



Advancing Standards™

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Re: OSC Notice 11-780 Statement of Priorities - Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2019

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding OSC Notice 11-780 Statement of Priorities - *Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2019* (the **Statement of Priorities**).

As background, PMAC represents [over 250 investment management firms](#) registered to do business in Canada as portfolio managers. In addition to this primary registration, many members are dually registered as investment fund managers and/or exempt market dealers. PMAC members encompass both large and small firms managing total assets in excess of \$1.8 trillion for institutional and private client portfolios¹.

OVERVIEW

PMAC is consistently supportive of measures that elevate standards in the industry and improve investor protection. We applaud the efforts made by the Ontario Securities Commission (**OSC**) to date in this respect, as well as the principles set out in the Statement of Priorities for 2019.

As with past years, PMAC's goals as an association continue to be very closely aligned with the goals set out in the Statement of Priorities and we would like to take this opportunity to thank the OSC and its colleagues that form the Canadian Securities Administrators (**CSA**) for the opportunity to

¹ For more information about PMAC and our mandate, please visit our website at: www.portfoliomanagement.org.

participate in various formal and informal consultations around issues of importance to our members and, ultimately, to Canadian investors. Similarly, we commend the OSC for its outreach to registrants and market participants to promote compliance, improve enforcement, and to discuss and seek feedback on new and ongoing initiatives.

PMAC continues to support and champion the efforts of the CSA to identify opportunities to promote investor protection and to improve the registrant regulatory framework. Our mission statement is “advancing standards” and we believe that the opportunity to provide feedback on regulatory priorities is an important way to lend support for the OSC’s work, as well as to highlight salient aspects of recent relevant PMAC submissions that can support these goals. Due to the long-term nature of many of the important projects being undertaken by the OSC and its CSA colleagues, some of our recommendations echo those made in previous submissions on past years’ Statements of Priorities.

SUMMARY OF PMAC’S KEY RECOMMENDATIONS

A summary of PMAC’s key recommendations in light of the OSC’s Statement of Priorities are as follows. Additional comments on these and other recommendations are discussed more fully in the body of this letter.

- **The fiduciary duty is important.** Ensure that amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* recognize, respect, and maintain the importance of the **fiduciary duty owed by registered portfolio managers** to their clients. Enshrine a **nationally harmonized statutory fiduciary duty** in the securities acts of all Canadian jurisdictions for all registrants managing client accounts on a **discretionary basis**.
- Ensure that amendments made to the **registrant-investor relationship are nationally harmonized, principles-based and do not impose duplicative, overlapping or inconsistent duties on registrants**. A one-size-fits-all approach must be avoided. PMAC has concerns that any jurisdictionally fragmented amendments would be detrimental to investors, our markets and to the global competitiveness of Canadian firms. The importance of not imposing duplicative or overlapping duties on registrants is highlighted by the U.S. Securities and Exchange Commission (**SEC**) having clarified the fiduciary duty as it relates to U.S. registered advisers while separately proposing a regulation best interest standard for broker-dealers that would not apply to advisers.
- Continue commendable efforts to **reduce regulatory burden**, including launching a **regulatory burden reduction consultation** with respect to **registrants under NI 31-103**.

- Implement **registration reform** to allow for the registration of associate advising representatives and advising representatives in client relationship management roles, as more fully set out below.
- **Modify** the current **outside business activity (OBA)** guidance and/or reporting requirements. In the absence of such modification, provide a **cost-benefit analysis** of the current OBA reporting requirements to assist registrants' understanding of the utility of such reports. **Identify ways to improve and streamline** OBA reporting and filing for registrants and regulators.
- Leverage the **opportunities** presented by **fintech and regtech** for firms of **all sizes and stages** of technology adoption and ensure **principles-based, technology-agnostic regulation** that creates a level playing field and promotes investor choice.
- Continue to encourage and **promote a cooperative regime** between participating and non-participating jurisdictions under the Canadian Capital Markets Regulatory System and encourage **additional stakeholder communication** and outreach with respect to the status of the national regulator's implementation.

The following are PMAC's comments on the OSC's strategic goals and the specific initiatives the OSC plans to pursue.

1. DELIVER STRONG INVESTOR PROTECTION

Publish regulatory reforms that address the best interests of the client

PMAC was pleased by the report in [CSA Staff Notice 33-319](#), updating stakeholders on CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients (CSA 33-404)*, that the CSA will be reconsidering certain targeted reforms to avoid a one-size-fits-all approach to registrant regulation in order to ensure proportionate regulatory obligations. We eagerly anticipate the release of the revised proposals from the CSA in respect of the targeted reforms to NI 31-103 and are keen to understand whether a separate regulatory best interest standard remains the preference of the OSC and the Financial and Consumer Services Commission of New Brunswick. PMAC anticipates completing an in-depth review of the revised proposals and to provide practical and constructive comments with a view to ensuring fairness, efficiency and investor best interest. This is especially the case in light of the recent publication by the SEC of a proposed regulation best interest standard for retail clients for broker-dealers alongside clarification and guidance on the fiduciary duty owed to clients by investment advisers.

The SEC has very clearly and deliberately distinguished between the investment adviser and broker-dealer business models as well as their market purpose, and duty of care, recognizing the importance and difference of each. The SEC determined to provide additional clarification and a reaffirmation of the fiduciary duty owed by investment advisers instead of also imposing the regulation best interest standard on them. PMAC believes that the SEC's approach in this respect avoids investor and compliance confusion and merits consideration by the CSA for these reasons.

PMAC continues to call for and support the introduction of a nationally harmonized statutory fiduciary duty in securities legislation for all registrants managing the investment portfolio of a client through discretionary authority granted by the client. In PMAC's view, investors in every province and territory who have chosen to have their investments managed on a discretionary basis should have the same opportunities, protections and remedies afforded to them.

Publish regulatory actions needed to address embedded commissions

We believe that the publication of a complete analysis of the potential impacts of proposed policy changes relating to the use of embedded commissions in securities products will be helpful to all stakeholders and will facilitate improved dialogue and understanding between registrants and clients. We also believe that releasing guidance on the CSA's intended direction based on the comments received through CSA Consultation 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions* will provide greater certainty that will allow for better planning.

Advance retail investor protection, engagement and education through the OSC's Investor Office

Seniors: PMAC applauds the work done by the OSC's Investor Office on the topic of senior and vulnerable investors. The OSC's Seniors Strategy provides important research, demographic data and background that we believe will aid in the development of regulatory guidance for better servicing of this important (and growing) population segment.

We are pleased to see that providing a roadmap of targeted approaches to address the investment issues of older investors is a priority. We believe that registrants require additional resources, information, guidance, third party support and safe harbours in order to bolster their ability to identify and serve clients with diminished capacity, vulnerability and/or financial abuse. This is a complex and multi-dimensional topic and PMAC's members are eager to understand the scope of the regulatory expectations for this demographic. Particularly, members are looking for additional guidance around the interaction between securities laws and/or best practices and privacy legislation.

We are pleased to see a growing number of stakeholder outreach events on this topic and urge the OSC and its CSA colleagues to continue disseminating this important information and background to assist firms in bolstering their processes.

OBSI Powers: PMAC would like to commend the staff of the Ombudsman for Banking Services and Investments (**OBSI**) for their frequent and open dialogue with industry. PMAC has observed a steady improvement in the transparency and reporting of information from OBSI and appreciates having had the opportunity to learn more about OBSI's processes, including with respect to the impact of industry sector claims on budgeting for the following year and with respect to OBSI's risk loss methodology calculations.

Further to the 2016 report of the independent evaluator for OBSI (the **OBSI Review**), we were pleased to see the action items arising out of the findings and recommendations in the OBSI Review, including the call for OBSI decisions to have binding authority. PMAC would be supportive of binding OBSI decisions, subject to this being coupled with appeal rights to a tribunal or other competent (and appropriately staffed) authority to ensure procedural fairness and transparent reporting.

2. DELIVER EFFECTIVE COMPLIANCE, SUPERVISION AND ENFORCEMENT

PMAC is supportive of the important efforts made by the OSC to detect, address and deter non-compliance. PMAC believes that the use of enhanced market analytics can be a useful way to improve efficiency in this respect and that Ontario can leverage off the experience of other regulators (for example, the SEC) who have recently adopted a similar approach.

The Risk Assessment Questionnaire (**RAQ**) is a key monitoring, data-collection and enforcement tool. PMAC would like to express our appreciation for the in-depth dialogue involving many different teams within the OSC that led to user-experience, content, and explanatory note improvements in the recently released 2018 RAQ. We believe that these amendments demonstrate a commendable willingness to improve processes and, ultimately, reduce regulatory burden to the benefit of stakeholders. As with the 2016 RAQ, PMAC will gather feedback on the 2018 RAQ experience to share with the OSC.

PMAC believes that enhanced coordination by the CSA is warranted with each firm's principal regulator to ensure that each registrant is only required to complete one RAQ (or other jurisdictional equivalent). CSA members should be coordinating to share relevant information and/or to create one standardized risk assessment tool to reduce regulatory burden.

3. DELIVER RESPONSIVE REGULATION

Work with fintech businesses to support innovation and capital formation through regulatory compliance

PMAC is very supportive of the OSC's goals of working with innovative businesses to identify opportunities to assist other businesses. PMAC would like to stress the importance of applying innovative fintech and/or flexible and principles-based interpretation of securities regulations not just to start-ups and technology firms, but also to more traditional firms, all of whom are faced with increasing compliance burden and mounting compliance costs that can impact end investors. We believe that investors are better served when firms have secure, simple and cost-effective technology available to them to facilitate client transactions, verification, reporting and general compliance functions. Since there are various levels of fintech adoption amongst registered firms, we believe that a continued commitment to principles-based, technology-agnostic regulation is crucial to ensuring a level playing field for firms and that this will assist in maintaining maximum investor choice and access to investment advice.

Address opportunities to reduce regulatory burden while maintaining appropriate investor protection

General: We applaud the work that took place over the past year to explore and propose ways to reduce regulatory burden for reporting issuers in terms of time and compliance costs. We are also pleased to see the very recently published plans to pursue four initiatives to eliminate redundancies and streamline disclosure requirements for investment fund issuers. PMAC anticipates providing comments on the proposed rule amendments to this effect.

We acknowledge the amount of work and thoughtful consideration being dedicated to amending NI 31-103. We do, however, believe that simultaneously launching a regulatory burden reduction consultation for registrants under this instrument would be beneficial and efficient in that NI 31-103 could be revamped to: 1) address the CSA's investor protection and market efficiency concerns articulated in CSA 33-404; and 2) streamline and reduce regulatory burden on registrants. PMAC's [submission](#)² on the OSC's 2018 Statement of Priorities outlined our key recommendations on reducing regulatory burden for registrants and we believe that these recommendations could form a starting point for such an initiative.

We also draw your attention to PMAC's [submission](#) to the Canadian Competition Bureau's draft report on fintech and to our [submission](#) on the recent British Columbia Securities Commission consultation on the securities law framework for fintech regulation, both of which focus on a variety of

² Please refer, in particular, to the discussion on reducing the regulatory burden starting at page 6.

ways that we see regulatory reform offering possibilities for increased efficiency for the benefit of investors.

We would like to take this opportunity to highlight and reiterate two of PMAC's key advocacy positions that speak to the need to reduce regulatory burden for the benefit of investors. We ask the OSC to support these two issues as regulatory priorities. We believe that solutions to these issues can be implemented relatively easily for regulators while providing important and long-sought relief for registrants.

Registration reform to allow for registration of a client-relationship management stream of advising and associate advising representatives

PMAC would like to express our appreciation for the dialogue to date to address PMAC's request to allow the registration of advising representatives (**ARs**) and associate advising representatives (**AARs**) who perform registrable client relationship management and limited advising activities (**CRMs**) and who do not perform research and stock analysis or make any ultimate investment decisions on behalf of clients (the **PMAC Request**).

We wish to reiterate the importance of our end goal of allowing individuals with specialized skill sets to work on the front-line with investors and how this proposal will elevate the quality, effectiveness, efficiency and investor-focused services delivered to Canadian investors by registered portfolio managers across Canada.

The PMAC Request will not erode investor protection standards since: the proficiency requirements set out in NI 31-103 will apply without exception; only the relevant investment management experience (**RIME**) directly related to stock research and selection will not be required in order to register CRMs; and fully registered ARs will continue to be required to approve all decisions to buy, hold or sell individual securities and to approve model portfolio selection and asset allocation or rebalancing (**Investment Decisions**) on behalf of clients.

Allowing the registration of ARs and AARs in CRM roles: makes room for the position of a CRM with clearly delineated boundaries for that role; eliminates the need for stock research and picking as part of the RIME for individuals that do not require this experience to perform their CRM responsibilities; and permits registrants to perform CRM activities while all final Investment Decisions are undertaken by ARs without any restrictions on their registration.

PMAC has also noted the important parallels between the registration reform for which we are advocating and the efficiencies that online platforms are able to realize through using an algorithm to fulfill certain Know Your Client duties. PMAC believes that the important work being done by the OSC LaunchPad should benefit both "traditional" and start-up firms, especially

where such streamlining and tailoring of regulation would serve to reduce regulatory burden to the benefit of all stakeholders.

This issue presents a challenge and significant regulatory burden for many of our members. We thank the OSC for the sustained leadership it has provided on this initiative with its CSA colleagues. We continue to urge for the implementation of a solution to the PMAC Request in the near-term.

Outside Business Activities: PMAC continues to query whether the reporting of all outside business activities (**OBA**s) - regardless of the materiality of the potential conflict of interest they pose - is necessary when weighed against the time and effort required by firms do so.

Members have raised questions about the utility of the reports submitted on [Schedule G – Current Employment, other business activities, officer positions held and directorships](#) - of Form 33-109 (**Schedule G**). Members have frequently suggested the need for a revision of OBA reporting requirements and/or amendment to the guidance on what constitutes an OBA. We believe that additional information could assist firms in understanding why registrants are not permitted to make a materiality determination with respect to an OBA but are permitted to make such determinations in other instances that may have far greater implications for investor protection (e.g.: registrants are permitted to exercise independent oversight of publicly offered investment funds through independent review committees).

Amendments to make the OBA regime less onerous while maintaining investor protection could include: revising the guidance in [CSA Staff Notice 31-326 – Outside Business Activities](#) to narrow the scope and extent of activities that constitute reportable OBAs, and making clear that some OBAs may be reportable to a firm’s compliance department but will not necessitate reporting to the CSA. This approach would be consistent with registrants being responsible for making determinations about conflicts of interest that are likely to be of far greater impact to investor protection and fairness than being a director of a personal holding company, to provide a common example.

As suggested in PMAC’s submission on the OSC’s 2018 Statement of Priorities, an alternative option would be to require internal OBA reporting to a firm’s Chief Compliance Officer (**CCO**) and then to have those reports subject to audit by the CSA. Alternatively, CCOs could be tasked with internally risk-rating OBAs and be required to report to the board, as part of the annual CCO report to the board, on those OBAs that were designated as high-risk, alongside highlights of how the conflict or potential conflict of interest was managed by the firm.

In the absence of modifying the OBA reporting requirement, PMAC requests additional information from the CSA to help registrants more fully understand the utility of these reports and, in particular, whether there is a tangible link

between the requirement to report all OBAs and increased investor protection.

Should the CSA determine that it does require the reporting of all activities currently defined to be OBAs, PMAC believes that a centralized, efficient and effective fintech solution, accessible by individual registrants and their sponsoring firms, could be created by the CSA to prompt registrants to update Schedule G every quarter. Firms would still retain their compliance oversight obligations as well as their obligation to ensure policies and procedures to deal with OBAs, but the automatic update tool would assist in the frequent confirmation and collection of this information.

On a related note, PMAC continues to hear of registrants who have reported an activity that may constitute an OBA out of an abundance of caution and, in so doing, received a fine from OSC staff for submitting an updated Schedule G a few days past the 10-day reporting deadline. PMAC believes that levying fines in such particular circumstances may, in fact, deter compliance with the current strict and very far-reaching OBA reporting requirement, as well as ignoring the realities of true conflicts and compliance priorities for firms being more important than filing a technical OBA. We believe that it is inappropriate - and damaging to the reputation of a regulator - to fine a registrant for a late filing of a non-profit volunteer activity that contributes to the well-being of the community in instances where any conflicts are being appropriately managed and where there is no wrongdoing. We also have concerns that there may be jurisdictional differences as to whether CSA members will levy fines for a non-material OBA being filed after the 10-day reporting deadline and that this difference may be unfair to certain registrants, depending on their principal regulator.

PMAC would like to offer a roundtable with OSC staff to identify whether there are mutually acceptable ways to make the OBA reporting and filing process more effective and efficient for both registrants and regulators.

Actively Monitor and Assess Impacts of Recently Implemented Regulatory Incentives

PMAC is very supportive of the OSC's review of recently implemented regulatory reforms to assess whether expected results are being achieved. The investment management industry has navigated and implemented many recent changes and it is important to understand the impact of such reforms on investors and our markets when considering what, if any, additional modifications or new regulatory initiatives should be considered. We look forward to the updates on the impact of measures such as CRM2 reporting and Point of Sale disclosure.

4. PROMOTE FINANCIAL STABILITY THROUGH EFFECTIVE OVERSIGHT

Enhance OSC systemic risk oversight

We support the OSC's goal of enhancing systemic risk oversight. We believe that, to be truly effective, systemic risk needs to be managed at a national level (and through cooperation with Canada's IOSCO partners). PMAC looks forward to the implementation of the national securities regulator as an effective mechanism to protect Canada from domestic and international systemic risks.

We support the consultations around a derivatives regulatory framework both for registration and business conduct, as well as the extensive work undertaken by the CSA over the past few years to further Canada's G20 commitments regarding derivatives regulation. We agree that there needs to be greater transparency of OTC markets and harmonized standards. This is particularly important given the provincial fragmentation with current derivatives rules. PMAC is pleased to have had the opportunity to participate in the consultation on the proposed derivative business conduct rule and is convening member meetings to solicit comments on the registration rules for derivatives activities as well as on the anticipated re-publication of the business conduct rules.

PMAC is also pleased to be able to provide member feedback on IOSCO's recommendations on liquidity risk management and looks forward to the opportunity to comment on the proposed financial benchmarks framework that the CSA will be releasing for consultation.

5. BE AN INNOVATIVE, ACCOUNTABLE AND EFFICIENT ORGANIZATION

Work with CMRA Partners on the Transition of the OSC to the Proposed Canadian Markets Regulatory Authority

The Statement of Priorities indicates the OSC's priority of working with its partners in the Capital Markets Regulatory Authority (the **CMRA**) on the transition of the OSC to the CMRA. Recognizing the political realities, potential legal challenges³ and sensitivities that accompany the transition to the CMRA, we continue to urge the OSC to work with the participating and non-participating Jurisdictions to encourage, to the furthest extent possible, harmonization of legislative requirements, integration of processes and a minimization of disruption to the markets, industry stakeholders and, most importantly, to investors. We know that the OSC shares the view that a single, harmonized securities regime – regardless of an investor's province or territory of residence – is of benefit to Canadians and we are supportive of this view.

³ Quebec Court of Appeal decision with respect to the constitutionality of the CMRA.

PMAC will be reviewing the proposed harmonized prospectus exemption and related regulations recently published for consultation by the CMRA.

To echo our submission on the 2018 Statement of Priorities, even despite the recent update from the CMRA on implementation steps, our members continue to express concern regarding the uncertainty around the interplay between the participating and non-participating jurisdictions, as well as uncertainty regarding the adoption of harmonized securities law requirements within the CMRA. We urge the OSC, to the extent possible, to encourage the CMRA to amplify and continue to build on its communication with stakeholders. These comments are made with an appreciation of the fact that the OSC is but one part of the larger CMRA.

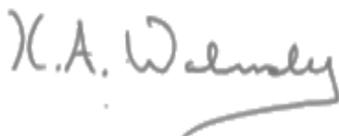
Conclusion

We commend the OSC for its progressive attitude and commitment to being an effective and responsive securities regulator. We support the OSC's Statement of Priorities and we look forward to working collaboratively and assisting, where possible, with some of the goals identified in the draft Statement of Priorities. We continue to view the work done by the OSC with respect and we have seen a great deal of collaboration, consultation and proactive problem-solving led by OSC Staff. We are very appreciative of these opportunities and efforts and commend the team at the OSC for their engagement with stakeholders.

If you have any questions regarding the comments set out above and/or any of our recommendations, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Melissa Ghislanzoni at (416) 504-1118.

Yours truly,

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