

SIMA Submission

Re: Notice and Request for Comment
25-314 – Proposed Approach to Oversight
and Refinements to the Proposed Binding
Authority Framework for an Identified
Ombudservice (OBSI)

September 29, 2025



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Delivered By Email

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
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Dear Sirs and Mesdames:

RE: SIMA Submission – CSA Notice and Request for Comment 25-314 – Proposed Approach to Oversight and Refinements to the Proposed Binding Authority Framework for an Identified Ombudservice

The Securities and Investment Management Association (**SIMA**) appreciates the opportunity to comment on the Canadian Securities Administrators' (**CSA**) notice and request for comment 25-314: *Proposed approach to oversight and refinements to the proposed binding authority framework for an identified ombudservice* published on June 15, 2025 (the **Proposal** or the **Consultation**). Capitalized terms used but not herein defined shall have the meaning ascribed to such term in the Consultation.

SIMA empowers Canada's investment industry. The association, formerly the Investment Funds Institute of Canada, is now the leading voice for the securities and investment management industry and oversees

approximately \$4 trillion in assets for over 20 million investors and the Canadian capital markets. Our members – including investment fund managers, investment and mutual fund dealers, capital markets participants, and professional service providers – are committed to creating a resilient, innovative investment sector that fuels long-term economic growth and creates opportunities for all Canadians.

We operate in a governance framework in which we gather input from our member working groups. The recommendations of these working groups are submitted to the SIMA board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of SIMA members.

SUMMARY

SIMA welcomes the continued work being done by the CSA to strengthen the Ombudsman for Banking Services and Investments (**OBSI**) framework for the benefit of all stakeholders and we support the regulatory goals of providing investors with a system of redress that is efficient, fair and accessible.

In order to achieve these goals, SIMA members have provided feedback regarding certain aspects of the Proposal, each of which is explained in detail in the remainder of this submission. Without these revisions we are concerned that the Proposal will not achieve its intended objectives.

GUIDING PRINCIPLES

The following principles guided SIMA members' analysis and discussions during the Consultation and form the foundation of our key recommendations regarding the Proposal:

1. **Rule harmonization is essential:** A fully unified complaint handling and dispute resolution regime across all CSA jurisdictions should be actively pursued to ensure Canadian investors and market participants benefit from an effective, efficient, accessible, and credible service.
2. **Procedural fairness is essential:** OBSI's binding dispute resolution process must reflect the principles of fairness, transparency, and accountability.
3. **The skills and oversight of Stage 2 decision makers is critical to the perceived and actual fairness of the dispute resolution outcomes:** The qualifications of Stage 2 decision-makers should be clearly defined and subject to review by the OBSI Oversight Committee to ensure both the perceived and actual fairness of outcomes.
4. **OBSI's fee structures must be reasonable and equitable:** OBSI's fees should be based on a detailed CSA analysis of the Proposal's projected impact on costs borne by investment firms, ensuring the process remains accessible and sustainable.

KEY CONCERNS & RECOMMENDATIONS

Notwithstanding SIMA's overall support for the Proposal, we note key concerns below which in our view must be addressed to ensure that the Proposal leads to the implementation of a fair, consistent, and credible binding dispute resolution framework. Below, we identify these concerns and provide the CSA with SIMA's recommendations to address these concerns.

- **Rule Harmonization**

The Proposal fails to advocate for a harmonized dispute resolution regime across all jurisdictions of Canada, including Quebec. As articulated in SIMA's March 1, 2024, submission to the CSA *Re: CSA Consultation – Registered Firm Requirements Pertaining to an Independent Dispute*

Resolution Service (2024 Consultation), SIMA continues to stress the importance of a fully-harmonized complaint handling and dispute-resolution regime across all jurisdictions of the CSA to provide Canadian investors and market participants with an effective, efficient, accessible and credible dispute resolution service.

While overall SIMA feels that the Proposal has evolved positively since the 2024 Consultation, we remain concerned about the lack of harmonization of the overall Canadian investor dispute-resolution regime as it relates to the clients of investment firms. SIMA appreciates the various ways in which the CSA has recently signaled their collective efforts to streamline regulation and promote competitive capital markets. One single, harmonized dispute-resolution requirement across all CSA jurisdictions would represent a crucial process improvement. We urge the CSA to continue to engage with the AMF on ways to harmonize the dispute resolution service requirements under section 13.16 of NI 31-103 vis-à-vis investment firms and their clients.

SIMA also strongly believes that the Proposals should not take effect until such time as every participating CSA jurisdiction has proclaimed each of the requisite legislative amendments that are required to enable the Proposals to be in force, including amendments related to the oversight framework. A staggered implementation of the Proposals would create further investor confusion and increased compliance costs

- **Procedural fairness is essential**

OBSI's decision-making guidelines should be available to the OBSI Oversight Committee, as should high-level summaries providing transparency on how a binding decision was rendered.

SIMA members view increased transparency, relating to how OBSI renders recommendations, as being very important given the binding, non-appealable nature of the recommendations. Our members therefore recommend OBSI be required to create decision-making guidelines that will be available to the OBSI Oversight Committee. This would be a meaningful enhancement of the corporate governance/oversight framework to be adopted under the Proposals.. Understanding that OBSI does not operate on a system of “precedents”, per se, we nonetheless believe that guiding principles as to how cases are decided, and a repository of previous recommendations/decisions is required in light of the new binding authority. We believe this “decisions playbook” will promote transparency and consistency of decision making, as well as assist the OBSI Oversight Committee in its oversight role.

SIMA also strongly recommends that all Stage 2 determinations be documented to capture the high-level reasons as to how and why the binding decision was rendered. Having internally available case precedents can assist with improved consistency across recommendations. These decisions should be available to the OBSI Oversight Committee for their review. In light of the potential impact of OBSI's binding decision-making authority, SIMA believes that documenting the reasons for a decision in a simple template format will increase the transparency of OBSI's decision-making process, as well as improve the OBSI Oversight Committee's ability to review those processes as a way to ensure fairness.

In addition to the binding nature of Stage 2 decisions, we also note that parties may seek judicial review of OBSI's final decision.

- **The skills and oversight of stage 2 decision-makers are critical to the perceived and actual fairness of the dispute resolution outcomes**

SIMA believes that it is critical for the skills of Stage 2 decision makers to be clearly articulated and overseen by the OBSI Oversight Committee. We view this as being a critical bolster to the perceived

and actual fairness of OBSI's decisions. We see this as helping to improve overall confidence in the dispute resolution mechanism and in the investment sector to the benefit of Canadian capital SIMA markets.

Additionally, in order to meet the policy goals of the Proposal, SIMA strongly recommends that all Stage 2 decision makers for disputes over the proposed monetary threshold be independent of OBSI, as further detailed in our response to Question 3 in Appendix A and in our Proposed Skills Matrix in Appendix B wherein we provide our thoughts on a sample skills matrix.

- **OBSI's fees should remain reasonable and equitable**

SIMA notes that the Proposals only apply to the investment sector. Given that OBSI operates on a cost-recovery basis, the costs of these amended and enhanced processes, as well as the fees paid to external decision-makers, will be borne by OBSI firms in the investment sector.

Recognizing the drivers for improved fairness and the desire for binding decision-making authority, SIMA members nonetheless encourage the CSA to undertake a detailed analysis of what the estimated actual impacts of the Proposals will be on fees payable by investment firms to support these changes at OBSI.

CONCLUSION

SIMA is pleased to have had this opportunity to provide our comments on the Consultation. Please feel free to contact me by email at amitchell@sima-amvi.ca. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE SECURITIES AND INVESTMENT MANAGEMENT ASSOCIATION

A handwritten signature in black ink, appearing to read 'Andy Mitchell', with a long horizontal stroke extending to the right.

By: Andy Mitchell
President and CEO

APPENDIX A - RESPONSES TO CONSULTATION QUESTIONS

Question #1

Is \$75,000 an appropriate threshold amount to require OBSI to appoint an external decision maker or a panel of external decision makers at stage 2?

SIMA Response:

Where the recommendation brought before OBSI is greater than \$75,000, there is more at stake for both the investor and the firm. To make the OBSI process a fair, efficient, and cost-effective alternative to the courts, a monetary threshold over which external decision makers are required is appropriate. SIMA members accept the proposed \$75,000 threshold, over which a claim would require OBSI to appoint an external decision maker or panel of external decision makers (which we will refer to in this letter as **External Stage 2 Decision Makers** for brevity).

Alongside the introduction of binding decision-making authority and the requirement for External Stage 2 Decision Makers, SIMA urges the CSA to require OBSI to bolster the transparency around how it renders investment sector-related decisions. Recognizing that there will not be a set formula that can – or should – be applied to each complaint, SIMA nonetheless believes that OBSI should be required to share its internal decision-making guidance and reasons for rendering past decisions with the OBSI Oversight Body. SIMA views this as a key factor in ensuring consistency and improved reviewability.

We also urge the CSA to make OBSI decisions available – after redacting the client and firm names -- to Participating Firms via the OBSI firm portal. In our view, providing access to these decisions would help firms better understand OBSI's reasoning, improve the quality of their investor recommendations, and potentially reduce the burden on OBSI—benefiting all stakeholders.

For Stage 2 decisions, there should be a written decision that can be subject to judicial review, where the circumstances merit. Additionally, we believe the intersection between CIRO's proposed arbitration program ("Arbitration Program") and the OBSI regime should be reviewed by the CSA. SIMA understands that CIRO has proposed to limit access to the Arbitration Program to claims above \$350,000 and has sought industry insight about whether the Arbitration Program should preclude complainants who have already engaged OBSI's dispute resolution process.

Given that both initiatives are still in their proposal stages, we encourage the CSA and CIRO to align on eligibility criteria and clearly communicate same to potential complainants, including the following questions: are there any limitations related to quantum (i.e. is it (alleged) loss quantum? Recommendation quantum?) for the Arbitration Program. Will complainants who use OBSI's dispute resolution process be excluded from the Arbitration Program? If not, will OBSI refer clients to the Arbitration Program if it concludes the recommendation from OBSI will exceed \$350,000? Do investors that have had to complete the OBSI process and have received an OBSI decision become ineligible to use the Arbitration Program?

Question #2

Does setting a monetary threshold for the requirement to appoint an external decision maker at stage 2 impact the accessibility of the proposed framework for investors?

SIMA Response:

We do not view the monetary threshold as reducing investors' accessibility to the proposed OBSI binding dispute resolution process. Our interpretation of the Proposal is that all the investors who appropriately refer a complaint to OBSI will have access to OBSI's dispute-resolution services. The difference that results from the Proposals is not in investors' access to the services, but rather, in which circumstances an investor's matter will have External Stage 2 Decision Makers involved in the consideration of their complaint.

Subject to our general comments about the impact that the Proposals will have on the fees paid by investment sector OBSI participating firms, we do not view the Stage 2 External Decision Maker requirement as impacting investor accessibility.

However, we are very concerned with the fairness of the Proposal as it relates to an investor being able to accept or reject a stage 2 review that was requested by an OBSI participating firm. If a firm requests a review of a stage 1 decision and the investor must accept or reject the stage 2 decision for it to be binding, we believe there are disparate incentives for each party. The firm will have had to pay for and respond to the enhanced OBSI process – which is likely to take longer than current OBSI cases to resolve because of the additional stage 2 review. However, the investor will have an incentive to reject the stage 2 offer if it is less than the stage 1 offer. Additionally, since the civil limitation period is tolled when an investor commences an OBSI complaint, at the end of the stage 2 review, an unsatisfied investor could still take their complaint to the court, resulting in a longer period within which the complaint is ultimately resolved. This would increase costs and increase uncertainty. The stage 2 review is intended to increase procedural fairness, consequently we believe that to align interests and for the sake of fairness, all stage 2 decisions should be binding, regardless of which party requested the stage 2 review.

Question #3

What would be potential advantages and disadvantages of permitting OBSI to appoint senior OBSI staff not involved in the stage 1 process to a panel conducting the stage 2 process in cases that meet or exceed the proposed monetary threshold, if the majority of the panel members are comprised of external decision makers?

SIMA Response:

SIMA members have concluded that preserving the impartiality of the Stage 2 review process is essential to ensuring the Proposal fosters investor and market confidence in OBSI's dispute resolution services. We view the use of External Stage 2 Decision Makers as a key enhancement to procedural fairness. Accordingly, we believe that the potential disadvantages (including perceptions of lack of impartiality that would trigger a corresponding need for a carefully constructed set of conflicts of interest controls and reviews of those controls) are significant.

SIMA members believe that Stage 2 Decision Makers should consist exclusively of external individuals for cases exceeding the proposed monetary threshold. To address concerns around efficiency and OBSI process familiarity, we recommend the non-voting involvement of senior OBSI staff—limited to responding to panel questions, as outlined below. We also believe the qualifications of External Stage 2 Decision

Makers warrant thorough discussion to ensure a balanced skill set that includes tribunal and adjudicative expertise, as well as proficiency in loss calculation and investment industry knowledge.

We believe that there are benefits to making senior OBSI staff, that are not involved in the Stage 1 decision, available to the External Stage 2 Decision Makers. These benefits include providing valuable organizational information that may assist the external decision makers, as well as acting as a conduit for seeking additional information and/or responses to decision-maker questions. For example, there may be opportunities for OBSI staff to provide factual or organizational information to the panel that assists with their understanding of the rationale for the stage 1 decision.

SIMA members believe that, as part of its governance framework, OBSI should be required to codify policies and procedures outlining how, when, and in which capacity senior OBSI staff may act as a resource for an External Stage 2 Decision Maker panel. We believe there to be potential material conflicts of interest in having OBSI staff work with External Stage 2 Decision Makers but, provided OBSI staff does not have a say in the binding stage 2 decision, we believe these conflicts can be appropriately managed.

SIMA members also believe that OBSI should be required to establish and follow policies and procedures outlining when and how OBSI will exercise its discretion to assign a complaint that is below the monetary threshold to a stage 2 review. We believe that such referrals should only be made in select instances and that they should require the input of the impacted participating firm since this decision extends the timeframe for arriving at a recommendation for a client and the uncertainty for the firm. We request that the criteria under which OBSI may consider referring such a case be published for stakeholder comment prior to the finalization of the proposals in the Consultation.

The data set out in the Consultation from OBSI's past four fiscal years, demonstrating that there were 20 out of 39 cases where OBSI's recommendation exceeded the proposed monetary threshold, is helpful. These statistics support the idea that roughly half of OBSI's decisions will not trigger the need for an External Stage 2 Decision Maker panel. However, we agree with the CSA that past data cannot predict the quantum of future recommendations and that there must be a careful balancing of competing policy outcomes: accessibility, fairness, impartiality, effectiveness and efficiency.

SIMA members urge the CSA to publish additional details about who the Stage 2 External Decision Makers will be, how they will be nominated or recruited the length of their service in such a role and their compensation for acting as an External Stage 2 Decision Maker.

SIMA views CIRO's "Excellence Standards", especially as they relate to New Public Members as setting out helpful skills criteria that we believe should be included in the OBSI External Stage 2 Decision Market skills matrix. We have provided certain aspects of the Excellence Standards that we feel are most applicable to OBSI in Appendix "B" hereto.

We suggest that each individual External Stage 2 Decision Maker should be assessed against a detailed skills matrix and only in cases where an individual meets all or a majority of the matrix criteria should they be allowed to adjudicate a stage 2 decision on their own. This could serve to reduce costs of the External Stage 2 Decision Maker function but should be carefully balanced against the need for diversity of skills, experience and thought. SIMA considers that the pool of qualified persons who are both willing and able to act as Stage 2 External Decision Makers may be impacted by demands on their time. In the case of retired adjudicators, we know their time is in high demand. For retired or part-time investment professionals, these individuals will also be approached to act on various boards of directors and independent review committees. SIMA therefore urges OBSI to develop and share with the OBSI Oversight Committee a training/onboarding plan for each approved Stage 2 External Decision Maker.

We have set out a proposed Skills Matrix at Appendix B hereto.

Question #4

Does the oversight framework strike the appropriate balance between ensuring OBSI's accountability and maintaining OBSI's organizational and decision-making independence?

SIMA Response:

SIMA supports the proposed enhanced regulatory oversight of OBSI by the CSA and views this as appropriate and commensurate with OBSI's ability to make final and binding decisions while preserving its independence. SIMA members support the proposed requirement that OBSI operate in the public interest, as well as the corporate governance standards to be set by the CSA. We view the establishment of the OBSI Oversight Committee as a positive and practical way for the CSA to exercise its oversight, in conjunction with the designation order, and view the role of the OBSI Oversight Committee as an effective and critical component to ensuring consistency and fairness.

SIMA agrees with the imposition of reporting obligations on OBSI to the CSA and encourages the CSA to engage in transparent periodic examinations of OBSI's recommendations, ensuring that the outcome of OBSI findings is consistent with the playbook and case precedents shared with the OBSI Oversight Committee, as well as consistent with the interpretation of securities laws and policies of the designating regulators.

SIMA members view the potential for conflicts of interest as a material concern to investors and the investment industry sector alike. As a result, like the CSA's processes and communications regarding the results of audits of registered investment firms, SIMA believes that the CSA's review of OBSI's conflicts of interest identification, management, control and disclosure process, will be a key area of stakeholder interest. We would welcome periodic written reports from the CSA on any findings related to deficiencies or improvements to be made in respect of OBSI's handling of conflicts of interest – both for stage 1 and stage 2 decisions.

In connection with the proposed enhanced corporate governance standards, we encourage the CSA to consider SIMA's following comments, as well as to draw on the recent experiences of certain CSA members, such as the Ontario Securities Commission (**OSC**), which have undergone adjudicative process and corporate governance strengthening changes.

Of the various corporate governance requirements outlined in the Proposal, SIMA wishes to emphasize the importance of establishing, following, and maintaining the currency of a comprehensive skills matrix for stage 2 reviewers to ensure that it is representative of the variety of areas of expertise required to render fair, efficient and independent decisions in quickly evolving markets. These individuals should meet prescribed relevant investment management criteria and consideration should be given to minimum proficiency requirements, as evidenced by experience in the investment industry and/or the attainment of certain recognized designations. Moreover, we believe that the panel should be required to have the skills to be responsive to new technologies, investment products and consumer behaviours.

As set out elsewhere in this submission, SIMA members are very supportive of measures that create transparency around the methodology by which OBSI renders recommendations. We view these playbook-style outlines and internal case precedents as creating an important set of guardrails against which OBSI decisions can be assessed as part of the CSA's overall oversight of OBSI.

As set out in the Proposal, we agree that having the CSA mandate an independent third-party evaluation of OBSI's operations at regular intervals and requiring CSA input on responses to findings of the third-party evaluation can be an effective tool in ensuring that OBSI's decision outputs align with the views of the regulators, without acting as a *de facto* appeals mechanism that would undermine OBSI's

independence. SIMA members do, however, query the rationale for increasing the frequency of an independent third-party review from every five (5) years, as we currently understand it to be, to every three (3) years, as proposed. We note the potential disruption to OBSI's daily operations, and the resources involved in being subject to – and responding to – such reviews. It would be helpful for stakeholders to understand the rationale for the accelerated review schedule being proposed or to have the CSA retain discretion to require more frequent independent third-party reviews if certain triggering events merit the three-year review cycle.

Question #5

What would the impact be of maintaining OBSI's current six-year limitation period? We understand that OBSI's current six-year limitation period is the result of OBSI wishing to harmonize with the longest limitation periods for civil cases across Canada?

SIMA Response:

Maintaining a six-year limitation period for OBSI carries the risk that an investor could pursue their complaint through the courts and, if dissatisfied with the outcome of the civil litigation process, subsequently bring the same complaint to OBSI. We do not believe this scenario serves the public interest. It creates an incentive for investors to seek a more favourable result through OBSI, while firms are burdened with the costs of defending themselves in litigation and simultaneously funding OBSI's enhanced binding dispute-resolution mechanism.

Accordingly, we recommend that investors who choose to pursue their complaints through the civil courts should be precluded from subsequently bringing the same matter before OBSI. This would serve as a practical safeguard against forum-shopping and help ensure that the costs of dispute resolution remain fair and reasonable for all parties involved.

APPENDIX B – Proposed Skills Matrix

As noted, the skills in this proposed matrix have been borrowed and modified to reflect the Proposals from the CIRO Excellence Standards dated November 2024.

BASIC QUALIFICATIONS	is a current or retired member of a law society in a jurisdiction of Canada in good standing
	is / has not been employed or affiliated with an OBSI Participating firm for the previous 18 months
	has no conflict of interest and no reasonable apprehension of bias with respect to matters before OBSI
	has strong adjudicative skills, including conduct of a hearing, decision writing and effective communication
	demonstrates general knowledge of business practices, administrative, business or corporate law, preferably securities legislation and CIRO (or former IIROC and MFDA) and CSA rules and practices
	has extensive criminal, quasi-criminal, regulatory or administrative law or comparable experience, preferably serving as an adjudicator in court or administrative tribunals
	has experience with regulated professions or industries, preferably the investment industry, consumer/retail investor knowledge and expertise
KNOWLEDGE COMPETENCIES	demonstrates a working knowledge of administrative law, principles of natural justice and OBSI's procedure and practices
	demonstrates a working knowledge of the investment and mutual fund industry, both CSA and CIRO jurisdiction, relevant securities legislation and regulatory requirements
	demonstrates preparedness for hearings, including prior review of materials, punctuality, clear understanding of facts and relevant issues
	provides concise reasons in plain language making clear findings of fact and determinations of law
BEHAVIOURAL COMPETENCIES	conducts hearings in a neutral manner, always acts professionally and courteously, demonstrating respect and appropriate behaviour towards all hearing participants
	approaches proceedings and all issues arising therein with an open mind, supporting fair opportunities to all parties to fully present their case, avoiding bias and perception of bias
	makes effective use of hearing time, actively managing the hearing process, focusing hearings on relevant issues and avoiding unnecessary delays

	demonstrates active listening, ability to interpret non-verbal and culturally diverse communication, raises appropriate questions, demonstrating effective, clear and concise verbal and written communication with parties and other hearing participants
	fully participates and contributes to a good rapport between OBSI panel members, shares opinions and contributes to discussions while respecting diverse views
ENGAGEMENT	Is generally available for hearings throughout the appointment term
	responds to communications from OBSI and other panel members within a reasonable time
	demonstrates a commitment to the timely disposition of cases, working efficiently with other panel members to prevent delays
	is generally available and actively participates in training and otherwise stays current on pertinent industry and OBSI matters
REPUTATION	has a good professional reputation, including no professional or other regulatory disciplinary action has been taken against the individual, including by CISO or the CSA, and no criminal conviction in any jurisdiction.
LANGUAGES	Capable of conducting hearings in both English and French
DIVERSITY	demonstrates sensitivity to issues of diversity (for example, race, culture, religion, disability, sexual orientation, gender identity) with respect to all OBSI participants and colleague
UNIQUE SKILLS	offers specialized expertise, for example, former judge or tribunal official, commercial experience, crypto, AI and other new product or technology expertise
PRODUCTIVITY	Complies with OBSI policies and procedures regarding binding decisions