

# TÊTE-À-TÊTE

## with the Ombudsman: **Doug Melville** Ombudsman for Banking Services and Investments (OBSI)

Doug Melville was appointed Ombudsman and CEO by OBSI's Board of Directors in August of 2009. He had previously joined OBSI in early 2006 as Senior Deputy Ombudsman for Banking Services. Prior to this Melville held increasingly senior positions in the financial industry and was engaged in public and government sector projects in Canada and overseas as a policy analyst and consultant. He holds a B.A. from Carleton University, a law degree and an MBA from the University of Western Ontario, and a Master of Laws from Osgoode Hall Law School at York University. Melville has served on the boards of numerous financial industry bodies and not-for-profit organizations in the fields of health care, anti-poverty policy and financial literacy, international development, and waste management. He is the current Chair of the International Network of Financial Ombudsman Schemes (INFO).

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**PCMA sits down with the OBSI Ombudsman: Doug Melville to discuss this new rule and OBSI's strategy.**

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OBSI's website contains useful information about who they are and what they do, and we recommend all PCMA members familiarize themselves with how to register with OBSI to ensure they are compliant with NI 31-103.

Since the CSA's announcement, PCMA has been receiving inquiries from members regarding specific aspects of OBSI's process and structure as it relates to exempt market dealers. We sat down with OBSI's Ombudsman, Doug Melville, to put these questions to him.

**PCMA: Does OBSI have the processes and people in place to handle exempt market complaints?**

Absolutely. OBSI has investigated complaints involving exempt products for many years now, coming from our MFDA members who are dually-licensed. The sector is not new to us as an organization.

In terms of our staff, OBSI's experienced and professional team is drawn from a variety of fields and disciplines such as securities dealing, law, accounting, and regulatory compliance and enforcement. Most worked for investment dealers before joining OBSI. I personally have experience dealing with exempt products, from when I worked in investment banking and retail distribution. My own history with the industry goes back a long way and I have several colleagues at OBSI who have also worked in the exempt market space.

Even with all this experience, we want to make sure we bring the most up-to-date knowledge to the table when we take on the new members as a result of NI 31-103. Members of our senior management team have already taken the CCO Education Series offered by the EMDA (now PCMA). In addition, many

OBSI staff members are currently enrolled in exempt market products course. Of course, we are also in regular dialogue with the exempt market industry, including PCMA, as well as securities regulators, in order to identify the relevant issues well in advance of the regulatory deadline for your members to join OBSI.

**PCMA: What does it mean that OBSI uses a "fairness standard"? How is this different from regulators' "suitability" standard?**

OBSI makes decisions based on what's fair to both the complainant and the firm, taking into account general principles of good financial services and business practices, the law, regulatory policies and guidance, and any applicable professional body standards, codes of practice, or codes of conduct. There are times where a regulator might find that no regulatory breach has occurred, but OBSI finds that compensation is owing to the investor for reasons of fairness. Similarly, there are times when the opposite occurs. It really depends on the individual facts and circumstances of a case. It is important to note that the absence of a regulatory investigation or finding does not mean that no problem occurred; regulators have discretion as to whether or not to investigate an issue, whereas OBSI is required to consider every investor complaint that comes in our door.

**PCMA: What is OBSI's methodology for assessing the suitability of exempt products. How will the OBSI value exempt securities and determine compensation?**

Exempt market dealers may not be aware that over the course of 2011 and 2012, OBSI undertook an extensive public consultation on our investment suitability and loss assessment methodology as applied in the majority of complaints. The consultation gave greater transparency to the approach we take and also resulted in a series of enhancements made to our methodology as a result of stakeholder feedback.

We intend to conduct a similar exercise on a proposed methodology for exempt market complaints. We will develop a position paper in consultation with third-party experts, including from industry, and

release it for public review and comment. This will incorporate some of the approaches we have used in the past when investigating exempt market complaints while also addressing some of the big questions that we know exempt market dealers have. Among these are how to value losses on illiquid products, whether dealers can always rely on client representations when determining accredited investor status, and whether all exempt market products should be assumed to be high-risk.

It's important to note that while we will consult with industry and the public on our proposed approach going forward, the financial regulators who provide oversight for OBSI's mandate also have an interest in whatever approach is proposed and we must be responsive to their concerns.

#### **PCMA: How were OBSI's budget and fees set for EMDs?**

Firstly, it's important for EMDs to know that OBSI sets its budget, and thus its membership fees, on the principle that no sector or registrant category should subsidize another. Each category pays only for the costs associated with resolving their category's complaints, as well as their proportional share of management and administration costs. OBSI's Board of Directors engages our external auditor each year to verify compliance with this "no cross-subsidization" policy.

What this means for EMDs (and Portfolio Managers) being brought into OBSI as a result of NI 31-103 is that there will be dedicated resources assigned to resolving complaints from the sector. Because the number of complaints that will come in the door is as yet unknown, OBSI's Board of Directors established a budget using moderate complaint assumptions; we do not want to be overwhelmed when complaints materialize, but nor do we want to incur more cost than is necessary. This budget was then divided by the number of registered dealing or advising representatives at EMD and PM firms captured by NI 31-103, resulting in the \$165 per representative fee that was announced.

Our Board and financial regulators agree that, once we have a history of complaint volumes to go by, in two years' time we will revisit the fees for both EMDs and PMs so that they accurately reflect the relative amount of work generated by each of those sectors.

#### **PCMA: How will the exempt market be represented in OBSI's governance structure?**

Right now, industry perspectives are represented in OBSI's governance structure through three out of ten seats on our Board of Directors: one director is elected from amongst nominees put forward from each of the banking industry, IIROC members, and MFDA members. Our Board values industry's input, and recognizes that EMDs (as well as Portfolio Managers and Scholarship Plan Dealers) should have the opportunity to participate in OBSI's governance given they are mandated to participate in our service. But, the exact form that will take is yet to be determined.

OBSI's Board and securities regulators have agreed that, in

two years' time, a review of our governance structure will take place. This may result in an overall increase in the size of our Board, both industry and community directors, but this would result in corresponding increases in overall governance costs to participating firms. An alternative may be that the three current industry director positions are not reserved for any specific industry groups, allowing all participating industry sectors the opportunity to put forward nominees for election to the Board. Regardless of the preferred approach, any proposed change will be the subject of stakeholder consultation by OBSI's Board prior to being implemented.

#### **PCMA: Some of your existing members have complained the process is too slow. How will you ensure the timely resolution of EMD complaints?**

Well, first you should know that our Board has a commitment that 80% of new investment cases that come in the door will be resolved in 180 days. This will include all EMD cases that we see. The dedicated team responsible for EMDs and PMs also ensures that the proper resources are in place for the timely resolution of complaints.

The reasons that older complaints took a long time to resolve are many, but include the fact that a backlog built up after the economic and market meltdown of 2008-09 which we were not sufficiently resourced to handle at the time. Sometimes, poor cooperation from either firms or complainants is the cause. As you may be aware, we were also engaged in lengthy discussions with some investment firms to avoid having to announce refusals of OBSI recommendations. Now that we are moving regularly to announce the refusals, case files are moving through to conclusion much more quickly. We are tightly managing our own internal processes as well as the inputs required from outside parties in order to speed up the resolution of those older complaints, in addition to the new ones that come in each day.

#### **PCMA: What are the next steps for EMDs?**

OBSI has developed a membership kit for new participating firms, available on our website <https://www.obsi.ca/en/resource-room/resources-for-firms>. EMDs should familiarize themselves with the documents and provide us with a completed Company Information Form as soon as possible. If EMDs have any questions about this process, please don't hesitate to reach out to us and ask.

We recognize that there will be a period of transition as EMDs get used to having an external dispute-resolution body. OBSI will be pleased to provide any assistance that they need during the transition. We are committed to making this an effective complaint-resolution process for both EMD firms and their clients, and we look forward to working with the PCMA and EMD firms over the coming months to make this happen.

For more information please visit: [www.obsi.ca](http://www.obsi.ca)