



Advancing Standards™

July 6, 2016

Delivered via Email: comment@ccmr-ocrmc.ca

Dear Sirs and Mesdames:

Re: Comments regarding the revised draft of the *Capital Markets Stability Act*

The Portfolio Management Association of Canada ("**PMAC**"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to provide comments on the revised consultation draft of the *Capital Markets Stability Act* (the "**CMSA**").

Overview

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. PMAC members manage investment portfolios for private individuals, foundations, universities and pension plans and the association has grown steadily to comprise over 200 members from across Canada¹.

PMAC applauds the Federal government's continued prioritization of this important initiative and wishes to express its appreciation for the extensive consultation, collaboration and revisions reflected in this draft of the CMSA. The amendments to the CMSA reflect the careful consideration given to the extensive stakeholder input as a result of the 2014 consultation process. PMAC, overall, sees these amendments as positive and crucial steps toward the near-term implementation of an effective national securities regulatory system.

PMAC has been a strong supporter and vocal advocate for a common securities regulator for many years². We have long advocated for Canada to adopt a national securities regulatory system to improve the protection of investors, enhance the global competitiveness of Canada's capital markets, foster a strong national economy and monitor and manage systemic risk.

General Comments

PMAC supports the effective detection, prevention and management of systemic risk in Canada's capital markets. As with any large-scale merger, the benefits that may be realized by the Cooperative Capital Markets Regulatory System ("**CCMRS**") are not without the risk of significant challenges in implementation. However, PMAC continues to be of the view that the goals of improved investor protection and streamlined regulation leading to operational and financial efficiency are attainable and that the revisions to the CMSA are a crucial and welcome step toward realizing these important national objectives.

¹ PMAC members include both large and small firms managing total assets in excess of \$1 trillion for institutional and private client portfolios. Many of PMAC's members are also registered as investment fund managers that offer a variety of investment fund products to institutional investors and private clients. PMAC's mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by our members. For more information about PMAC and our mandate, please visit our website at: <http://www.portfoliomanagement.org/>.

² Please see the [PMAC website](#) for a listing of all government submissions including our [submission dated December 8, 2014](#) with respect to the CMSA and the draft *Provincial Capital Markets Stability Act* consultation.

We welcome the clarification that the CMSA is designed to complement the existing capital markets regulatory framework and not to replace or duplicate it. Continued efforts will need to be made to ensure the seamless and efficient interplay between the *Capital Markets Act* ("**CMA**"), the CMSA and, to the extent they continue to exist after the implementation of the CCMRS, the provincial and territorial securities regulators of any territory or province in which the CMA is not in force ("**non-participating jurisdictions**").

PMAC believes that the day-to-day administration of the CCMRS and the efficacy of this system will be significantly improved if detailed policies are implemented to maximize cooperation and efficiency with non-participating jurisdictions to the maximum possible extent. Specifically, with respect to the CMSA, PMAC sees the critical necessity for policy frameworks setting out the interface between the Capital Markets Regulatory Authority (the "**Authority**") and non-participating jurisdictions in order to clearly delineate lines of communication and decision-making processes where the members of the CCMRS are not aligned with non-participating jurisdictions. We think this cooperation should be codified beyond the current notification requirements regarding key steps in the urgent order-making process. Additionally, in our view, a smooth interface between the Authority, non-participating jurisdictions and existing expert bodies, such as the Office of the Superintendent of Financial Institutions, is a critical component of investor protection and also essential for the health and competitiveness of the Canadian capital markets as this cooperation will leverage existing expertise and minimize the risk of market disruption, duplicative regulatory requirements and legal uncertainty.

PMAC acknowledges that the regulatory framework for the CMSA (along with that of the CCMRS as a whole) is the government's first priority and that the regulations that are to be published after the CCMRS is launched will be subject to a public comment period of at least 90 days. However, in light of the importance of the substance of these regulations and their potential impact on the Canadian economy and market participants, PMAC believes that the sooner the regulations can be published for comment, the fewer disruptive effects the launch of the CCMRS may have on the Canadian capital markets. Increased visibility into the contents of the regulations will allow market participants to respond and plan accordingly and could thereby reduce market uncertainty. PMAC looks forward to having the opportunity to provide comments on draft regulations and policy statements as they are released for stakeholder input.

The specter of duplicative, overlapping or unduly onerous regulation continues to be a concern with respect to the implementation and operationalization of the CCMRS, including the CMSA, in the face of non-participating jurisdictions. At this time of extreme uncertainty in the global financial markets, we believe that it is important for Canada to endeavor to address all possible gaps and uncertainty in its securities regulatory framework while maintaining the necessary flexibility to address innovation and new risks. We appreciate that this is a herculean task but acknowledge the expertise and dedication of the parties working to implement a successful CCMRS.

The following comments address some of the revisions made to the CMSA in further detail, along with certain views on implementation and requests for further clarity.

Systemic Risk

We are pleased to see that the revised CMSA has shifted focus away from the regulation of entities, including capital market intermediaries (especially portfolio managers, investment funds and investment fund managers), as being "systemically risky" and applaud the focus on systemically important products and benchmarks and systemically risky practices instead. We believe that this alignment with global practices is the advisable and correct lens through which to view the regulation of systemic risk in Canada.

This important shift in the scope and focus of the CMSA's systemic risk regulation powers has addressed a number of the questions and concerns raised in PMAC's submission on the 2014 consultation. PMAC views the specific addition of a materiality threshold in the CMSA's definition of "systemic risk related to capital markets" as an important modification to the definition.

PMAC supports the inclusion of the requirement for the Authority to consider whether and how systemically risky practices, systemically important securities and derivatives and benchmarks are already regulated before introducing new requirements or regulations. We believe these obligations will reduce the administrative burden on capital markets participants, promote clarity and reduce the threat of conflicting or inconsistent regulation across various legislative requirements. We also hope that this obligation will increase the dialogue between the Authority, participating jurisdictions and non-participating jurisdictions.

Procedural Protections and Due Process

We welcome the deletion of the broadly worded catch-all under the urgent order making power to "do anything else". PMAC does, however, believe that additional guidance is required as to both the substance and standard of due process for benchmarks that are designated as systemically important as well as for practices and products that are prescribed to be systemically risky or important. We also note that there may also be potential designees that exhibit the elements of both a product and a practice. For such hybrids, we believe that additional clarification is required to reduce ambiguity as to which set of considerations would be applied by the Authority in arriving at a designation. Additional clarity in the form of guidance or policy statements would be welcome with respect to mapping out how the Authority will exercise its discretion in this regard. In PMAC's view, the regulations setting out the prescribed requirements, prohibitions and restrictions for benchmarks, practices and products will be a critical component of the CMSA and we note that we will review these draft regulations closely upon release and expect to provide more detailed comments in respect of these drafts.

We also believe that the CMSA should codify the opportunity for entities responsible for managing products or engaging in practices that are subject to a systemic risk inquiry to be heard prior to a designation being made. Without the ability for such entities to provide the Authority with critical data and insight prior to the assignment of a designation, there is a real possibility that "systemically important" or "systemically risky" designations may be inappropriately made.

While we recognize that the implementation of the CMSA and the interpretation of the clauses therein will be an evolutionary process that is responsive to both existing and potential risks and capital markets challenges, we see the need for additional guidance on how the Authority's broad powers of discretion will be exercised in order to provide market participants with a framework within which to evaluate products and practices.

We request further clarity with respect to the revised definition of "capital markets intermediary" in section 42 of the CMSA. As currently drafted, the scope of who may be caught by the definition of "a person [...] that, as a significant part of its business, trades in securities or derivatives *or provides services related to trading in or holding securities or derivatives*. It does not include a trading facility or clearing house" [emphasis added] is unclear. Clarification of this definition will be important to our understanding of how the order making powers under Section 44 of the revised CMSA could impact our members and their businesses.

Data Collection

PMAC is pleased to see that the national data collection powers under the CMSA have been tailored to reflect potential exceptions to confidentiality requirements as well as to require the

Authority to consider whether requirements already exist in respect of information retention and collection and whether the information in question can be otherwise obtained from an existing source, thereby reducing the undue or duplicative administrative burden on capital market participants.

Harmonization and Consultation

PMAC continues to urge all non-participating jurisdictions to join in the CCMRS in order to create a truly harmonized national securities regulatory system. We continue to believe that, without full participation from coast-to-coast, the CCMRS will face challenges in effectively establishing a world-class securities regulatory regime that contributes to a stronger national economy, protects all Canadians, regardless of their province or territory of residence, and promotes Canada's competitiveness in global capital markets. We therefore urge the Federal government and the participating jurisdictions to continue their ardent pursuit of the participation of and constructive negotiations with the remaining non-participating jurisdictions.

We welcome the five year review introduced in section 98 of the CMSA, as well as the requirement for a report on the administration and operation of the CMSA as a result of this review, and see these as beneficial and practical additions. We believe that, as a result of the review and report, a further public consultation on necessary amendments to the CCMRS and the CSMA may be advisable.

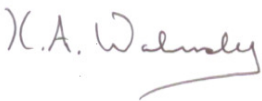
Interpretive Guidance

PMAC encourages the Authority to publish policy statements and other material that it considers advisable to provide guidance on the interpretation of the CMSA and the exercise of the Authority's powers and we believe that this guidance will be critical in terms of setting expectations, reducing uncertainty for capital market participants as well as in soliciting stakeholder feedback that may be of great practical value to the CCMRS as a whole. We appreciate the extension of the timeframe for which such policy statements must be available for public comment from a minimum of 30 days to a minimum 60 days and urge the Authority to consider slightly longer comment periods for matters of elevated complexity or whose impact on market participants would be significant. As a related matter, we suggest that Section 83(3) should also be amended to provide stakeholders with a minimum of 60 days to make written comments with respect to any material subsequent changes to a proposed policy statement, instead of the currently drafted minimum 30 days.

Conclusion

We would be pleased to continue the dialogue on this important issue and discuss the recommendations included in this submission in more detail. If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018. Thank you once again for the opportunity to participate in this important Consultation.

Yours truly;
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