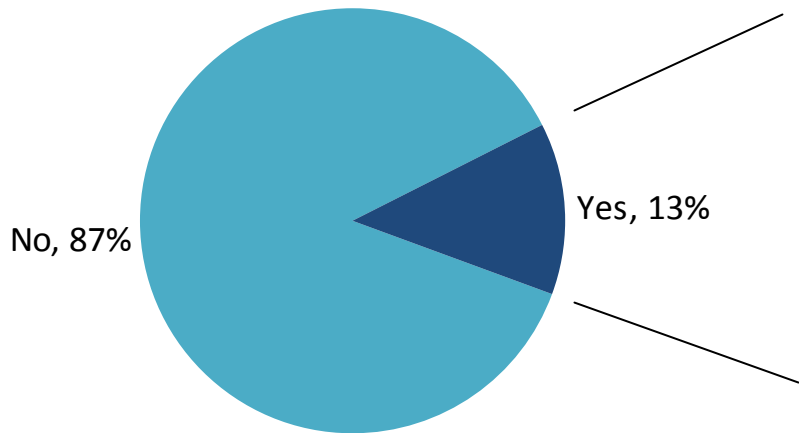
Percentage of respondents



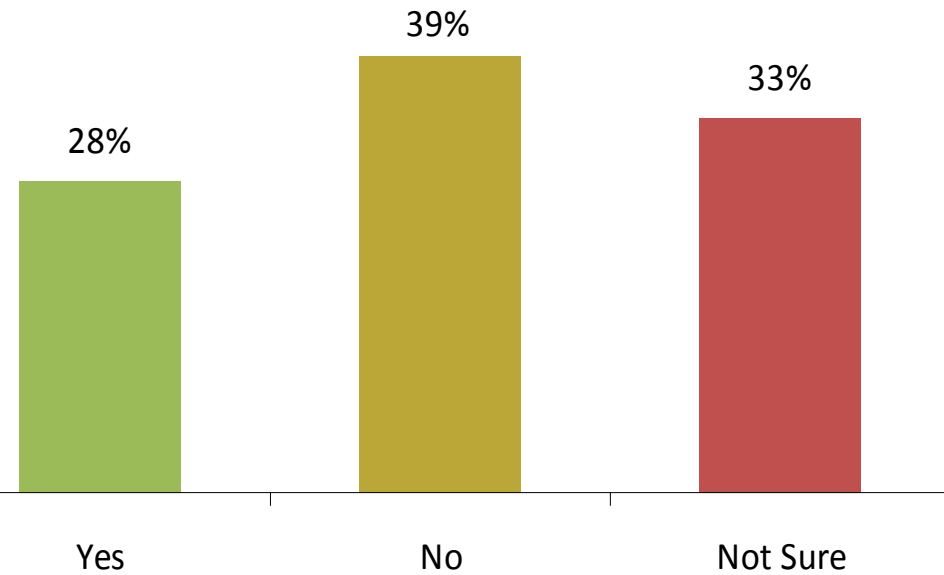
# Are You Owned by, or Affiliated with, a Company Currently Utilizing the Services of OBSI for Dispute Resolution? If So, has the Affiliated Company Recommended OBSI?

Percentage of respondents

### Affiliated with company utilizing OBSI

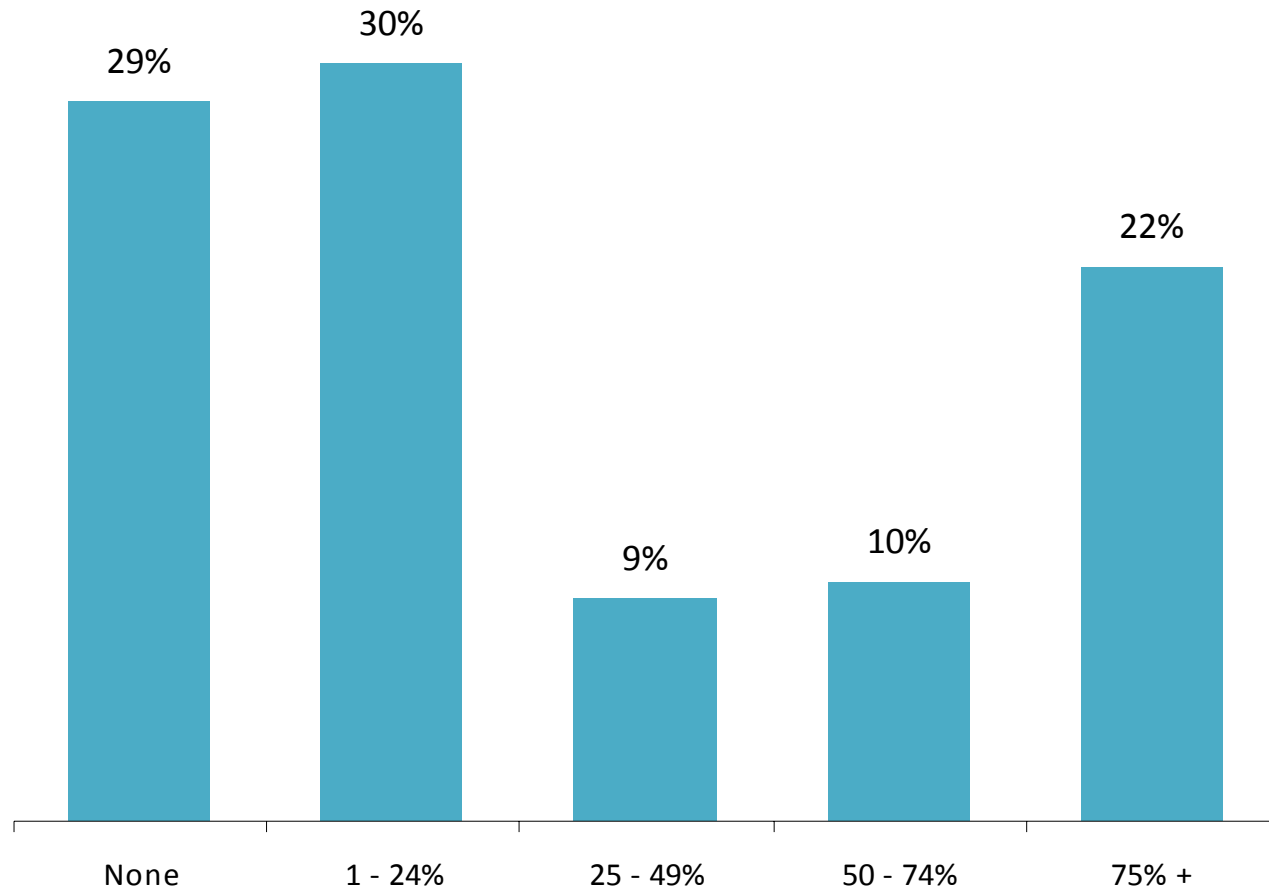


### Has affiliated company recommended OBSI?



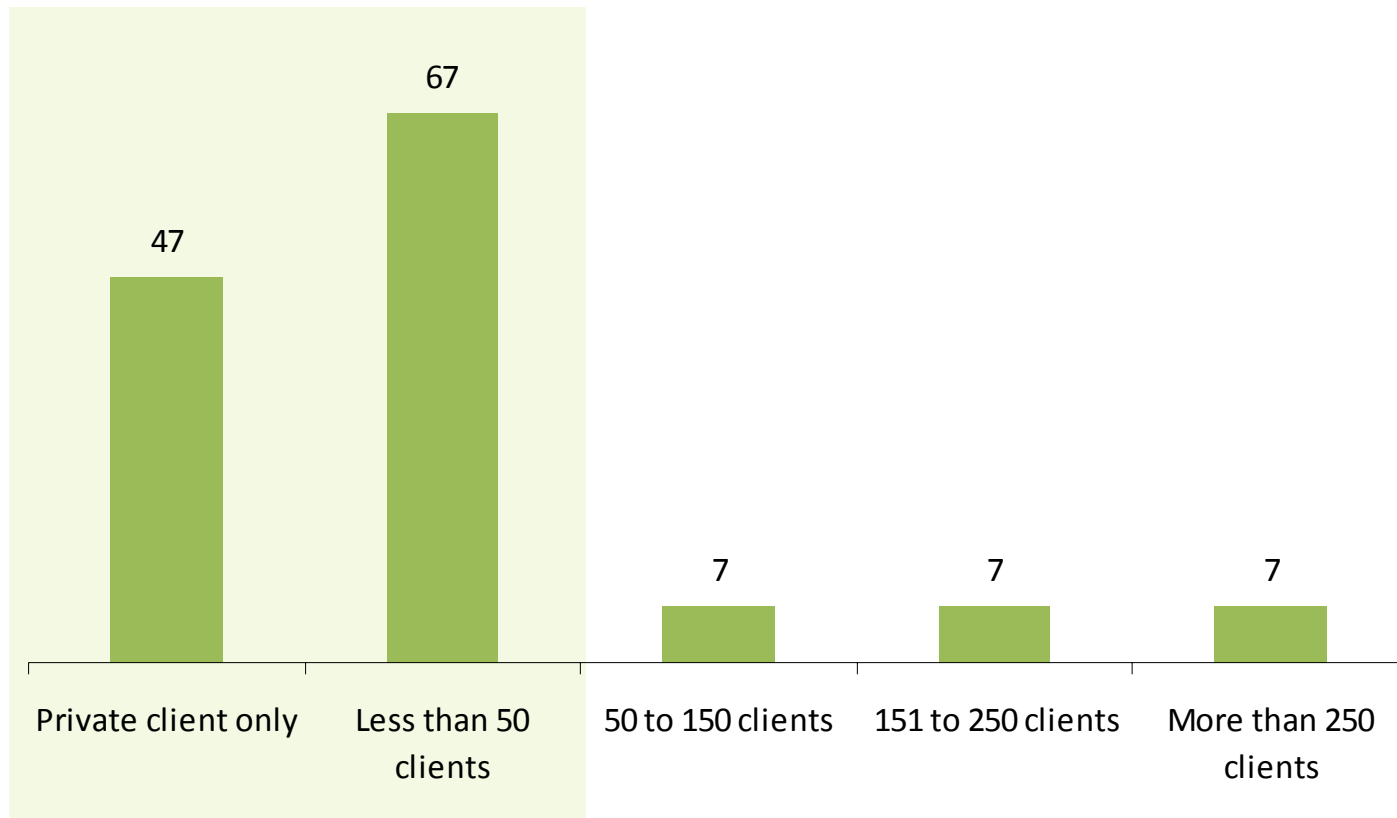
# Of Your Firm's Total AUM, what Percentage is Institutional (Sophisticated Investors Including Pensions, Large Public Company, Foundations, Endowments, etc.)?

Percentage of respondents



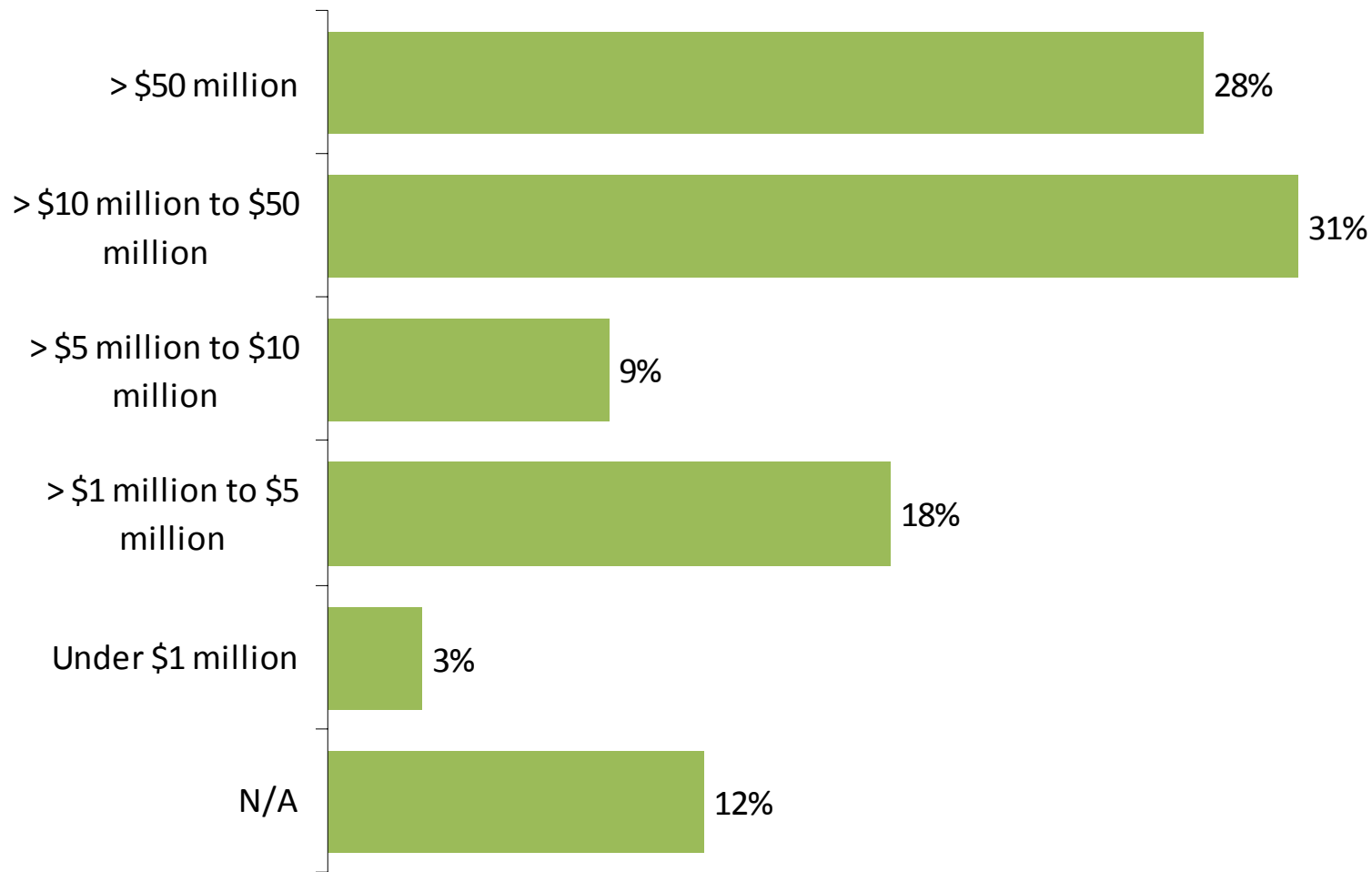
# Please Estimate Your Firm's Total Number of Institutional Clients

Number of respondent firms



# Please Estimate the Average Mandate of your Institutional Clients

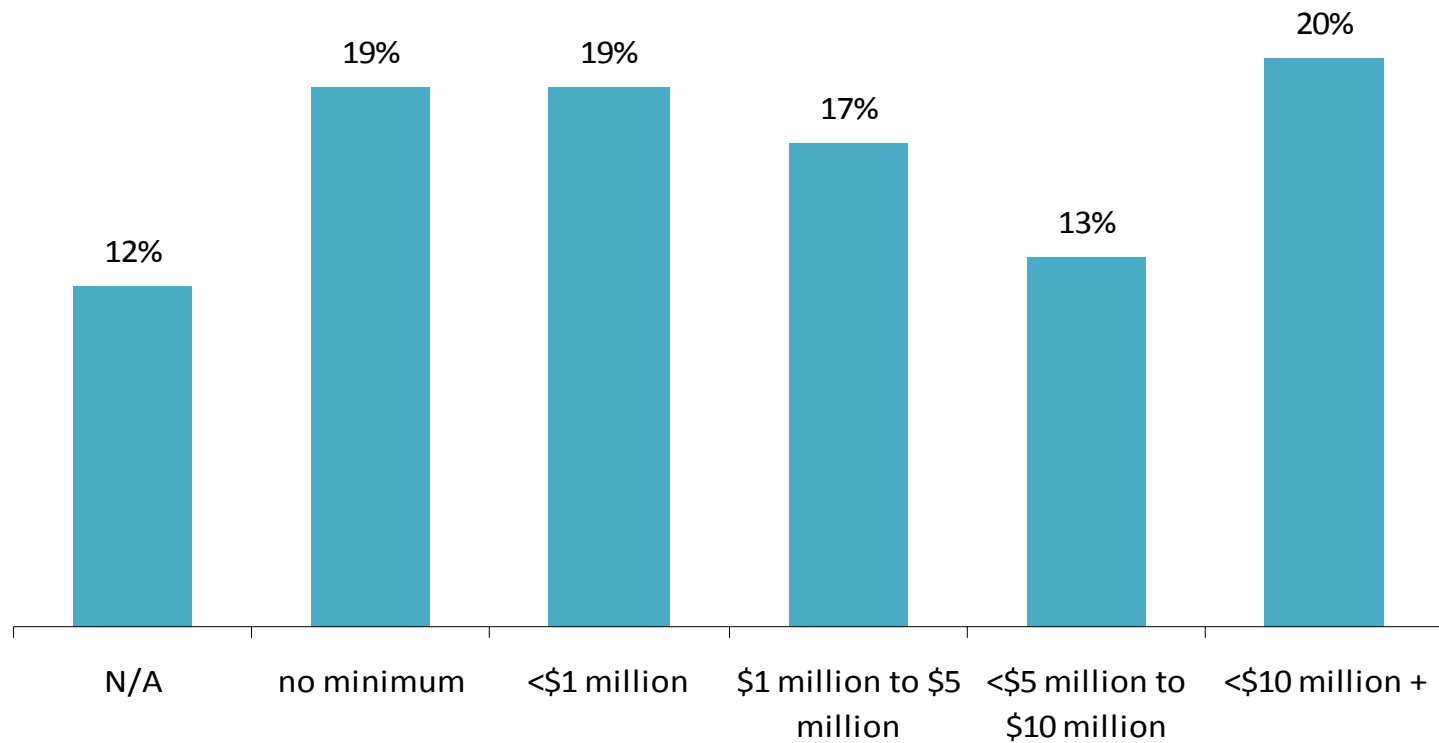
Percentage of respondents





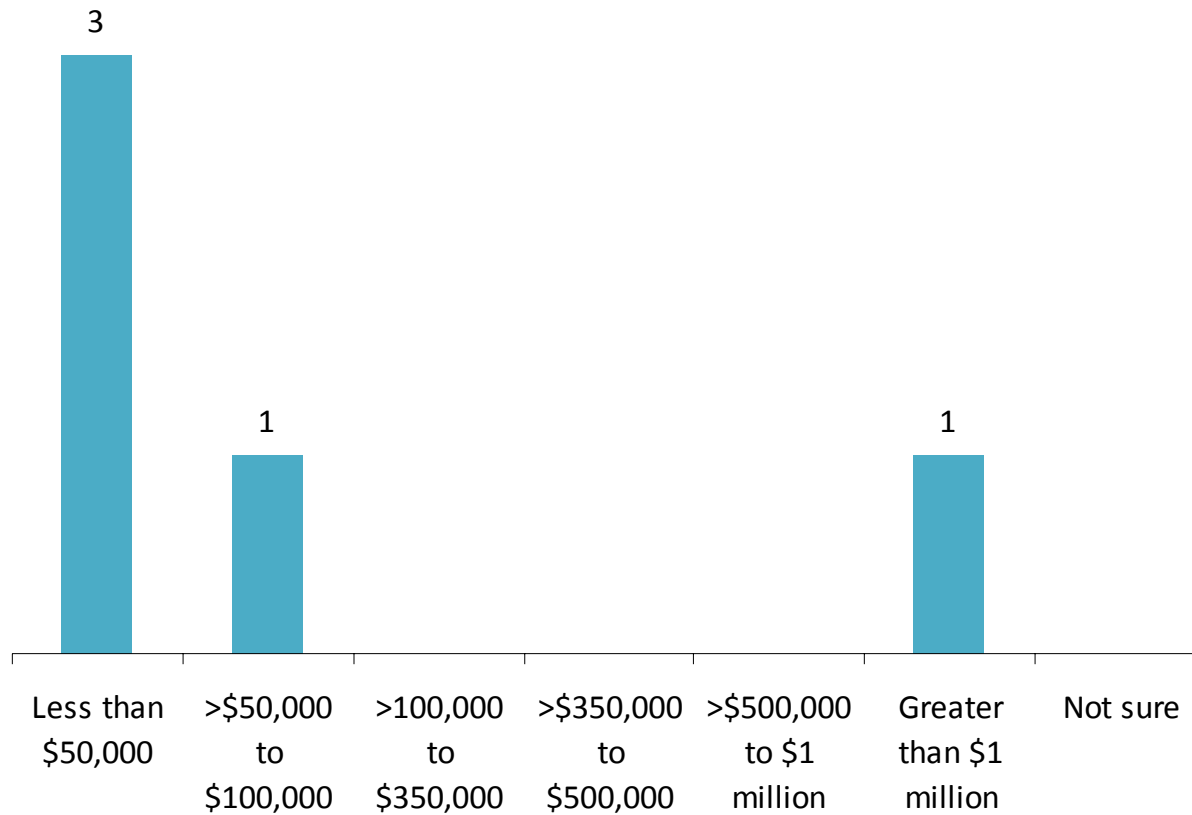
# Please Indicate your Institutional Client Account Minimum

Percentage of respondents



# For your Institutional Accounts, please Indicate the Average Dollar Value of Quantifiable Complaints your Firm has Dealt with in the Last 5 Years

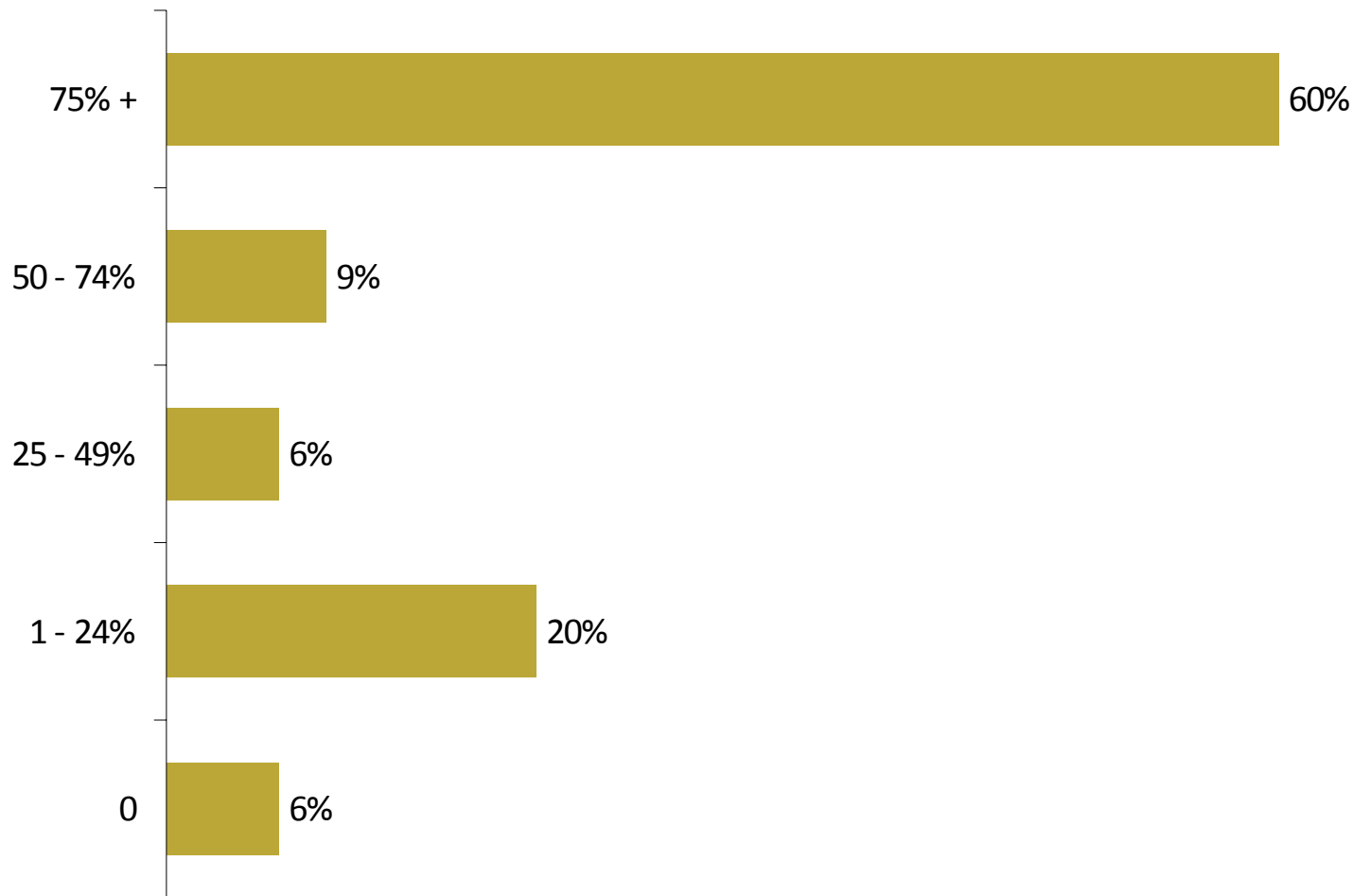
Complaints by dollar range



*Note: 95 respondents answered question with 90 Firms (94.9%) indicating they had no formal complaints*

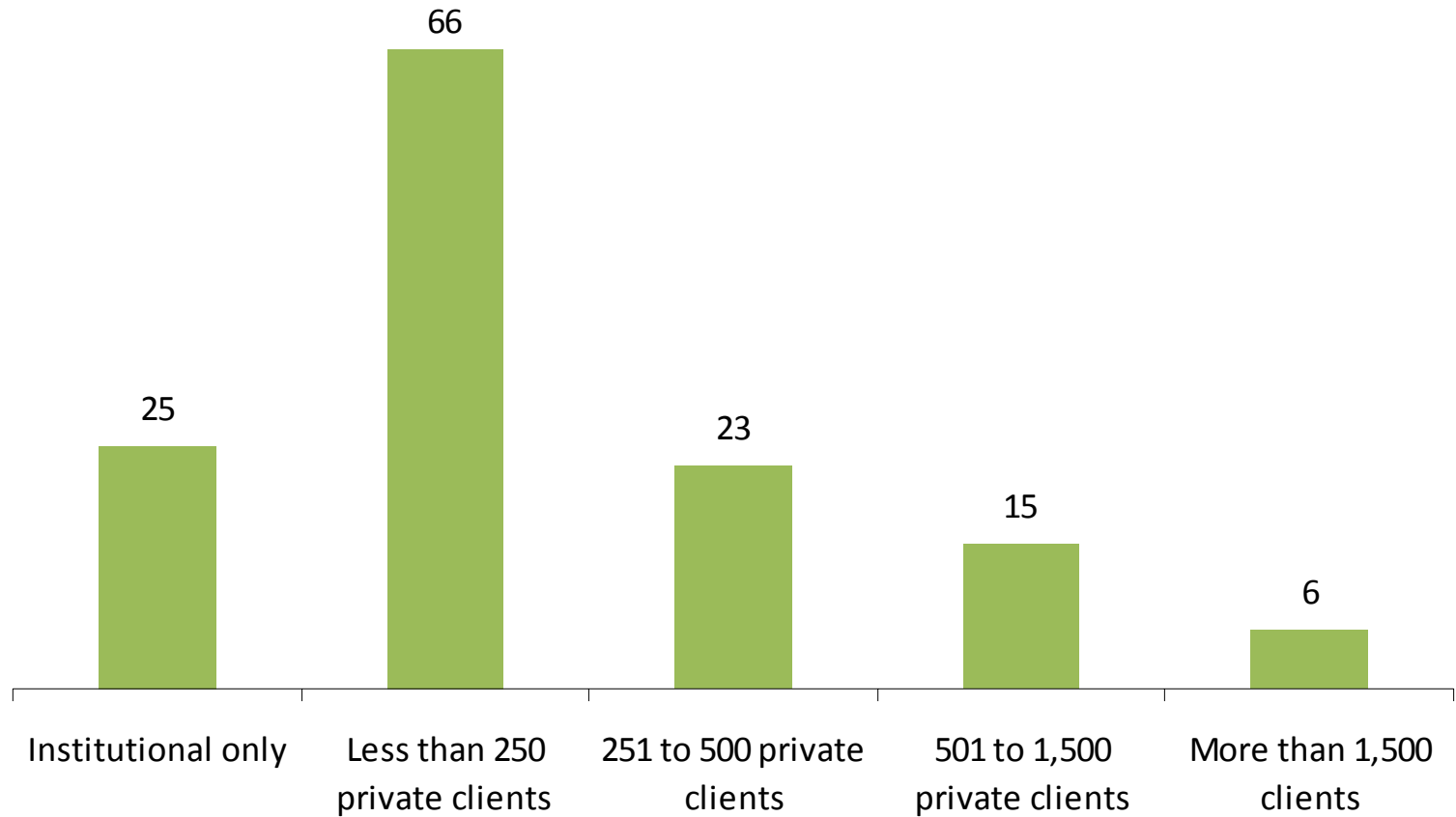
# What Percentage of your Firm's Total AUM is Private Client?

Percentage of respondents



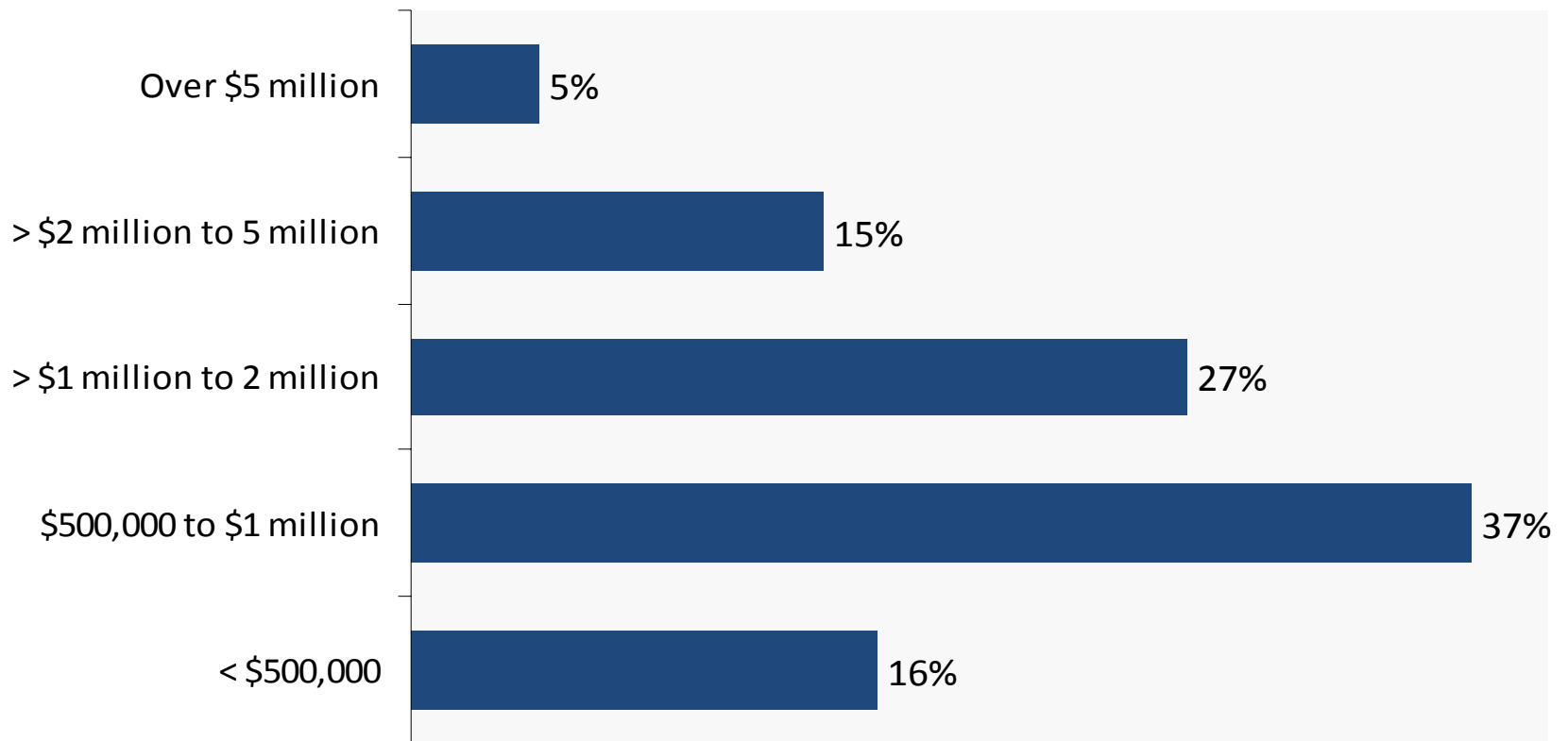
# Please Estimate your Firm's Total Number of Private Clients

Number of respondents



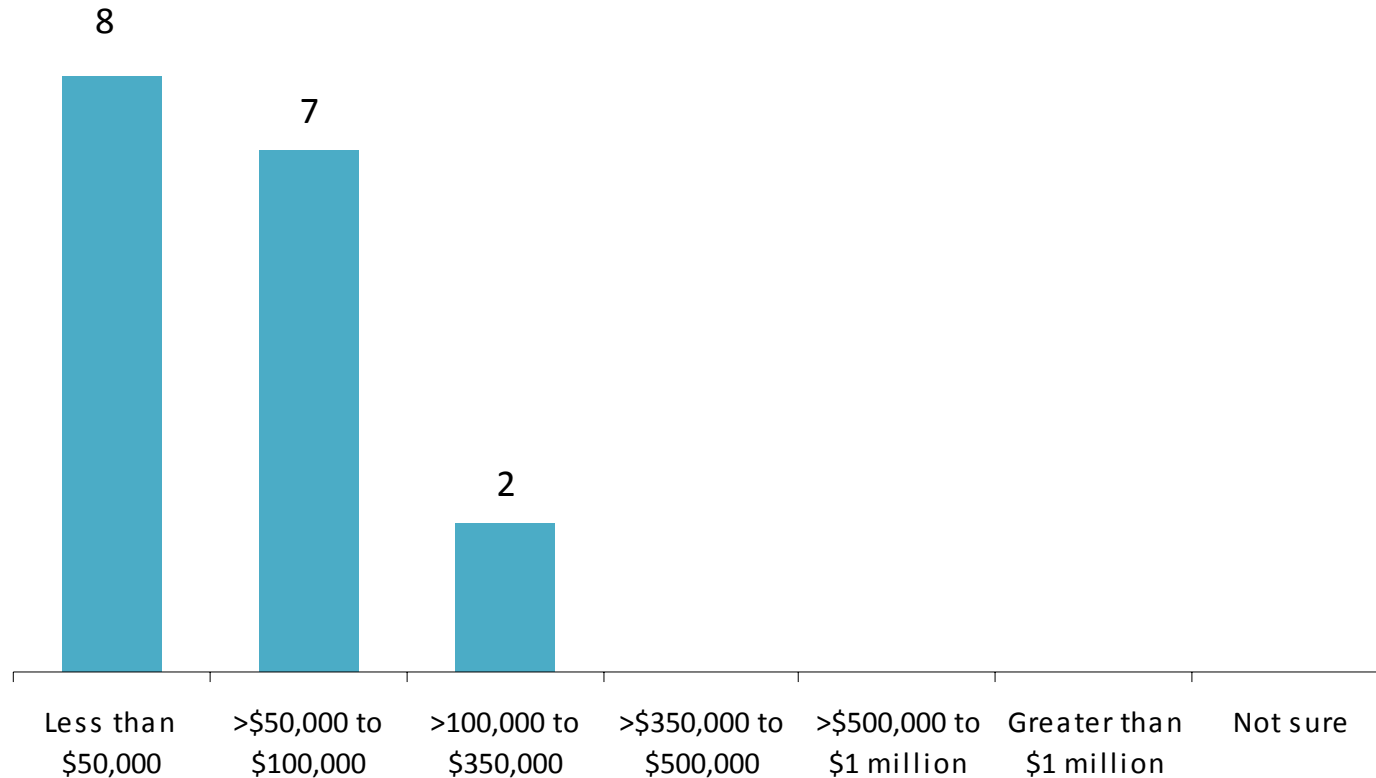
# For your Private Client Accounts, what Is the Average Portfolio Size of Each Account?

Percentage of respondents



# For your Private Clients, please Indicate the Average Dollar Value of Quantifiable Complaints your Firm has Dealt with in the Last 5 Years

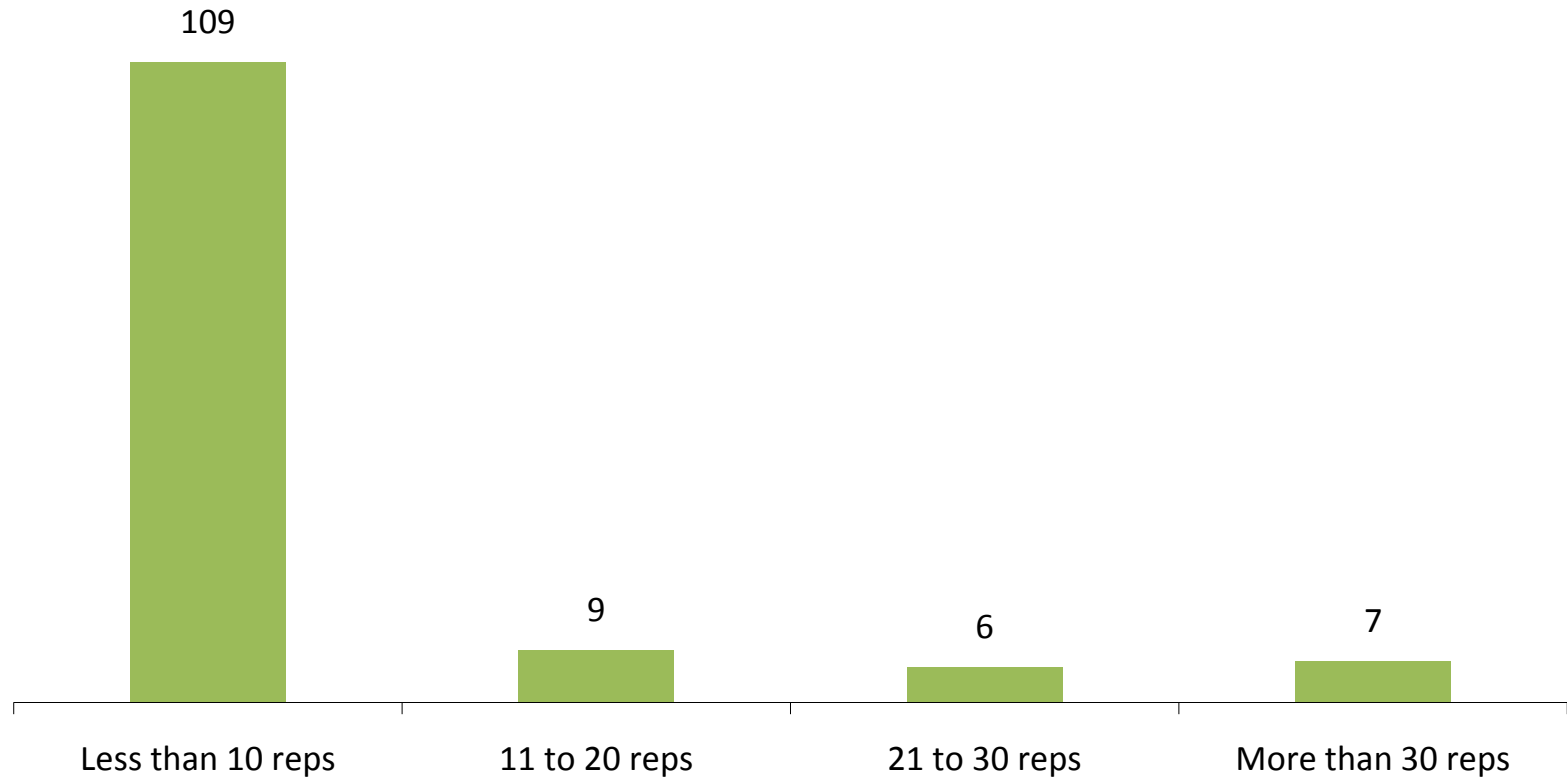
Number of complaints by dollar range



*Note: 96 of 113 firms (85%) that answered the question had no formal complaints*

# How Many Registered Advising Representatives does your Firm Have?

Number of respondents



# Between 2008 - 2012, did your Firm File Any Insurance Claims Under your Corporate Financial Institution Bond Insurance Policy?

Percentage of respondents

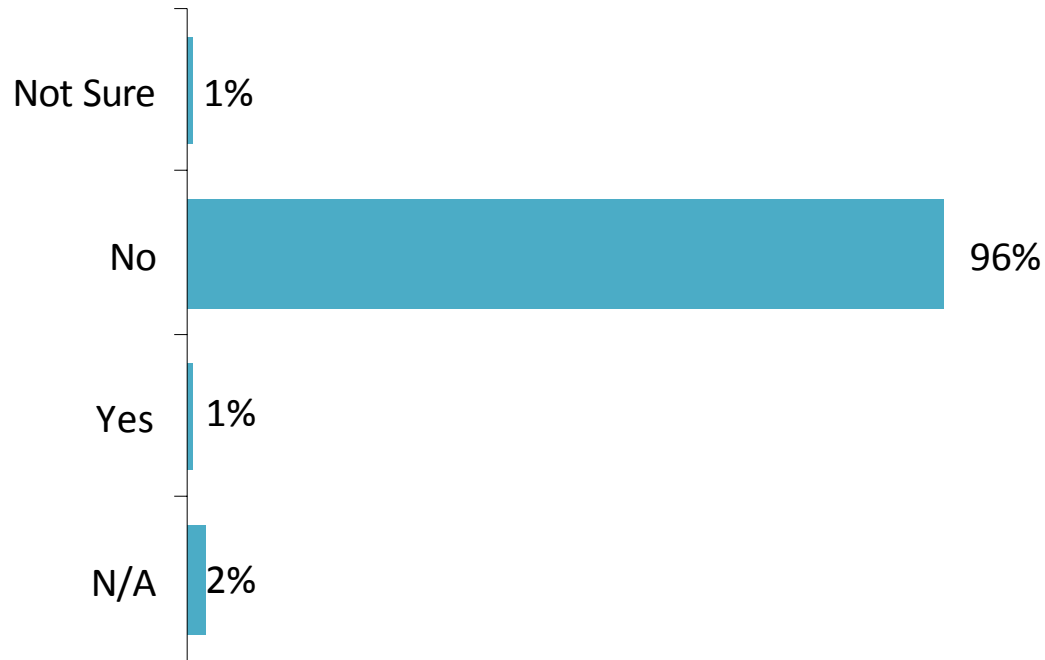


*Note: A single firm filed a claim under the corporate Financial Institution Bond insurance policy*



# Between 2008 - 2012, did your Firm File Any Insurance Claims Under Your Corporate Professional Liability Policy or Errors & Omissions Policy?

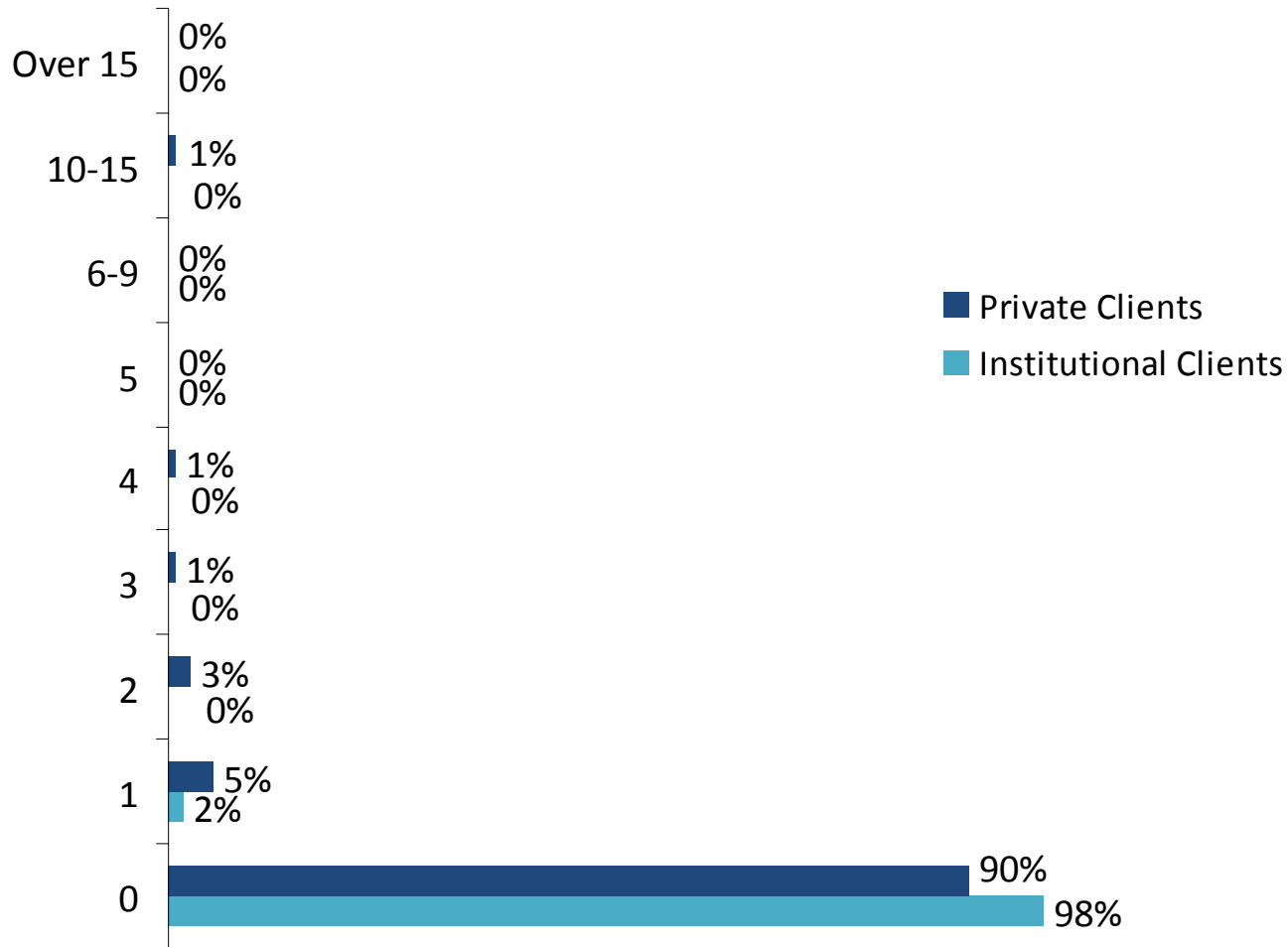
Percentage of respondents



*Note: A single firm filed a claim under the corporate professional liability policy on errors and omissions*

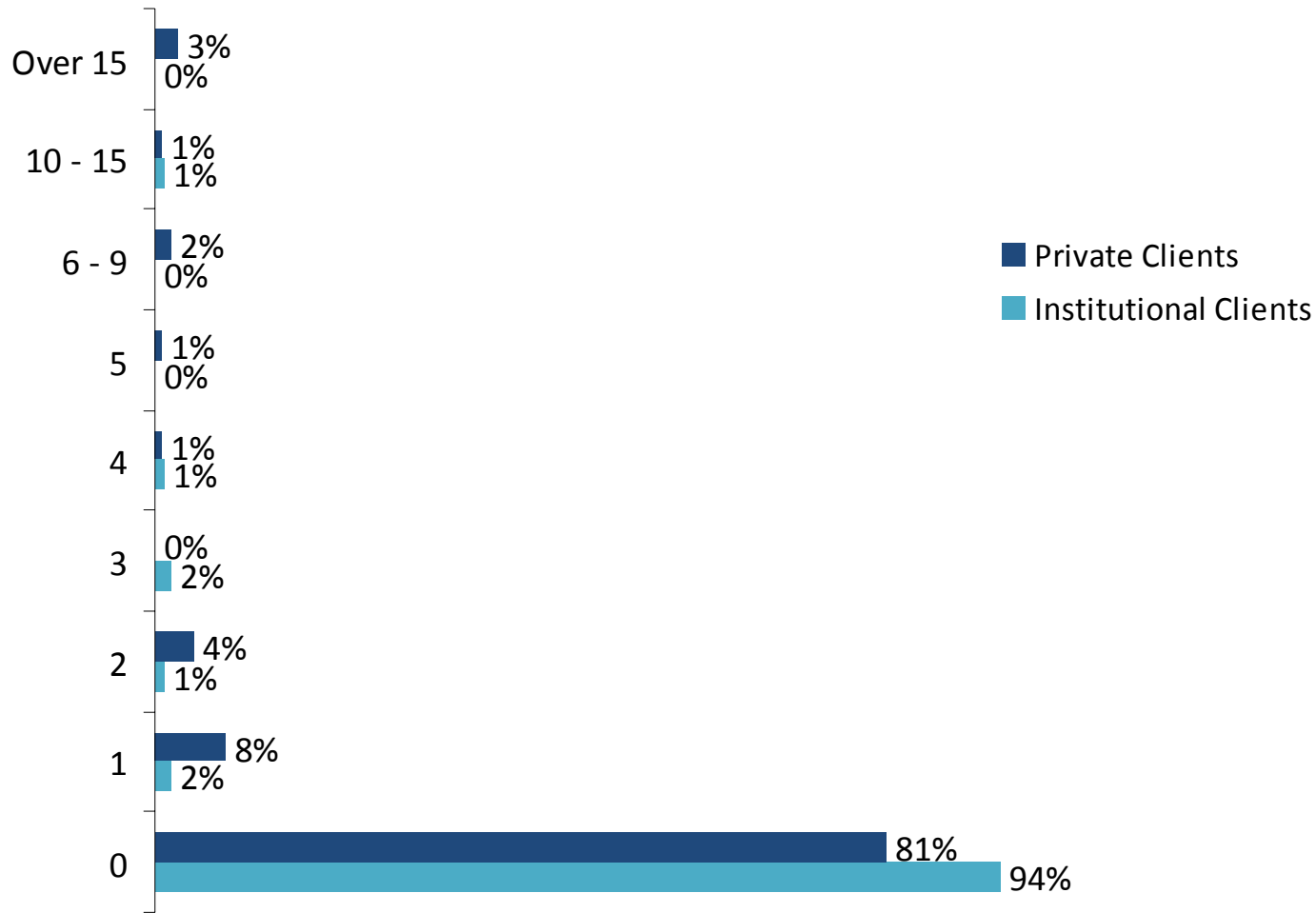
# Please Indicate the Number of Complaints your Firm Received in 2012

Percentage of respondents



# Please Estimate the Number of Complaints your Firm Received from 2008 to 2011

Percentage of respondents



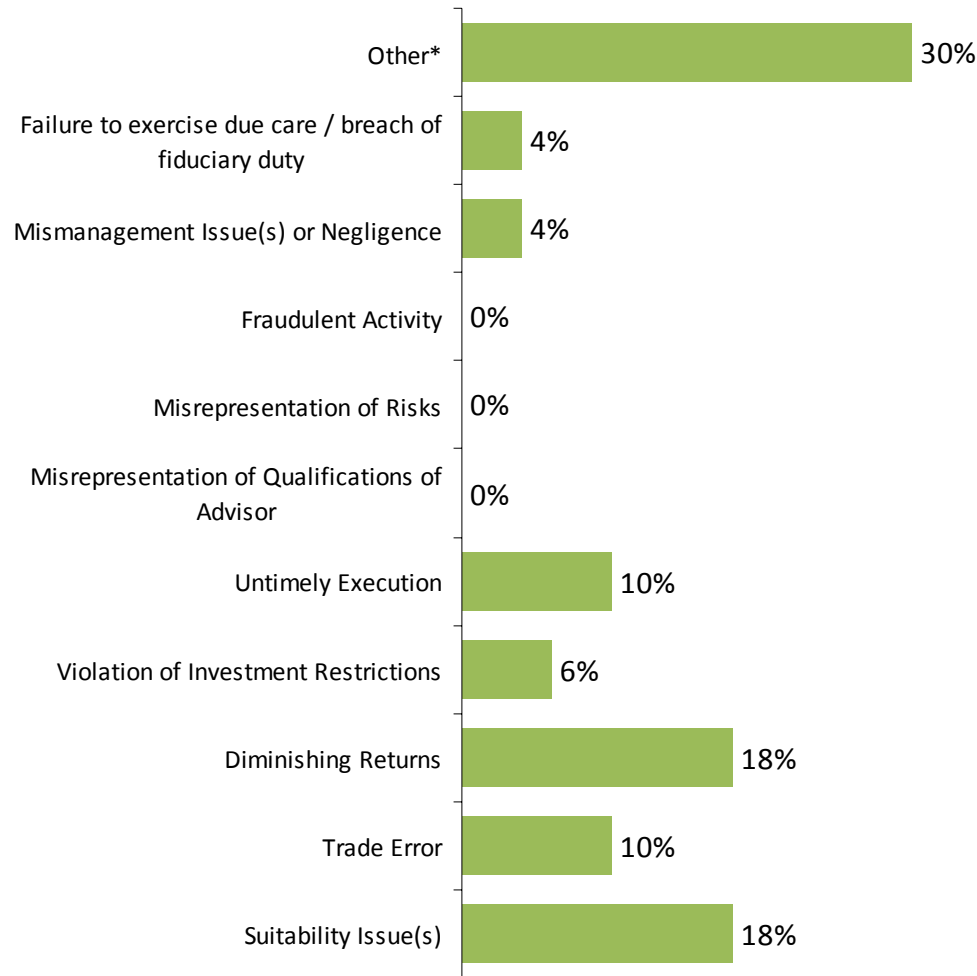
# Please Specify the Number and Nature of Complaints the Firm was Unable to Resolve Satisfactorily in the Past 2 Years

## Summary of written comments

- Over the past 2 years, 5 respondents reported complaints that had not been resolved to the client's satisfaction pursuant to the firm's complaint handling policy.
- Four of the 5 firms reported one complaint each and 1 firm reported 4 complaints.
  - 2 of these firms had no institutional assets, 2 had less than 25% institutional assets and 1 had between 25% and 50% institutional assets.
  - The nature of the complaints related to suitability and execution timeliness.

# The Nature of Past Complaints Generally can be Described as Follows (Check all that Apply)

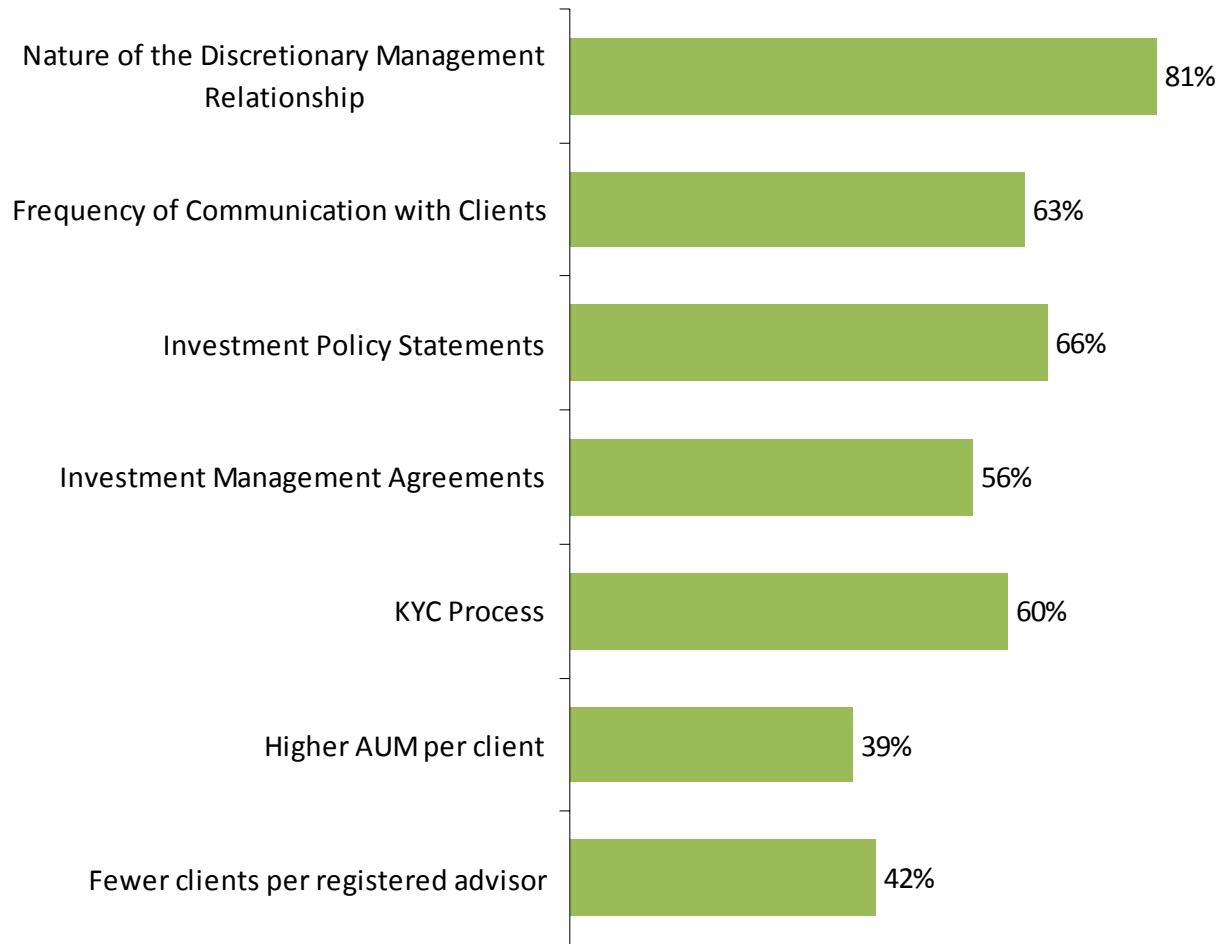
Percentage of respondents



*\*Other adjusted for comments that indicated no complaints. Remaining Other included service, admin issues around statements and pricing.*

# In your Opinion, what are Some of the Reasons why Portfolio Managers may have Lower Complaint Volume?

Percentage of respondents



# In your Opinion, what are Some of the Reasons why Portfolio Managers may have Lower Complaint Volume?

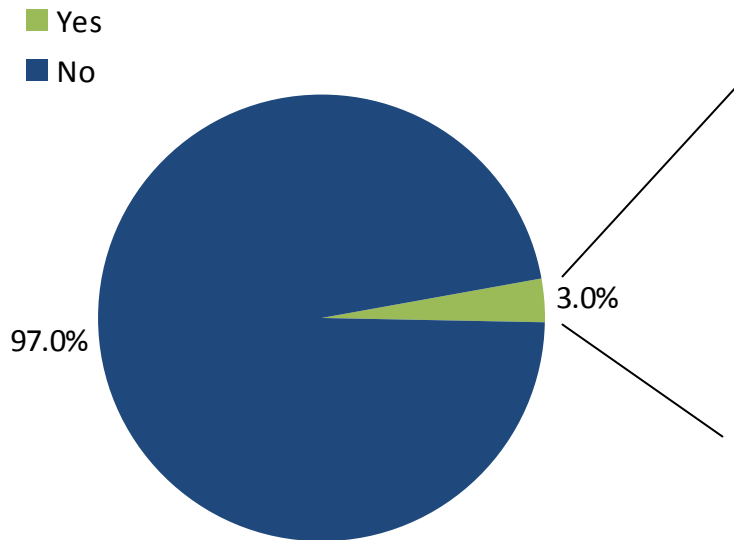
## Summary of written comments

- Written comments for “Other” reasons were largely focused on the nature of the discretionary relationship which has a high level of client and advisor sophistication.
- The fee-based nature (versus transactional or higher level of fees) of the relationship and its fiduciary nature were also suggested as key elements in creating a relationship where expectations are well aligned.
  - These comments were very consistent across firms with different private and institutional business mix.
  - Comments on the fee-based nature of the relationship were more prevalent among firms with under 50% institutional business.
- These written comments reflected a view developed throughout the survey that the discretionary relationship between client and portfolio manager, institutional or private, forms a unique relationship dynamic that would not be served by the more general focus of OBSI.

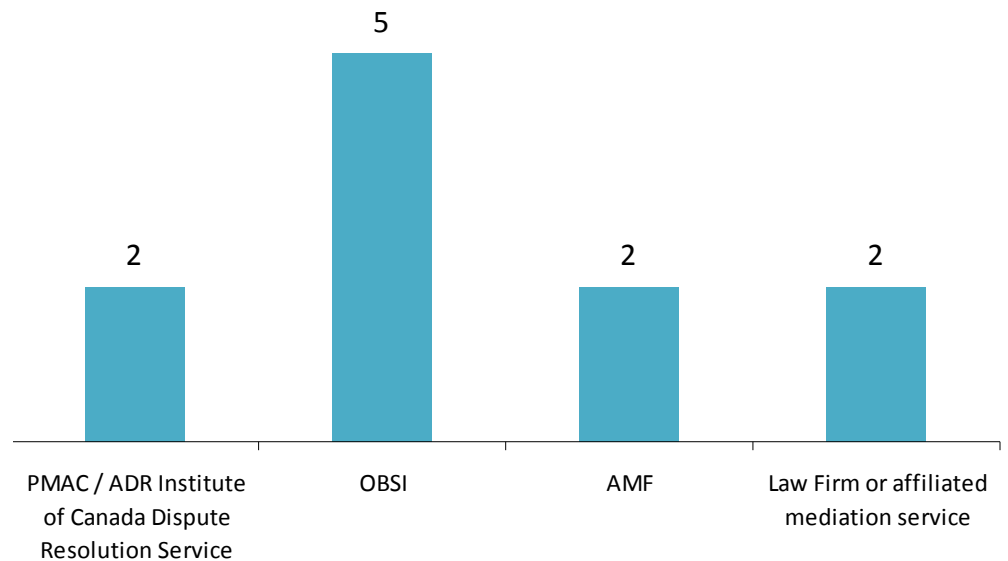
# Has your Firm Utilized the Services of a Dispute Resolution Provider in the Last 5 Years?

Percentage of respondents that used a provider and number of respondents by service provider

## Utilization of a Dispute Resolution Provider



## Dispute Resolution Provider Used in Last 5 Years





# Use of Dispute Resolution Providers by the Institutional Share of a Firm's AUM

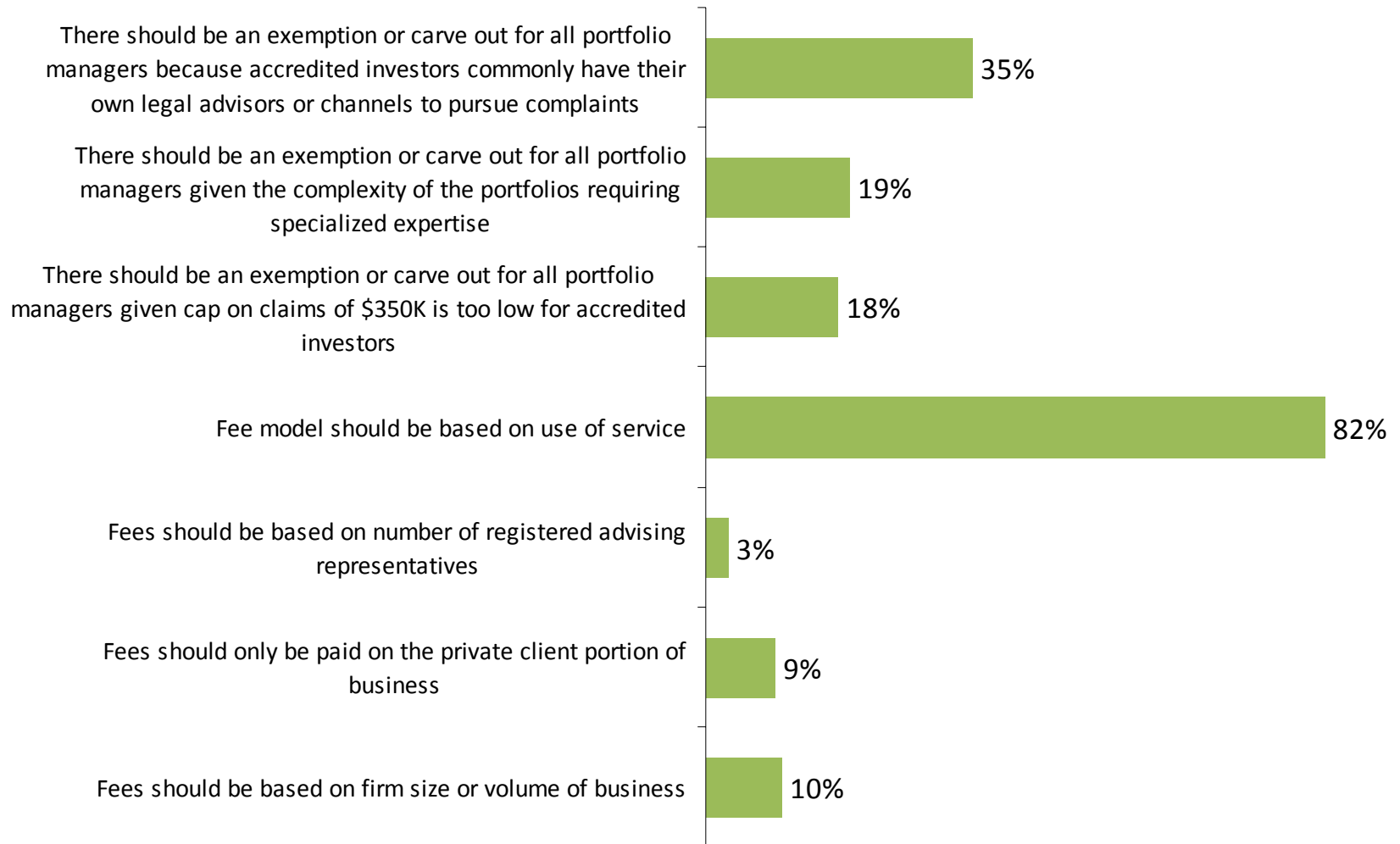
Percentage distribution of responses

**Question:** *If your firm has used a dispute resolution service provider, please indicate which provider(s)?*

	0	1 - 24%	25 - 49%	50 - 74%	75% +	All firms
Independent Mediator or Arbitrator	—	—	—	—	—	—
PMAC / ADR Institute of Canada Dispute Resolution Service	1	—	—	—	1	2
ADR Chambers	—	—	—	—	—	—
Canadian Dispute Resolution Co. (CDRC)	—	—	—	—	—	—
OBSI	—	3	—	—	2	5
AMF	1	—	—	—	1	2
Law Firm or affiliated mediation service	1	—	—	1	—	2

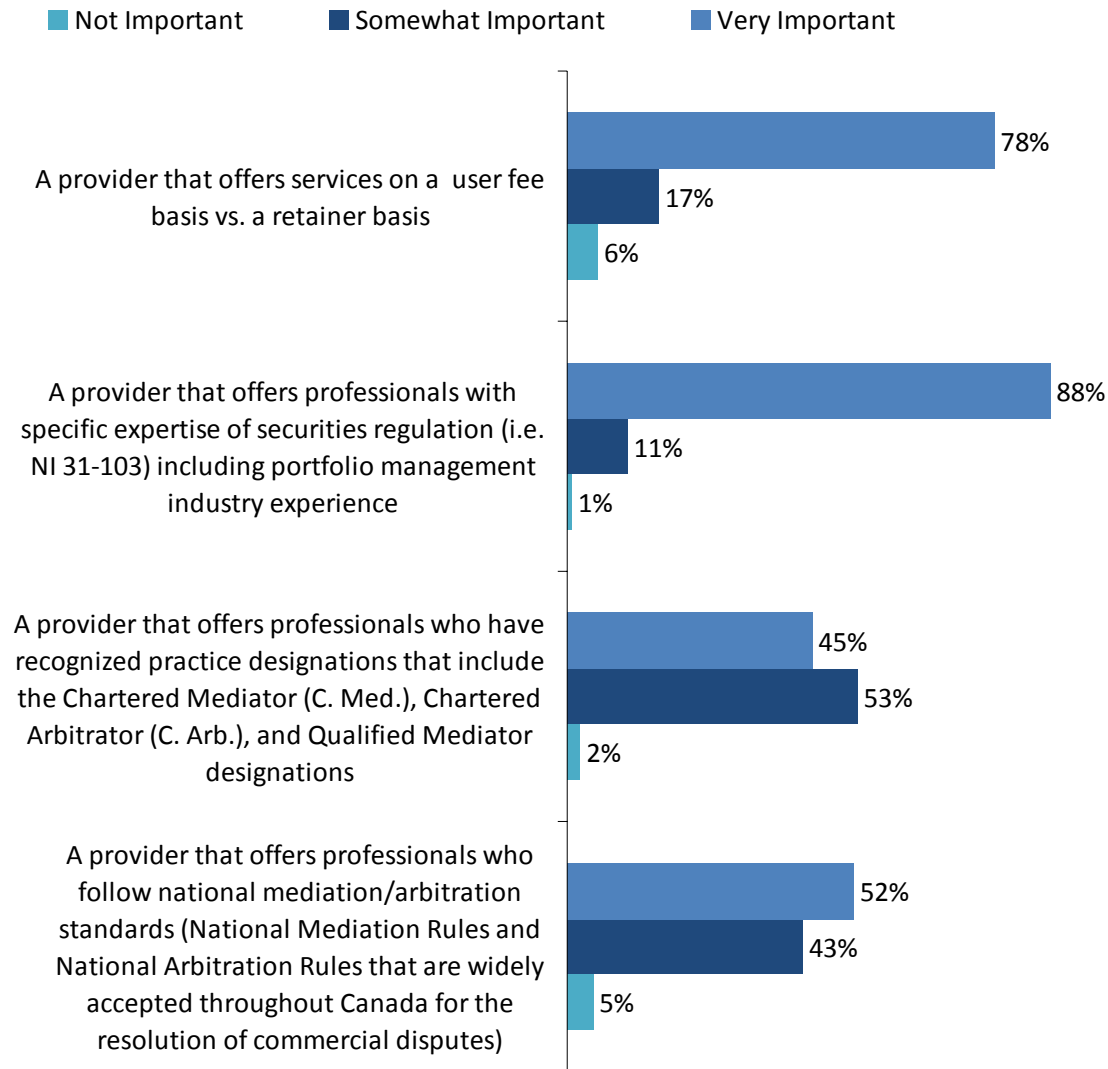
# Currently, all Participating OBSI Firms Pay a Levy Based on their Size or Volume of Business. What are your Views on this Potential Fee Model?

Percentage of respondents



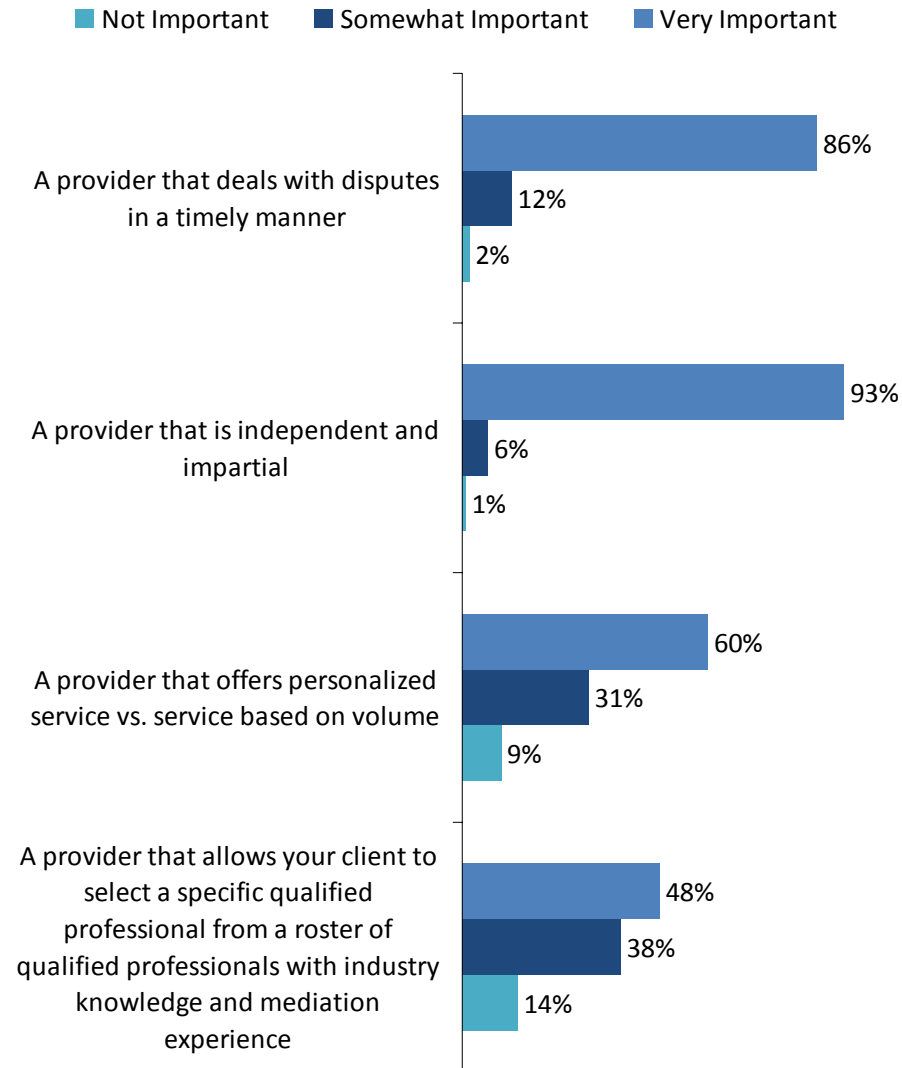
# If you were given the Option of Selecting a Dispute Resolution Service Provider, what would be of most Importance in your Selection Process?

Percentage of respondents



# If you were given the Option of Selecting a Dispute Resolution Service Provider, what would be of most Importance in your Selection Process? (Continued)

Percentage of respondents



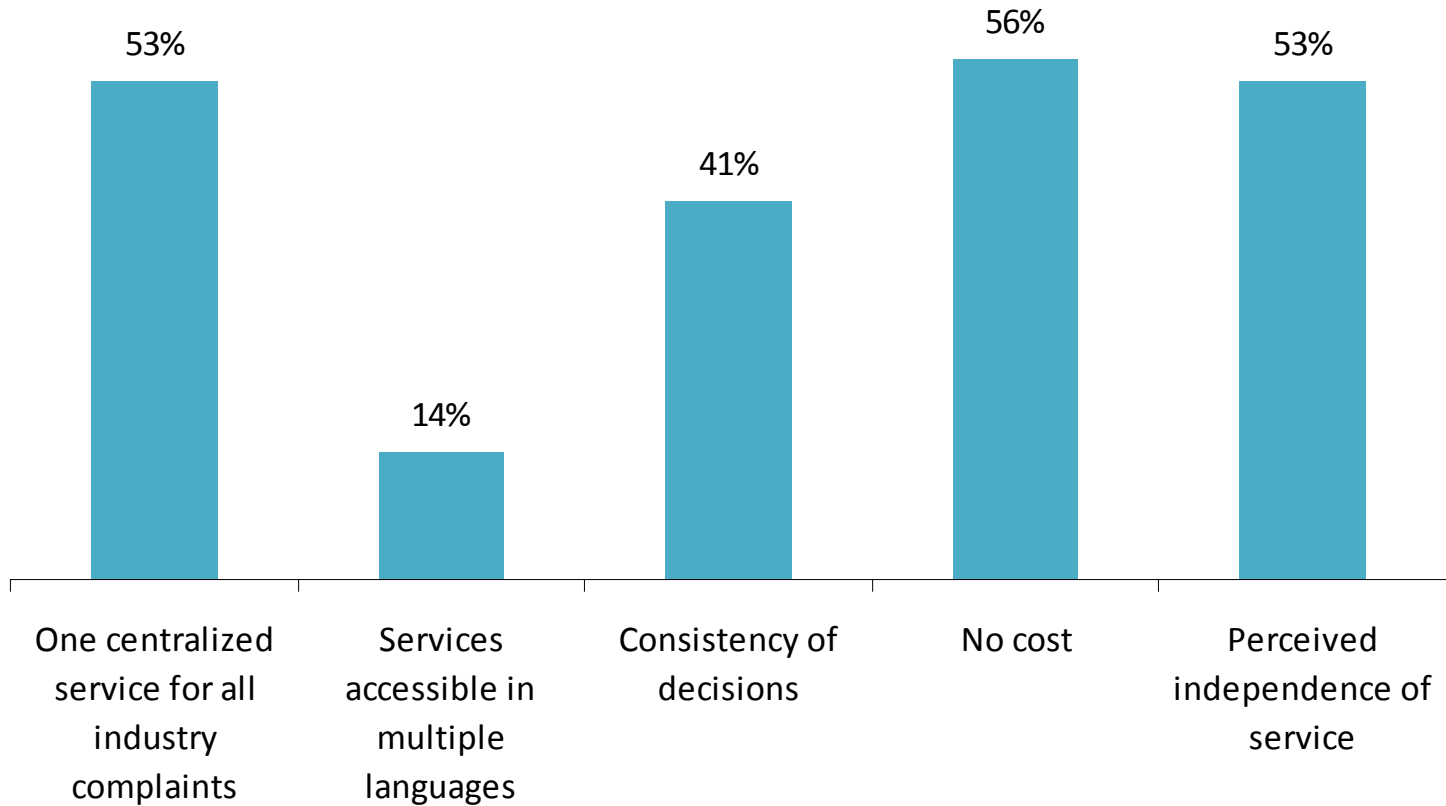
# If you were given the Option of Selecting a Dispute Resolution Service Provider, what would be of most Importance in your Selection Process? (Continued)

## Summary of written comments

- 7 respondents of 126 that answered the questions left a written comment. The majority of remarks noted the importance of industry knowledge and the dynamic of the client relationship in portfolio management. One respondent suggested mediators should be experienced portfolio managers with a Chartered Financial Analyst (CFA) designation.
- Need for impartiality was also stressed i.e. no preconceived notion that adviser is to be blamed.
- Verbatim comments:
  - *Only respect individuals that are peers; experienced PMs with CFA*
  - *A provider knowledgeable in the PM business and discretionary management*
  - *A provider that understands the complexities of discretionary management*
  - *Knowledge of industry is key. Dynamics of how things work between clients and portfolios and no preconceived notion that the advisor is blamed; need impartiality*

# What would be some of the Benefits to your Clients if OBSI was Available to them as a Dispute Resolution Service Provider? Check all that Apply

Percentage of respondents



*Note: 8% indicated no benefit to clients in comment field*

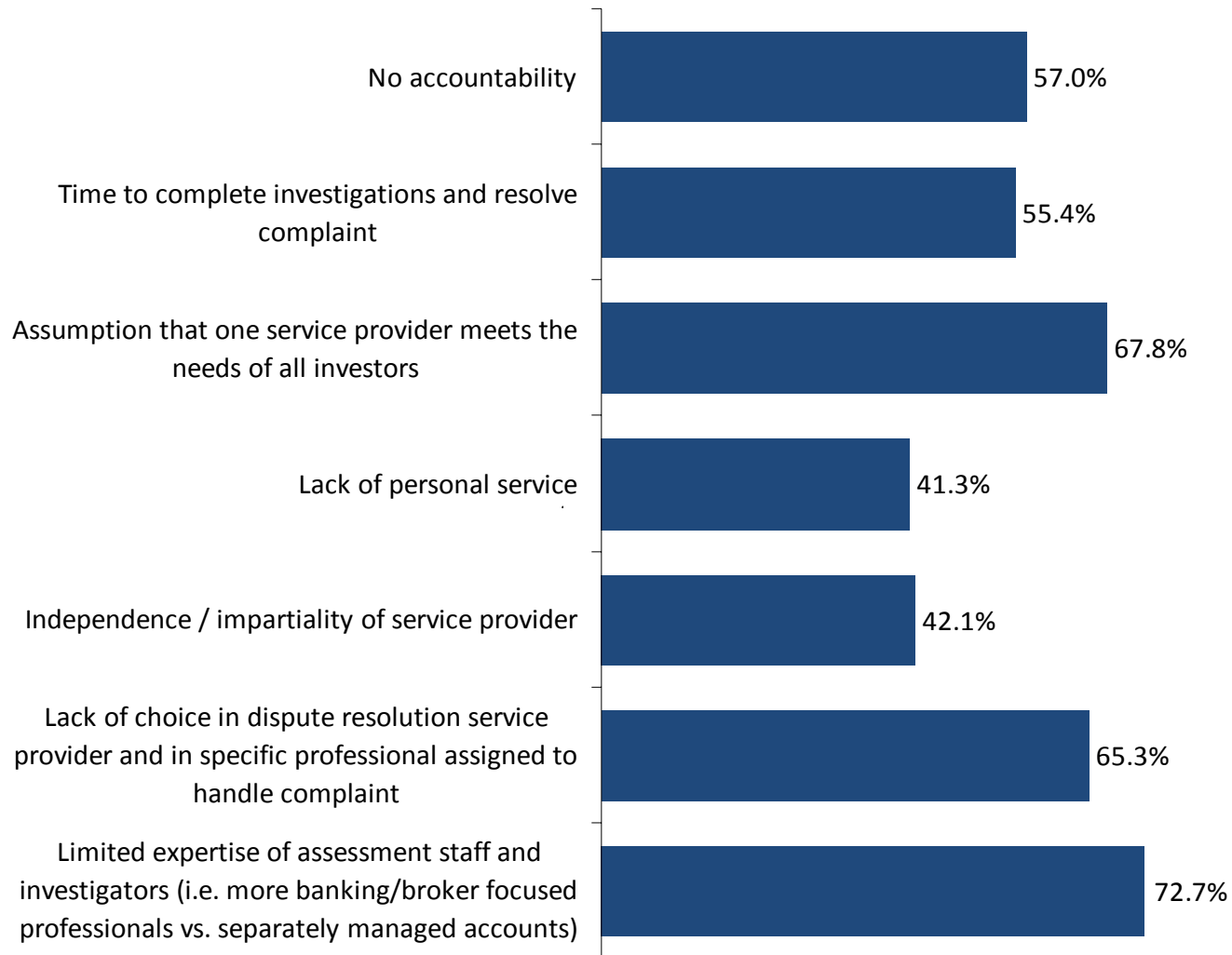
## What would be some of the Benefits to your Clients if OBSI was Available to them as a Dispute Resolution Service Provider? Check all that Apply

Summary of written comments

- Written comments were provided by only 9 respondents, with 8 of 9 discounting the potential benefits listed in strongly worded terms, citing:
  - Lack of familiarity with the segment
  - Lack of need
  - Exit of banks being a bell-weather of quality
  - Added costs
- 2 firms had no institutional assets, 4 firms had less than 24%, 1 had between 25% and 49% and 1 had more than 75%.

# What are some of the Concerns your Clients might have if they are Required to Use OBSI? Check all that Apply

Percentage of respondents





# Please Provide any Additional Feedback you may have on the CSA Proposal to Mandate the Use of OBSI?

## Summary of written comments

- Of the 137 respondents, 28 provided written comments. These additional comments focused largely on the infrequency of complaints, the unique nature of the discretionary portfolio management business and the inability of OBSI to properly address the types of complaint that arise.
  - *We would be very much opposed to being mandated into paying for a service that is so infrequently used.*
  - *We pay enough fees so why should we pay more for a non-existent problem.*
  - *I don't believe such a service should be mandated. Firms such as ours, which have never had to utilize these services - and have never had a client complaint - shouldn't have to pick up the tab for those firms that need to use these services.*
  - *We are a large firm by AUM, but receive a minimal number of complaints. Any fee system based on firm size rather than usage would impact our firm negatively. We are concerned about the expertise of OBSI staff in determining how to resolve complaint issues in securities matters and in calculating compensation where required.*
  - *Should only apply to IIROC and not PMAC firms.*
  - *Banks have left OBSI due to their concern over OBSI's ability to mediate impartially. IIROC members would leave OBSI if given the choice. Perception is that OBSI does not understand the financial services sector and sides with the client, acts more as an investor advocate than a mediator.*



## **Selected Cross-tabulations:**

**Results by firm size, nature of business and complaint history**

The background is a solid teal color. It features several faint, semi-transparent white and light teal graphics. There are two jagged line graphs, one in the upper left and one in the upper right. In the center, there is a bar chart with several vertical bars of varying heights. At the bottom, there is a pattern of binary code (0s and 1s) arranged in a grid-like fashion.

Firm Size

## Frequency of Past Complaints Segmented by Firm AUM

**Question:** *The nature of past complaints generally can be described as follows (check all that apply)*

	<\$300 million	\$300 million to \$1 billion	>\$1 billion to \$3 billion	>\$3 billion to \$10 billion	>\$10 billion	All firms
Mismanagement Issue(s) or Negligence	—	2	—	—	—	2
Suitability Issue(s)	—	2	1	1	5	9
Violation of Investment Restrictions	—	1	—	—	2	3
Diminishing Returns	1	3	3	—	2	9
Untimely Execution	1	1	2	—	1	5
Trade Error	—	3	—	1	1	5
Misrepresentation of Qualifications of Advisor	—	—	—	—	—	—
Misrepresentation of Risks	—	—	—	—	—	—
Fraudulent Activity	—	—	—	—	—	—
Failure to exercise due care / breach of fiduciary duty	—	1	—	—	1	2

# Reasons for Lower Customer Complaint Volume in Comparison to Retail Sector Segmented by Firm AUM

Percentage distribution of responses

**Question:** According to the Association's research to date, our members' customer complaint volume is significantly lower than in other retail sectors of the industry. In your opinion, what are some of the reasons why Portfolio Managers may have lower complaint volume?

	<\$300 million	\$300 million to \$1 billion	>\$1 billion to \$3 billion	>\$3 billion to \$10 billion	>\$10 billion	All firms
Higher AUM per client	9%	10%	10%	11%	9%	10%
Few clients per advisor	12%	10%	4%	9%	11%	10%
Investment Management Agreements	12%	10%	18%	20%	17%	14%
Investment Policy Statements	16%	15%	18%	17%	16%	16%
Frequency of Communications with Clients	14%	17%	20%	14%	14%	15%
Nature of the Discretionary Management Relationship	21%	22%	16%	17%	19%	20%
KYC Process	16%	16%	14%	11%	14%	15%

# Use of Dispute Resolution Providers by Firm AUM

## Percentage distribution of responses

*Question: If your firm has used a dispute resolution service provider, please indicate which provider(s)*

	<\$300 million	\$300 million to \$1 billion	>\$1 billion to \$3 billion	>\$3 billion to \$10 billion	>\$10 billion	All firms
Independent Mediator or Arbitrator	—	—	—	—	—	—
PMAC/ADR Institute of Canada Dispute Resolution Service	1	—	—	—	1	2
ADR Chambers	—	—	—	—	—	—
Canadian Dispute Resolution Co. (CDRC)	—	—	—	—	—	—
OBSI	—	1	1	—	3	5
AMF	1	—	—	—	1	2
Law Firm or affiliated mediation service	—	2	—	—	—	2

# Perceived Benefits to Clients if OBSI was Available as a Dispute Resolution Service Provider Segmented by Firm AUM

Percentage distribution of responses

**Question:** *What are some of the benefits to your clients if OBSI was available to them as a dispute resolution service provider? Check*

	<\$300 million	\$300 million to \$1 billion	>\$1 billion to \$3 billion	>\$3 billion to \$10 billion	>\$10 billion	All firms
One centralized service for all industry complaints	23%	28%	24%	29%	23%	25%
Services accessible in multiple languages	4%	3%	6%	14%	9%	6%
Consistency of decisions	23%	18%	18%	24%	13%	19%
No cost	32%	25%	21%	14%	26%	26%
Perceived independence of service	19%	26%	32%	19%	28%	25%

# Perceived Concerns of Clients if OBSI was Available as a Dispute Resolution Service Provider Segmented by Firm AUM

Percentage distribution of responses

**Question:** *What are some of the concerns your clients might have if they are required to use OBSI? Check all that apply.*

	<\$300 million	\$300 million to \$1 billion	>\$1 billion to \$3 billion	>\$3 billion to \$10 billion	>\$10 billion	All firms
Limited expertise of assessment staff and investigators (i.e. more banking/broker focused professionals vs. separately managed accounts)	21%	21%	20%	15%	22%	21%
Lack of choice in dispute resolution service provider and in specific professional assigned to handle complaint	16%	19%	22%	23%	20%	19%
Independence / impartiality of service provider	16%	11%	10%	12%	9%	12%
Lack of personal service	13%	13%	12%	12%	9%	12%
Assumption that one service provider meets the needs of all investors	18%	20%	20%	23%	20%	20%
Time to complete investigations and resolve complaint	15%	16%	14%	15%	19%	16%
No accountability	20%	12%	14%	15%	18%	17%



The background is a solid teal color. Overlaid on this are several faint, semi-transparent graphics: a line graph with multiple peaks and valleys, a bar chart with several vertical bars of varying heights, and a grid of binary code (0s and 1s) in the lower right quadrant. The text 'Nature of Business' is centered in the middle of the page in a white, sans-serif font.

## Nature of Business

## Frequency of Past Complaints Segmented by the Institutional Share of a Firm's AUM

**Question:** *The nature of past complaints generally can be described as follows (check all that apply)*

	0	1 - 24%	25 - 49%	50 - 74%	75% +	All firms
Mismanagement Issue(s) or Negligence	—	2	—	—	—	2
Suitability Issue(s)	1	6	1	—	1	9
Violation of Investment Restrictions	1	—	1	1	—	3
Diminishing Returns	1	5	1	—	2	9
Untimely Execution	1	—	3	—	1	5
Trade Error	1	1	1	1	1	5
Misrepresentation of Qualifications of Advisor	—	—	—	—	—	—
Misrepresentation of Risks	—	—	—	—	—	—
Fraudulent Activity	—	—	—	—	—	—
Failure to exercise due care / breach of fiduciary duty	—	1	—	1	—	2

# Reasons for Lower Customer Complaint Volume in Comparison to Retail Sector Segmented by the Institutional Share of a Firm's AUM

Percentage distribution of responses

**Question:** *According to the Association's research to date, our members' customer complaint volume is significantly lower than in other retail sectors of the industry. In your opinion, what are some of the reasons why Portfolio Managers may have lower complaint volume?*

	0	1 - 24%	25 - 49%	50 - 74%	75% +	All firms
Higher AUM per client	9%	9%	11%	5%	11%	10%
Few clients per advisor	12%	11%	6%	5%	11%	10%
Investment Management Agreements	13%	11%	13%	14%	18%	14%
Investment Policy Statements	16%	17%	15%	22%	14%	16%
Frequency of Communications with Clients	16%	14%	19%	22%	14%	15%
Nature of the Discretionary Management Relationship	19%	21%	19%	16%	21%	20%
KYC Process	16%	15%	17%	16%	12%	15%

# Perceived Benefits to Clients if OBSI was Available as a Dispute Resolution Service Provider Segmented by the Institutional Share of a Firm's AUM

Percentage distribution of responses

**Question:** *What are some of the benefits to your clients if OBSI was available to them as a dispute resolution service provider? Check all that apply.*

	0	1 - 24%	25 - 49%	50 - 74%	75% +	All firms
One centralized service for all industry complaints	21%	30%	21%	24%	22%	25%
Services accessible in multiple languages	4%	5%	5%	4%	10%	6%
Consistency of decisions	20%	21%	26%	20%	12%	19%
No cost	35%	18%	21%	20%	29%	26%
Perceived independence of service	20%	26%	26%	32%	26%	25%

# Perceived Concerns of Clients if OBSI was Available as a Dispute Resolution Service Provider Segmented by the Institutional Share of a Firm's AUM

Percentage distribution of responses

**Question:** *What are some of the benefits to your clients if OBSI was available to them as a dispute resolution service provider? Check all that apply.*

	0	1 - 24%	25 - 49%	50 - 74%	75% +	All firms
Limited expertise of assessment staff and investigators (i.e. more banking/broker focused professionals vs. separately managed accounts)	20%	21%	18%	20%	24%	21%
Lack of choice in dispute resolution service provider and in specific professional assigned to handle complaint	18%	19%	21%	11%	23%	19%
Independence / impartiality of service provider	16%	10%	9%	16%	9%	12%
Lack of personal service	13%	11%	9%	18%	10%	12%
Assumption that one service provider meets the needs of all investors	18%	22%	21%	16%	20%	20%
Time to complete investigations and resolve complaint	14%	17%	21%	20%	13%	16%
No accountability	18%	17%	12%	14%	18%	17%

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## Complaint History

## Fee Model Preferences Broken Down by whether Firm Received Complaint in the past 5 Years

Percentage distribution of responses

**Question:** *The CSA has been working with OBSI to develop a fee model that will be fair to all registrants. Currently, all participating OBSI firms pay a levy based on their size or volume of business. What are your views on this potential fee model?*

	Firm received complaint		
	Yes	No	Combined
Fees should be based on firm size or volume of business	6%	4%	6%
Fees should only be paid on the private client portion of business	6%	2%	5%
Fees should be based on number of registered advising representatives	2%	—	2%
Fee model should be based on use of service	46%	51%	47%
There should be an exemption or carve out for all portfolio managers given cap on claims of \$350K is too low for accredited investors	9%	12%	10%
There should be an exemption or carve out for all portfolio managers given the complexity of the portfolios requiring specialized expertise	12%	8%	11%
There should be an exemption or carve out for all portfolio managers because accredited investors	19%	22%	20%

# Most Important Factors Considered when Choosing a Resolution Provider Broken Down by whether Firm Received Complaint in the past 5 Years (Continued)

Percentage distribution of responses

**Question:** *If you were given the option of selecting a dispute resolution service provider, please indicate for each option below what would be of most importance in your selection process.*

*A provider that offers professionals who follow national mediation/arbitration standards (National Mediation Rules and National Arbitration Rules that are widely accepted throughout Canada for the resolution of commercial disputes)*

	Firm received complaint		
	Yes	No	Combined
Not Important	5%	4%	5%
Somewhat Important	44%	39%	43%
Very Important	51%	57%	52%

*A provider that offers professionals who have recognized practice designations that include the Chartered Mediator (C. Med.), Chartered Arbitrator (C. Arb.), and Qualified Mediator designations*

	Firm received complaint		
	Yes	No	Combined
Not Important	3%	—	2%
Somewhat Important	52%	56%	53%
Very Important	45%	44%	45%



# Most Important Factors Considered when Choosing a Resolution Provider Broken Down by whether Firm Received Complaint in the past 5 Years (Continued)

Percentage distribution of responses

*A provider that offers professionals with specific expertise of securities regulation (i.e. NI 31-103) including portfolio management industry experience*

	Firm received complaint		
	Yes	No	Combined
Not Important	1%	—	1%
Somewhat Important	12%	7%	11%
Very Important	87%	93%	88%

*A provider that offers services on a user fee basis vs. a retainer basis*

	Firm received complaint		
	Yes	No	Combined
Not Important	6%	4%	6%
Somewhat Important	17%	14%	17%
Very Important	77%	82%	78%

*A provider that allows your client to select a specific qualified professional from a roster of qualified professionals with industry knowledge and mediation experience*

	Firm received complaint		
	Yes	No	Combined
Not Important	13%	14%	14%
Somewhat Important	39%	36%	38%
Very Important	47%	50%	48%

# Most Important Factors Considered when Choosing a Resolution Provider Broken Down by whether Firm Received Complaint in the past 5 Years (Continued)

Percentage distribution of responses

*A provider that offers personalized service vs. service based on volume*

	Firm received complaint		
	Yes	No	Combined
Not Important	9%	11%	9%
Somewhat Important	29%	37%	31%
Very Important	62%	52%	60%

*A provider that is independent and impartial*

	Firm received complaint		
	Yes	No	Combined
Not Important	1%	—	1%
Somewhat Important	5%	11%	6%
Very Important	94%	89%	93%

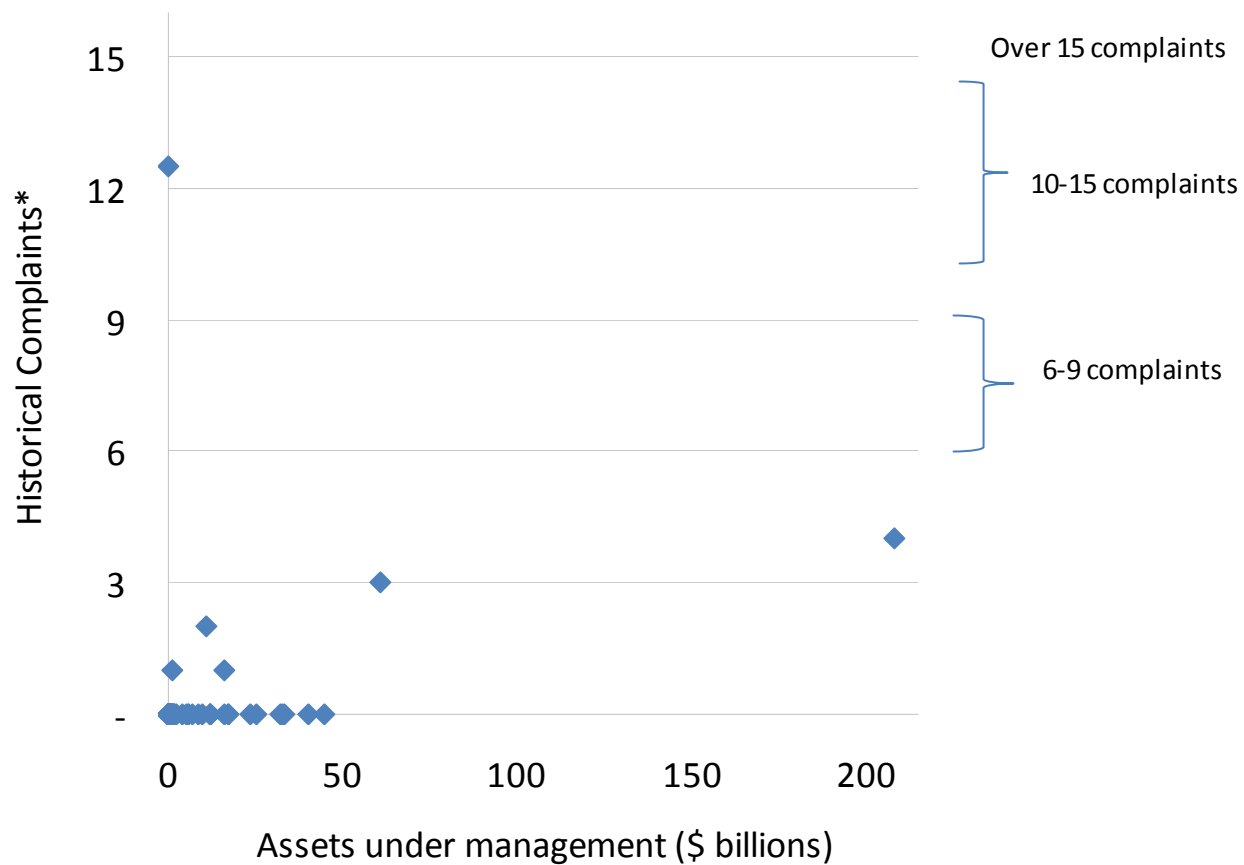
*A provider that deals with disputes in a timely manner*

	Firm received complaint		
	Yes	No	Combined
Not Important	2%	—	2%
Somewhat Important	11%	15%	12%
Very Important	87%	85%	86%



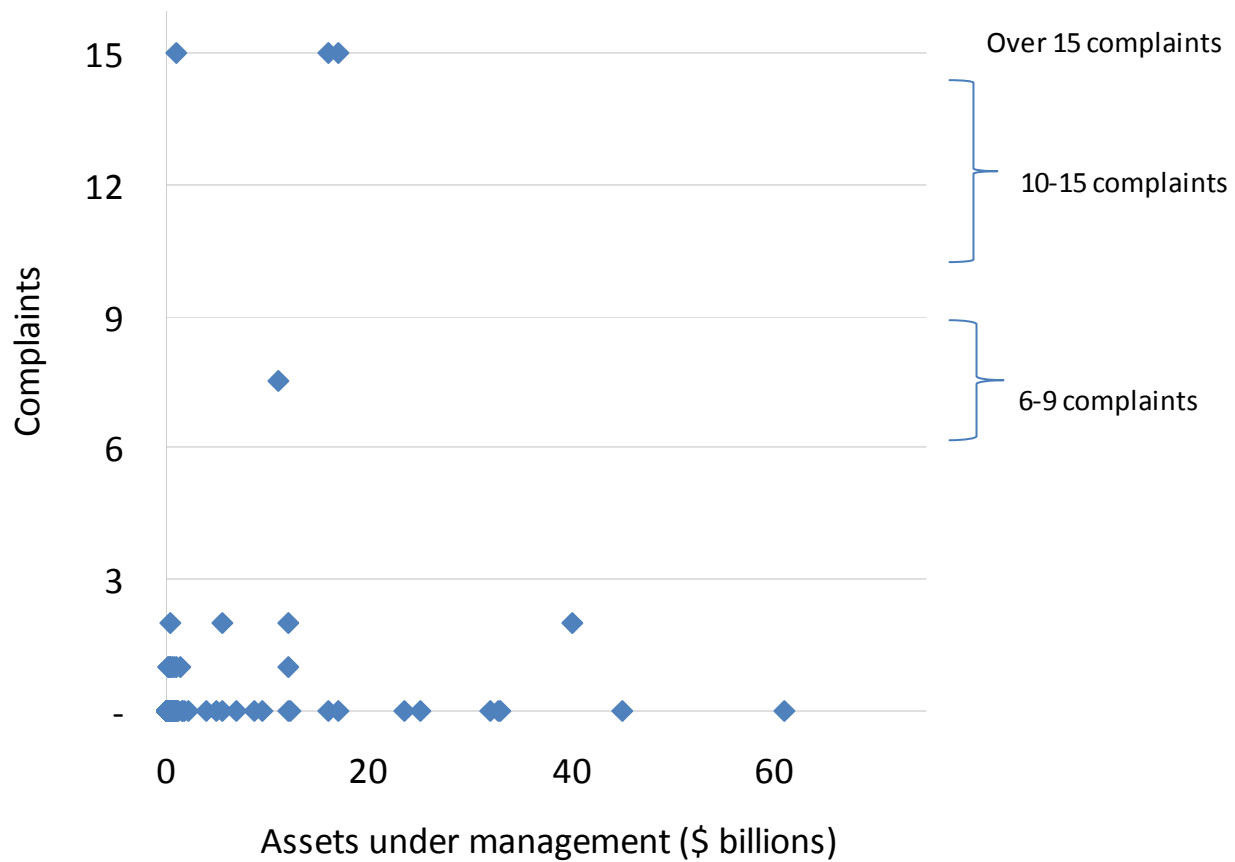
# Correlation Mapping of Firm Characteristics and Frequency of Complaints

# Occurrence of Institutional Complaints by Firm Size as Measured by Firm AUM



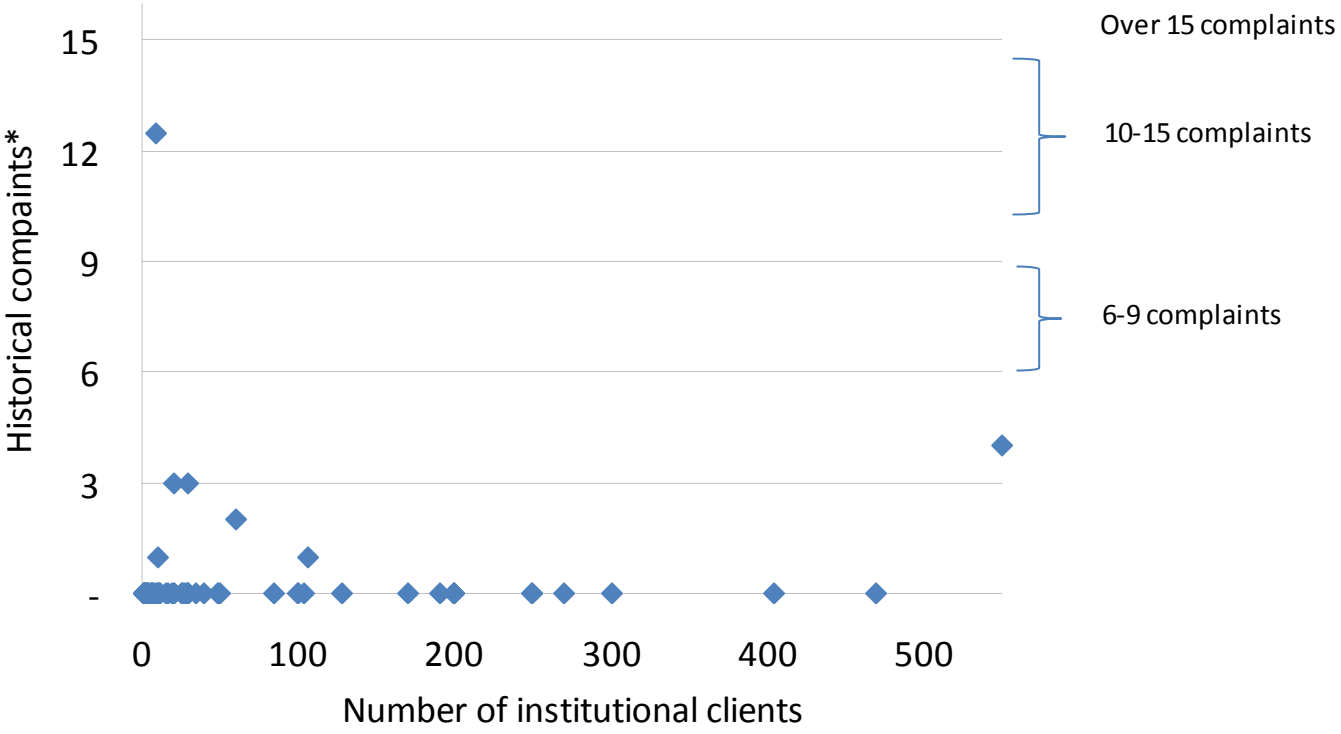
\*Complaints between 2008-2011

# Occurrence of Private Client Complaints by Firm Size as Measured by Firm AUM



\*Complaints between 2008-2011

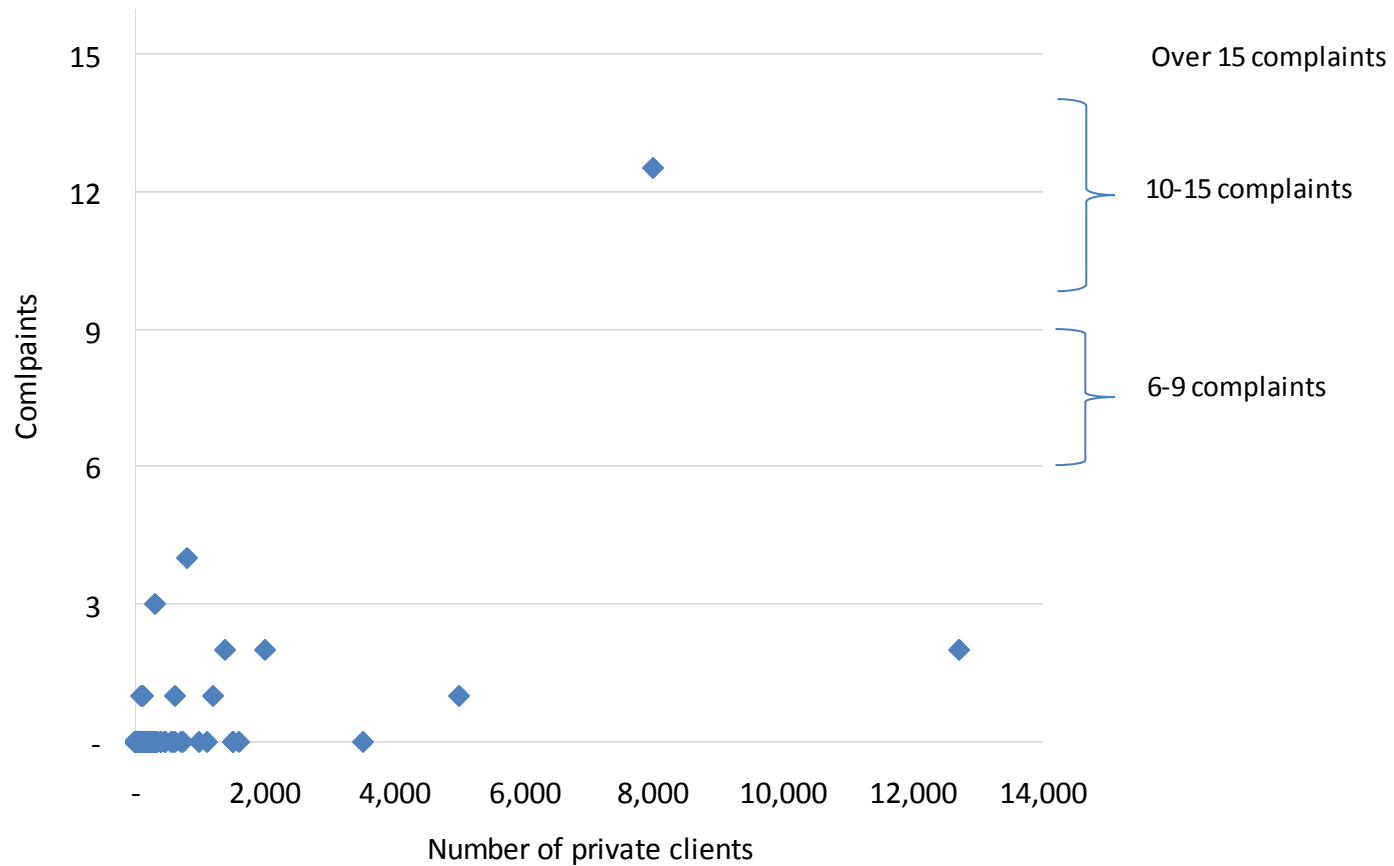
# Occurrence of Institutional Complaints by the Number of Institutional Clients Registered with Firm



\*Complaints between 2008-2011

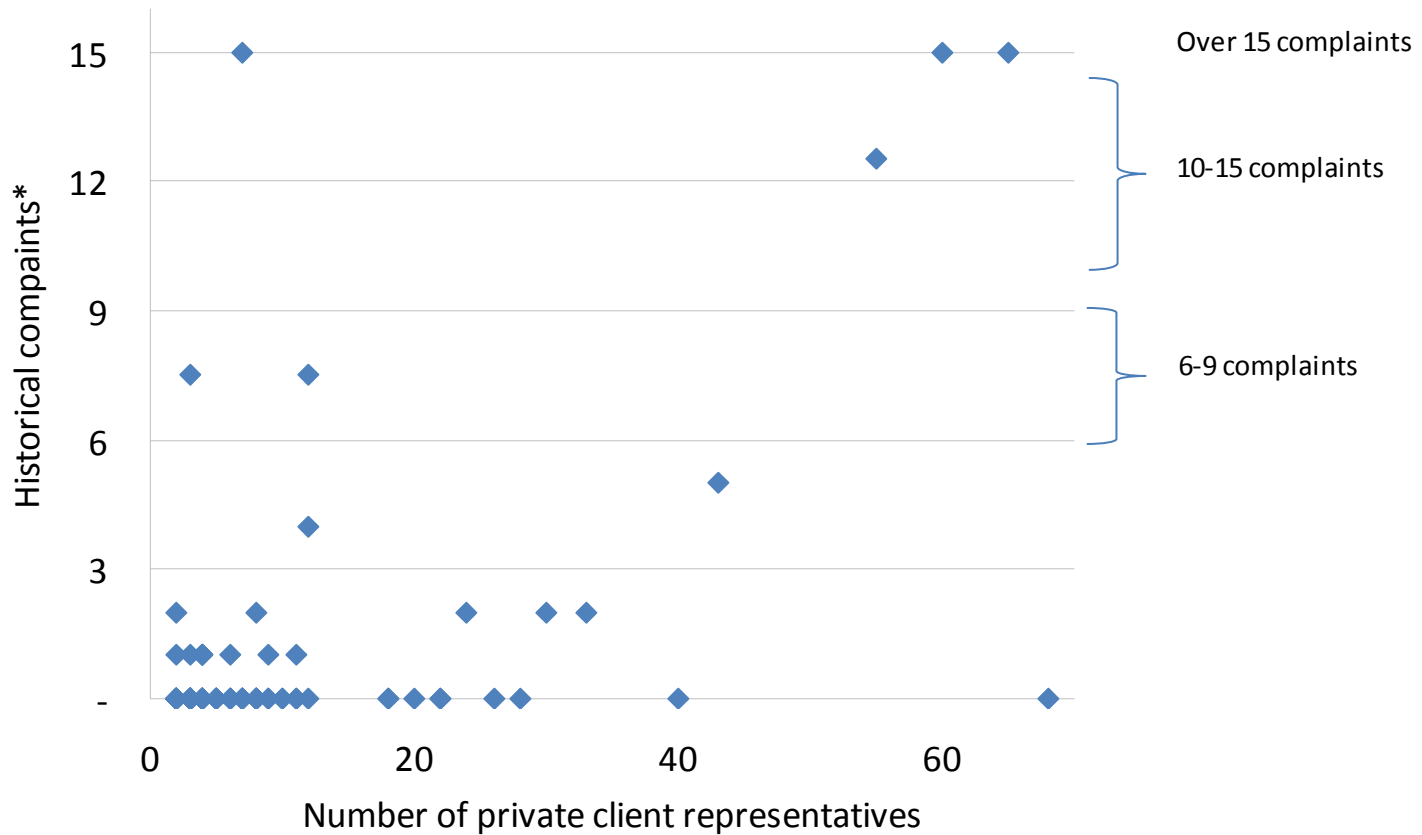


# Occurrence of Private Client Complaints by the Number of a Firm's Private Clients (2012)



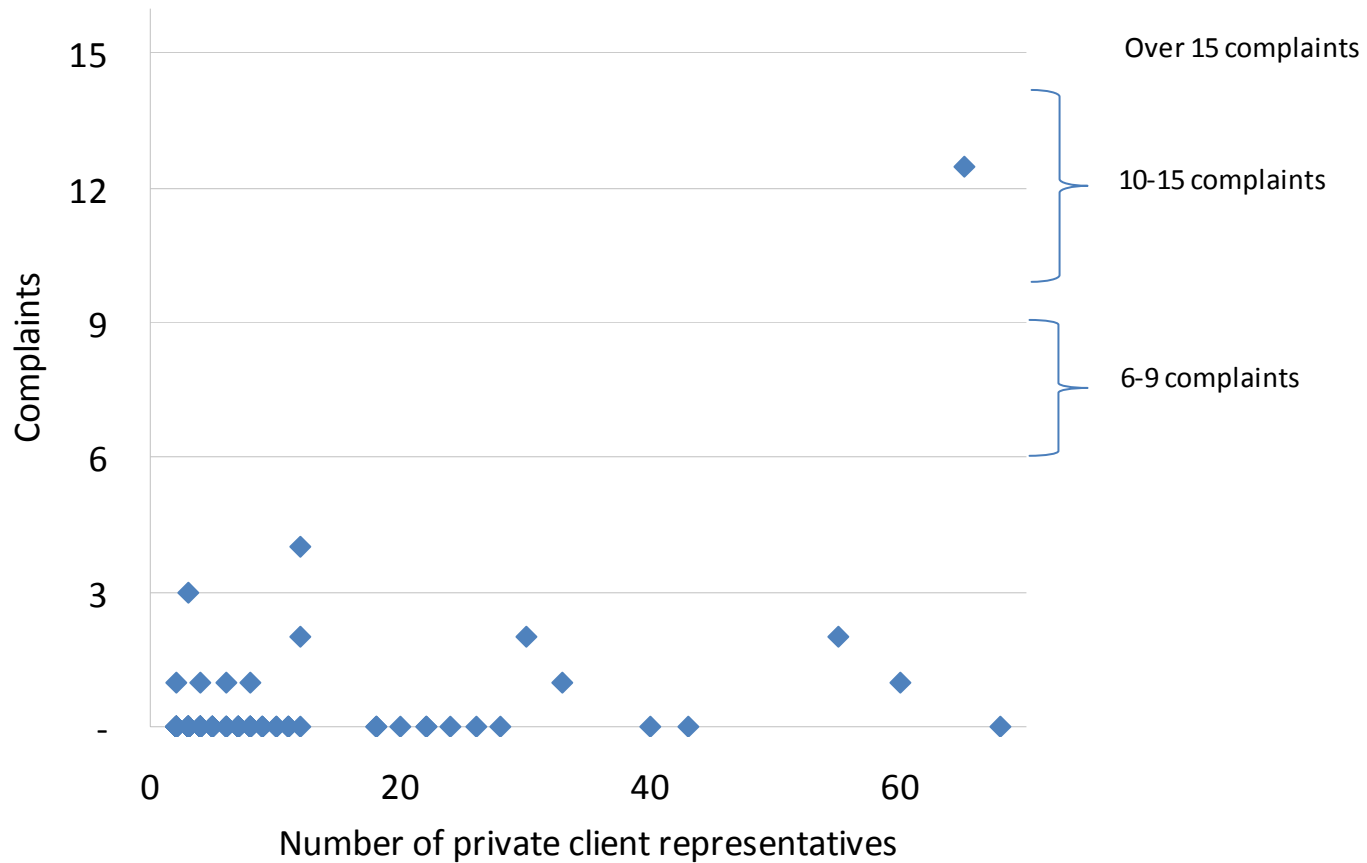


# Occurrence of Private Client Complaints by the Number of Advisors Employed by Firm (Historical)



\*Complaints between 2008-2011

# Occurrence of Private Client Complaints by the Number of Advisors Employed by Firm (2012)



The background is a solid teal color. It features faint, semi-transparent graphics of financial charts, including a line graph with multiple peaks and valleys, and a bar chart with several vertical bars of varying heights. At the bottom of the image, there is a pattern of binary code (0s and 1s) in a lighter shade of teal.

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