



**VIA E-MAIL**

November 21, 2024

Mr. Mark Wright  
Director, Communications and Stakeholder Relations  
20 Queen Street West, Suite 2400, P.O. Box 8  
Toronto, ON M5H 3R3  
Fax: 1-888-422-2865  
Email: [publicaffairs@obsi.ca](mailto:publicaffairs@obsi.ca)

**RE: OBSI consultation on loss calculation for complaints involving unsuitably sold illiquid exempt market securities – request for public comment**

---

## **OVERVIEW**

The Portfolio Management Association of Canada (**PMAC**)<sup>1</sup> represents over [330 investment management firms](#) from across Canada registered with the various members of the Canadian Securities Administrators (**CSA**) as Portfolio Managers (**PMs**). PMAC's membership is comprised of firms of varying sizes and models, ranging from one-person firms to international and bank-owned firms, including more traditional models and online advisers, and manage total assets in excess of \$3.9 trillion, representing institutional and private client assets.

Thank you for the opportunity to provide feedback on behalf of our membership on the Ombudsman for Banking Services and Investments' (**OBSI**) consultation on loss calculations for complaints involving unsuitably sold illiquid exempt market securities (the **Consultation**).

PMAC is supportive of fair dispute resolution mechanisms and effective and trusted avenues for the redress of investor losses. As such, PMAC generally agrees with the OBSI's current approach to loss calculations involving illiquid securities that have been found to be unsuitable for the investor.

---

<sup>1</sup> For more information about PMAC and our mandate, please visit our website at [pmac.org](http://pmac.org).

## CONSULTATION QUESTIONS

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

We agree with this methodology. We agree that it will reasonably put the investor in the position they would have been in, had the unsuitable investment advice not been given. It is simple, easy for investors to understand, and provides an efficient and fair methodology to compensate the investor where there is no other way to value the securities.

We agree that this methodology will appropriately relieve the investor from the burden of disposing of the securities. It will allow the investor to be compensated quickly, rather than having to wait until the securities are able to be valued. It also prevents a double recovery, and allows the firm to realize the best value for the securities (it can time a disposition in a manner that is most favourable to the firm).

2. If we maintain our general approach of assigning a value of zero to unsuitable illiquid exempt market securities when a value cannot be determined and requiring investors to return these securities to firms as part of any settlement:
  - a. are there exceptional situations or specific circumstances where such an approach should not be used?

We believe that there are always exceptional and unforeseeable circumstances that may warrant an alternative approach. The Consultation mentions cases where the firm objects to receiving securities as part of a settlement – we agree that OBSI should work with the parties in these cases to find a mutually acceptable solution.

We also note that there are circumstances where securities cannot be transferred to the firm, such as due to restrictions on transfers in the offering documents, insolvency of the issuer, and/or cease trade orders from the regulators. In these circumstances, OBSI should work with the parties to arrive at a fair and reasonable solution that is acceptable to the parties. For example, as a condition of the settlement, the investor could be asked to enter into a legally binding agreement that would transfer beneficial ownership in the securities to the firm, or agree to pay over any amounts received in the context of a receivership to the firm. This would allow the investor to be compensated for their losses without delay, and would avoid any double recovery by the investor.

- b. are there any other considerations or steps that we should take in the recommendation and settlement process that would improve the fairness of outcomes for consumers and/or firms in cases where illiquid exempt market securities have been unsuitably sold?

Based on feedback from our members, we are concerned that OBSI's approach to suitability and loss calculations is not being applied fairly and consistently as described in the Consultation. With the growing interest in private markets, and increased "democratization" of private market investment opportunities for retail and other investors, we anticipate that there could be additional claims to OBSI involving illiquid exempt market securities. It is therefore imperative for assessments to be conducted according to the correct process, especially with respect to the suitability determination and the valuation and loss calculation.

#### Suitability determination

It is important to bear in mind that investments in the exempt market may reflect part of an overall diversification strategy in a client's portfolio. When this is the case, including in situations where the client's investments are held with different registrants, it is critical to ensure that OBSI focuses on the portfolio-level suitability of the securities, rather than looking at individual securities in isolation. The Client Focused Reforms included specific amendments to the Companion Policy to NI 31-103 to encourage registrants to assess suitability based on the client's financial circumstances as a whole, including investments that may be held at other firms.

A narrow focus on the illiquid exempt market securities in the client's account may lead to a conclusion that the securities were unsuitable, when this is not necessarily the case. We encourage OBSI to review all of the circumstances of the particular investment, before making a conclusion with respect to suitability.

#### Valuation and loss calculations

It would seem that the loss calculation methodology described for illiquid exempt market securities would only be required in very rare circumstances, when it is truly impossible to arrive at a fair value for the securities. Relying on information from the portfolio manager, third party appraisals, OBSI or independent research and reasonable estimates for ascribing a value to the securities should be prioritized, and assigning a value of zero should be a methodology of last resort.

## **CONCLUSION**

The Consultation provides an excellent overview of OBSI's continued work to examine the fairness of its dispute resolution processes and its loss calculation methodologies. We applaud this work and encourage OBSI to continue to evaluate its processes as new products and services come to the market.

We agree with the current loss calculation methodology for illiquid securities that are found to have been unsuitable for the investor. We urge OBSI to employ a flexible approach where it is not possible to effectuate a transfer of the securities in question, in order to achieve a resolution that is fair to all parties. We are concerned that the loss calculation methodologies described in the Consultation are not being followed in practice, with respect to the suitability determination and the valuation of securities, especially in cases involving exempt market securities. OBSI must consider all of the circumstances and available evidence when making these determinations.

We are grateful for the opportunity to respond to this Consultation, and we would be pleased to discuss our comments further with you. If you have any questions please contact Katie Walmsley (416-504-7018 or [kwalmsley@pmac.org](mailto:kwalmsley@pmac.org)) or Victoria Paris (416-504-7491 or [vparis@pmac.org](mailto:vparis@pmac.org)).

## **PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA**

*"Katie Walmsley"*

Katie Walmsley  
President

*"Warren M. Rudick"*

Warren M. Rudick  
Director  
Chair of Industry, Regulation & Tax  
Committee;

Chief Counsel, Wealth and Asset Management  
Canada,  
& Global Chief Counsel, Distribution Law,  
Manulife Investment Management