

Demystifying OBSI's loss calculation for unsuitably sold illiquid exempt market securities

October 31, 2024

The Ombudsman for Banking Services and Investments (OBSI) [released a consultation](#) relating to its approach to calculating investor losses where there has been an unsuitable **sale of illiquid exempt market securities**. The consultation reviews OBSI's fundamental approach to financial harm calculation, which is to identify an amount of compensation that puts an investor in the position they would have been had the error not occurred, and that such amount will be reduced when it is fair to do so (e.g. where an investor contributed to the harm).

Currently, if the evidence shows the investor would have invested in suitable investments, OBSI will compare the portfolio performance with the performance of a hypothetical comparative portfolio of suitable investments. Calculating the value of actual investments made as at the end of the relevant period becomes complicated for certain illiquid exempt market securities if there is no market or if there are so few arms-length transactions that a market price can not be determined. If there is insufficient evidence about the value of the security, OBSI will assign a value of zero to such securities for purposes of the loss calculation and require the investor to return the exempt market security to the firm. OBSI seeks formal industry views on this methodology, and poses two questions relating to the current approach, and whether there are circumstances where such an approach should not be used. Comments on the proposal are sought by **November 21, 2024**.

By

[Kimberly Poster](#)

Expertise

[BLG Beyond AUM Law](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.