PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

May 23, 2017

Robert Day
Senior Specialist Business Planning
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

E-mail:rday@osc.gov.on.ca

Re: OSC Notice 11-777 Statement of Priorities - Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2018

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 11-777 Statement of Priorities - *Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2018* (the "**Statement of Priorities**").

As background, PMAC represents 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 mangers and/or exempt market dealers. PMAC members encompass both large and small firms managing total assets in excess of $1.5 trillion for institutional and private client portfolios[1].

OVERVIEW

PMAC advocates for the highest standard of unbiased portfolio management in the interest of the investors served by our members. For this reason, we are 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.

PMAC considers its goals to be very closely aligned with the Statement of Priorities articulated by the OSC and we would like to take this opportunity to thank the OSC

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

and its colleagues that form the Canadian Securities Administrators ("**CSA**") for the opportunity to participate in various formal and informal consultations around issues of importance to our members and, ultimately, to Canadian investors. These discussions are critical to the on-going dialogue between regulators and industry and help to shape effective, relevant, informed and practical regulatory policy. Similarly, we commend the OSC for its outreach to registrants and reporting issuers to promote compliance 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. We believe that the registrant-investor relationship is of utmost importance and that an effective way to bolster and improve this relationship is to allow registrants to focus on regulatory compliance measures that are principles-based and which provide benefit to investors and to the Canadian capital markets. For this reason, we are particularly pleased to see the OSC's initiative to consult on ways to reduce the regulatory burden while maintaining appropriate investor protections. We understand that the OSC will be publishing a targeted consultation around ways to reduce regulatory burden for registrants and PMAC looks forward to making a more detailed submission at that time. We have, however, outlined some of our key recommendations on this priority in this letter in the hope that these topics will be considered and included in the targeted consultation as suggested areas in which the OSC will consider alleviating the regulatory burden.

Our comments on certain of the Priorities are set out in detail below. Certain of our comments are a reiteration of submissions PMAC has recently made to the OSC and/or to the CSA. Where this is the case, we have either linked to or provided a copy of the relevant submission.

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.

- **Best Interest Standard**: 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. PMAC has concerns that any jurisdictionally fragmented amendments would be detrimental to investors, our markets and to the global competitiveness of Canadian firms.

- **OBSI**: Continued work is necessary on the fees payable into OBSI by firms registered as portfolio managers which are proportionally large compared to the volume of complaints that clients of such firms refer to OBSI for dispute resolution. PMAC believes the current fee structure to be contrary to OBSI's principle of not having the various sectors it serves cross-subsidize the others.

- **Regulatory Burden:** Reduce the regulatory burden for the benefit of market efficiency and investors, as well as for industry stakeholders in the following ways:

    - **Registration of Individuals**: Implement registration reform to allow for the registration of a client-relationship management stream of advising and associated advising representatives, as advocated by PMAC, in the near-term;

    - **Risk Assessment Questionnaire**: Leverage fintech and other technologies to improve and update the Risk Assessment Questionnaire ("**RAQ**");

    - **National Registration Database**: Improve the technology, functionality and user-experience with respect to the National Registration Database ("**NRD"**);

    - **Report of Exempt Distribution**: Improve the ease and harmonization of filing Form 45-106F1 – *Report of Exempt Distribution* ("**45-106F1"**) and clarify that fees for 45-106F1 relate only to the jurisdiction of the portfolio manager who purchased the securities on behalf of a fully managed account;

    - **Outside Business Activities**: Modify the current outside business activity ("**OBA**") reporting requirements to allow for reporting by registrants to their firms' internal compliance departments. 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; and

    - **Harmonization and deference among CSA members**: Increase the harmonization in interpretation and application of regulatory requirements among CSA members and/or increase deference to the decisions of a firm's lead regulator to reduce delays and costs to the detriment of investors.

- **Recently Implemented Regulatory Incentives**: Monitor impacts of recent regulatory reforms on investors and the Canadian markets when considering what, if any, modifications or additional changes should be implemented.

- **Systemic Risk Oversight**: Implement an effective, national securities regulator to help protect Canada from domestic and international systemic risks. Continue to consult on and implement nationally harmonized derivatives regulations that will operate within the existing securities registration framework;

- **Cybersecurity resilience**: Publish registrant-specific cybersecurity guidance to help registrants meet their obligations in this respect.

- **OSC Business Capabilities**: Enhance the OSC's business capabilities to support the OSC's ability to meet the demands of market developments and domestic and international change. PMAC's comments on improvements to the RAQ and NRD are relevant to this topic;

- **Canadian Markets Regulatory Authority**: Encourage and promote a cooperative regime between participating and non-participating jurisdictions under the Canadian Markets Regulatory Authority ("**CMRA**") and encourage additional stakeholder communication and outreach in advance of the 2018 implementation; and

- **Additional Recommendation - Investor education**: Increase investor education and outreach as a critical tool in addressing the expectations gap identified by the CSA in several recent consultations.

Each of these recommendations is discussed in turn below.

DELIVER STRONG INVESTOR PROTECTION

Best Interest Standard

PMAC was pleased to have the opportunity to participate in various discussions on the important proposals outlined in CSA Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients* ("**CSA 33-404"**). Our submission noted with approval several positive amendments proposed in CSA 33-404 that are designed to bolster the client-investor relationship and to foster investor protection.

PMAC supports 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 protections and remedies afforded to them, regardless of the registration category of their investment adviser.

We noted the publication of CSA Staff Notice 33-319 – *Status Report on CSA Consultation 33-404* (the "**33-404 Update**") and the announcement that only the OSC and the Financial and Consumer Services Commission of New Brunswick will be pursuing consultations on the adoption of a regulatory best interest standard.

With respect to the proposed regulatory best interest standard, PMAC voiced certain concerns and questions around the benefit that such a standard would have for investors served by portfolio managers. PMAC believes that a regulatory best interest standard is unnecessary for individuals and firms registered as portfolio managers as a result of the already existing fiduciary duty. The fiduciary duty is the highest standard of conduct as compared to the regulatory best interest standard and has an established history of judicial interpretation and meaning. PMAC expressed concerns

that the imposition of both standards on portfolio managers could create unnecessary confusion and inadvertently introduce a bifurcated standard of care for this registration category. PMAC fears that a regulatory best interest standard for portfolio managers could have the unintended consequence of lowering the applicable standard of care to the detriment of investors due to the overlap of duties that would be owed by them. Furthermore, PMAC expressed and continues to express serious concerns over the impact on all Canadian capital markets participants should the regulatory best interest standard be imposed in some Canadian jurisdictions but not others. We believe that jurisdictional fragmentation would increase compliance costs and complexities while simultaneously widening the investor expectations gap that the CSA identified as a core concern in CSA 33-404. We echo the concerns of the Autorité des marchés financiers and the British Columbia Securities Commission on this point in the 33-404 Update. Additionally, we worry that a fragmented regulatory best interest standard could result in regulatory arbitrage.

PMAC understands that the OSC intends to publish proposals for regulatory provisions to create a best interest standard and we look forward to continued opportunities for dialogue and to provide concrete suggestions as to how such a standard could be crafted so as to address the CSA's investor protection concerns while exempting portfolio managers from any duplicative, conflicting or overlapping requirements.

PMAC was very pleased to see in the 33-404 Update that the CSA will be reconsidering how some of the targeted reforms are framed so as to avoid a one-size-fits-all approach to registrant regulation in order to ensure proportionate regulatory obligations which serve the best interests of investors. Our submission noted that certain of the targeted reforms in CSA 33-404 may be duplicative or unnecessary for portfolio managers who are already subject to legal, ethical and professional obligations that are often distinct from other registrants. We believe that the imposition of duplicative requirements would undermine the OSC's goal of eliminating unnecessary regulatory burden while maintaining appropriate investor protection and we applaud any efforts to address these concerns.

PMAC was also very pleased to see that the 33-404 Update sets out a number of proposed targeted reforms that are being reconsidered by the CSA in terms of their utility and practicality. Included in these are the mandatory collection of "basic tax information" in the course of know your client inquiries and the requirement to re-assess suitability every 12 months, even in the absence of any triggering event. PMAC thanks the OSC and its CSA colleagues for having carefully considered a number of the comments received during the CSA 33-404 consultation process and we look forward to providing additional, specific input on the draft regulations once they have been published for comment.

OBSI Powers

PMAC continues to support the requirement that registrants provide dispute resolution services to investors at the expense of registrants and we strongly agree that investors should have unfettered access in seeking restitution with a no-cost alternative to the court system. Further to the 2016 report of the independent

evaluator for the Ombudsman for Banking Services and Investments (the "**OBSI Review"**), we are pleased to see the action items arising out of the OBSI Review's findings and recommendations, including the call for a regulatory response for OBSI decisions to have binding authority.

PMAC believes that, in order for dispute resolution to be effective and accessible to investors – especially to lower wealth investors – there must be a mechanism to ensure that firms found to owe investors compensation are required to make this restitution.

PMAC looks forward to the opportunity to participate in the comment process around any amendments that would make OBSI decisions binding on firms, particularly with respect to how industry and investors will be able to ensure that any binding OBSI decision has been correctly rendered and is subject to appeal by either party to a tribunal or other competent authority to ensure procedural fairness.

PMAC continues to have concerns that the fees payable into OBSI by firms registered as portfolio managers is disproportionately large compared to the volume of complaints that clients of such firms refer to OBSI for dispute resolution. We believe that this contravenes OBSI's principle of not having the various sectors it serves cross-subsidizing one another. PMAC understands that OBSI will be engaging in additional outreach to firms about the quantum of their fees in the coming months and PMAC will determine whether follow-up is necessary after reviewing those communications.

DELIVER RESPONSIVE INNOVATION

Reducing the Regulatory Burden

We commend the OSC for this particular priority and believe that, while this may seem a Herculean task to undertake for a commission that is already significantly occupied with improving and responding to changes in the markets, this undertaking will pay great dividends by easing unnecessary regulatory burdens and allowing registrants to focus ever more closely on their investors.

We believe the rising costs of compliance, particularly for smaller firms, can present a barrier to entry and stifle industry growth and investor choice. Changing client expectations and demands, a series of significant regulatory amendments, along with shifts in the competitive landscape are reshaping the playing field for many portfolio managers. We believe that the OSC should take into account the consumer demand for the services provided by smaller firms – both fintech start-ups as well as "traditional" firms - when assessing the costs of compliance on such firms. We also echo the concerns of the OSC that the potential for increased protectionism and de-regulation elsewhere could inhibit global harmonization and create the opportunity for regulatory arbitrage to the disadvantage of Canadian investors and the firms that serve them.

As noted above, PMAC will provide a more fulsome submission on ideas for reducing the regulatory burden for registrants when such consultation is published. We are including the comments below in the hopes that they may find their way into the OSC's consultation as suggested discussion points.

The recommendations below highlight certain of PMAC's key advocacy positions that speak to the need to reduce regulatory burden for the benefit of investors. Certain of the recommendations below were provided by member firms having reference to recent experiences with the referenced regulatory requirements that members feel to be unnecessary, burdensome, outdated, or in need of further explanation for registrants and investors to understand their continued utility. They are discussed in order of magnitude.

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

PMAC thanks the CSA and, in particular, the OSC, for a number of very productive conversations on the subject of registration reform to allow for the registration of advising representatives ("**ARs"**) and associate advising representatives ("**AARs"**) who perform registrable client relationship management ("**CRM"**) duties in the absence of certain relevant investment management experience, namely stock picking experience where the full extent of today's relevant investment management criteria is not relevant and required for the CRM professional to perform her duties. A copy of PMAC's most recent submission on this issue is attached as Appendix **A** to this letter.

Importantly, PMAC is not asking for any change to the proficiency requirements for AARs or ARs. PMAC is only requesting a waiver for the stock picking and research experience and only in instances where such AAR or AR will not be choosing stocks in the course of her duties. The proficiency, professionalism and duty of care owed by a CRM AAR or CRM AR to her client would be in no way diminished if this proposal is implemented.

PMAC has made two submissions to the CSA's Registrant Regulation Committee on this issue and, in these submissions, has highlighted the inefficiencies of the current stock picking and research requirement in order to have ARs and AARs registered when those particular individuals do not and will not be picking individual securities. The current registration model is causing issues in terms of:

1) a shortage of individuals who can be registered;
2) biased hiring decisions whereby firms are selecting individuals who have been previously registered and/or whose experience is aligned with the CSA's requirements, as opposed to those whose experience and skill is aligned with investor's needs and firm's requirements;
3) Hiring decisions which may also inadvertently inhibit diversity in the industry as a result of encouraging firms to only hire previously registered individuals;
4) Efficiency issues as a result of the logistics and impracticalities of being required to use non-registered professionals to perform CRM functions who are required to be supervised by registered – but non-client-facing – professionals. This

creates challenges in terms of efficiency, value-add and human resource problems that are not in the best interest of investors; and
5) Succession planning problems due to challenges in graduating individuals from the AAR category to the AR category.

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.

PMAC has asked the CSA to allow for:

1) The registration of otherwise qualified individuals who do not have stock picking experience – but who will not be in a stock picking role, as ARs, and
2) For AARs in a CRM role to qualify for registration as ARs in a CRM role, after an appropriate amount of time.

While we believe these two objectives could be achieved in the following ways, PMAC is open to other practical and efficient ideas from the CSA's point of view:

1) Granting exemptions from the experience requirements in Division 2 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations (***"NI 31-103"**) for ARs and AARs in a CRM role by way of a predetermined set of terms and conditions which would restrict the AR or AAR from engaging in stock picking activity and which would set out an appropriate supervisory requirement by a "full" AR with respect to such stock picking; or
2) The creation of a new restricted category of CRM AR and AAR in NI 31-103 setting out the prohibition on stock picking and the appropriate supervisory requirements.

This issue presents a challenge and significant regulatory burden for many of our members. We urge the OSC to provide leadership to its CSA colleagues on this matter by implementing a solution in the near-term.

ii. Improvements to the Risk Assessment Questionnaire

After the 2016 OSC RAQ, PMAC was approached by a number of member firms with feedback designed to reduce the significant time burden the RAQ presents to many firms, as well as to improve the user experience and data collected by the RAQ.

PMAC was pleased to have the opportunity to meet with various representatives of the OSC in the fall of 2016 to share this feedback. A copy of our submission is attached as Appendix **B** to this letter.

Firms generally felt that the 2016 RAQ was conducted at a good time of year and that the OSC did a good job of alerting firms as to the timing of the RAQ. Firms appreciated the outreach in the form of the Webinar and FAQ.

Firms noted concerns with the frequency of the RAQ and feel that the 2 year gap is too short a timeframe when considering the very significant number of resources that have to be dedicated to completing the survey. Alternative timeframes and approaches were suggested that could mitigate some of the regulatory burden in terms of the frequency of this exercise.

Several targeted suggestions to improve the user experience, including with respect to the date as of which information is requested, the user interface and programming of the spreadsheet, amongst others, were also discussed.

We believe that the OSC has the opportunity to harness fintech to create a more streamlined, user-friendly and nimble RAQ experience that will not only minimize the regulatory burden, but also bolster the ways in which the OSC can leverage the vast amounts of data that it collects through this survey. We believe that improvements to the RAQ will benefit all stakeholders.

iii. Modernization and Improved User Experience for NRD

Members raised comments with respect to the user-experience of NRD that echoed many of the comments raised with respect to the RAQ. Namely, that the user experience, interface and technology would benefit strongly from modernization and improvements. NRD is a vital database and the posting and maintenance of correct and current information on NRD is a core obligation for registrants. The NRD technology, as well as the User Guide published in connection with it, is a prime candidate for the use of fintech innovation and a revamp of the user communication associated with it. For example, functionality that would provide a choice to enter data directly through a web-based workflow process or by a file upload, combined with flexible field-based reporting, would improve the ease and timeliness by which registrant data are submitted and tracked. Members noted there are several instances where a change in a registrant's information necessitates that the same amendments be made to other forms filed via NRD. It would be more efficient and provide less room for human error were NRD to include an option to update all relevant filings with the same new information, as opposed to requiring a manual update of each of the various filings. We also recommend that the Post-Licensing Requirements ("**PLRs**") and Continuing Education ("**CE**") sections under IIROC Services be moved to a tab in NRD that would also include the proficiency information for each registrant. That would allow access through a single sign-on to one location where a registrant's historical proficiency and ongoing PLR and CE requirements and courses would be recorded for improved tracking and comparison. Members also noted that it would make sense to require all registrant filings to be done through NRD so that it is the one and only filing portal required. Examples of filings that are currently made through the OSC's web filing portal that would be more efficiently made via NRD include 45-106F1 and the Monthly Suppression of Terrorism and UN Sanctions Reports. We appreciate that the OSC does not solely control budgeting and technology

decisions with respect to NRD but we ask you to play a leadership role in significantly improving this system.

iv. 45-106F1 – Report of Exempt Distribution

Members noted that the requirement to file 45-106F1 through SEDAR in all provinces with the exception of British Columbia and Ontario, creates an unnecessary regulatory burden and requested that these disparate ways of filing be streamlined into one, sole and easy-to-access method.

Members also noted that, based on a reading of the instructions related to the filing of revised 45-106F1, as well as confirmation from staff at the OSC, the CSA may have already eased a very large regulatory burden in respect of 45-106F1 reporting. Section 4 under Part A - General Instructions Form 45-106F1 Report of Exempt Distribution states:

> **References to Purchaser**
>
> References to a purchaser in this form are to the beneficial owner of the securities.
>
> However, if a trust company, trust corporation, or registered adviser described in paragraph (p) or (q) of the definition of "accredited investor" in section 1.1 of NI 45-106 has purchased the securities on behalf of a fully managed account, provide information about the trust company, trust corporation or registered adviser only; do not include information about the beneficial owner of the fully managed account.

These instructions indicate that PMs need only list the PM firm as the purchaser of exempt securities in 45-106F1 and, by extension, the implication is that fees are only payable in the jurisdiction in which the PM firm is registered, as opposed to in each jurisdiction in which beneficial owners reside. A member of OSC Staff has confirmed the correctness of this interpretation. This amendment is very welcome as it results in reduced costs as well as a drastically reduced regulatory burden for PM firms that are now not required to list out each beneficial owner for whom they purchased securities in a managed account. Further confirmation and dissemination to registrants of the results of this change to 45-106F1 would be beneficial to firms and would garner praise for a smart and significant reduction in regulatory burden without a corresponding diminishment in protection for investors or Canadian markets.

v. Cost benefit analysis of Outside Business Activity reporting

PMAC queries whether the reporting of all OBAs to the CSA is necessary when weighed against the time and effort required by firms do so. Members have raised questions about the utility of such reports and whether the current system could be replaced by reporting internally to firms' own compliance departments. The internal OBA reporting could be subject to audit by the CSA and, by extension, reduce the regulatory burden on CSA members who would only be receiving relevant OBA reports

as opposed to all outside business activities of a registrant, no matter how low a risk they pose of a conflict. In the absence of modifying the OBA reporting requirement, member firms request a statement 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.

vi. Need for increased harmonization / deference among CSA Members

A number of comments from member firms that are registered in more than one jurisdiction highlight the cost, delays and inability to deliver services to investors when members of the CSA take differing views regarding a regulatory requirement. Examples provided by members included inconsistent interpretations and decisions with respect to the approval of OBAs and the registration of individuals.

One recent example of the consequences of differing decisions among CSA members involved a firm whose lead regulator approved an OBA. The firm had business in Ontario and the OSC declined to accept the lead regulator's OBA approval and instead required the firm to re-submit the application and accompanying fee. The firm was required to answer the same questions as it had for its lead regulator and the OSC denied the approval, causing the individual to have to reject the directorship in respect of which the application had been submitted.

PMAC appreciates that the interpretation and application of principles-based regulation can lead to disagreement between CSA members. This is a very real challenge for regulators to which we are sympathetic. Notwithstanding the challenges of arriving at harmonized decisions which each securities commission feels reflects their mandate, we request that the OSC lead the charge in efforts around further harmonization or deference to a firm's lead regulator on such matters, understanding that delays and inconsistencies are frequently very costly and can create standstills that are not of benefit to investors.

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 will be important to understand the impact of such reforms on investors and our markets when considering what, if any, additional modifications should be considered. We look forward to updates on the impact of measures such as CRM2 reporting and Point of Sale disclosure.

PROMOTE FINANCIAL STABILITY THROUGH EFFECTIVE OVERSIGHT

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 regulation 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 the opportunity to participate in the consultation on the proposed business conduct and registration rules for derivatives and will be stressing the importance of such rules being able to operate within the existing securities registration framework and harmonized across Canada.

Cybersecurity resilience

Cybersecurity is an issue impacting financial services firms, our markets and investors with potentially devastating consequences. PMAC supports the initiatives of the OSC in conjunction with the CSA on bolstering cybersecurity. Members appreciated the opportunity to participate in or read about the private roundtable on cybersecurity in February of 2017 and we believe that more such sessions would be useful to prepare stakeholders for a potential large-scale cyber incident.

From a registrant point of view, we look forward to the publication of registrant-specific cyber-security guidance and believe that additional information regarding the minimum security, systems and related expectations of the CSA *vis a vis* cybersecurity may help firms – especially smaller firms with fewer resources – to understand and meet their obligations in this respect.

BE AN INNOVATIVE, ACCOUNTABLE AND EFFICIENT ORGANIZATION

Enhance OSC business capabilities

We strongly support this priority and believe that enhancing the OSC's business capabilities will continue to allow it to meet the demands of market developments and the ever-accelerating pace of change domestically and internationally. Our comments with respect to improvements to the RAQ and NRD (see pages 8-10) are also relevant to this priority.

Canadian Markets Regulatory Authority

The Statement of Priorities indicates the OSC's priority of working with its partners in the CMRA on the transition of the OSC to the CMRA. Recognizing the political realities, potential legal challenges[2] and sensitivities that accompany the transition to the CMRA, we continue to urge the OSC to work with the participating and non-

[2] Quebec Court of Appeal decision with respect to the constitutionality of the CMRA.

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 investors' province or territory of residence – is of benefit to Canadians and we are supportive of this view. Our members have expressed some concern with respect to uncertainty as to 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 its communication with stakeholders to assist them in their preparation for the advent of the CMRA in 2018. We believe that the more transitional and practical information can be made available, the more seamless the transition will be for everybody's benefit. These comments are made understanding that the OSC is but one part of the larger CMRA.

ADDITIONAL RECOMMENDATIONS – GROWING IMPORTANCE OF INVESTOR EDUCATION

The OSC has rightfully noted that investor education has the potential to contribute to improved financial outcomes for investors and is an important component of investor protection. We strongly agree that investors with a greater level of understanding of financial concepts will be better able to make informed investment decisions.

PMAC is particularly supportive of initiatives that help investors understand the value of advice. This is especially relevant in light of CSA 33-404 and CSA Consultation 81-408 – *Consultation on the Option of Discontinuing Embedded Commissions* ("**CSA 81-408"**). In both of these consultations, the CSA note with concern the expectations gap investors have around the duty of care owed to them by their advisors, as well as a misalignment and lack of understanding on the part of clients about the fees paid for their investments.

PMAC believes that a public, accessible and wide-spread investor education campaign will be a critical component of achieving the CSA's goals with respect to both CSA 33-404 and CSA 81-108. We ask the OSC to increase its offering of education to investors about understanding fees, seeking advice from a qualified adviser who is duly registered and understanding the value of investing in Canada's capital markets for the benefit of investors' retirement savings. We would also support more accessible information to investors on the proficiency requirements required for individual registration categories – and the corresponding duty of care, set out in plain language - to enhance their understanding of the expertise of investment professionals. PMAC also encourages the OSC to work closely with its provincial counterparts in the Ministry of Education to develop and enhance the curriculum with respect to financial literacy for the next generation of investors.

Conclusion

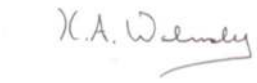
We commend the OSC for its progressive attitude and commitment to being an effective and responsive securities regulator. We support the OSC's Statement of

Priorities and we look forward to working collaboratively and assisting, where possible, with some of the goals identified in the draft Statement of Priorities.

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,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley
President, PMAC

Margaret Gunawan
Managing Director – Head of Canada
Legal & Compliance
BlackRock Asset Management Canada Limited

Appendix A

PMAC Submission on Registration Reform – January 2017

PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

January 11, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

cjepson@osc.gov.on.ca

Dear Mr. Jepson:

Re: Canadian Securities Administrators' Follow-up questions on PMAC's presentation about the registration of advising representatives and associate advising representatives in a client relationship management role

The Portfolio Management Association of Canada ("**PMAC"**) was pleased to have the opportunity to present to the CSA's Registrant Regulation Committee (the "**Committee**") on October 20, 2016 about our request for a solution that would allow for the registration of advising representatives ("**ARs**") and associate advising representatives ("**AARs**") who perform registrable client relationship management ("**CRM**") duties in the absence of certain relevant investment management experience - namely stock picking experience - where the full extent of today's investment management experience criteria is not relevant and required for the client relationship professional to perform his or her duties.

In this letter we have summarized certain of the key points from PMAC's October submission to the Committee in Section A below for convenience and, in Section B, we have addressed the follow-up questions posed by the Committee.

Our responses are based on the feedback we received from a roundtable PMAC hosted in late 2015 with approximately 20 member firms and two law firm affiliates and, most recently, from a discussion on November 7, 2016 with representatives from 12 member firms and three law firms to discuss the specific follow-up questions the Committee raised.

A. Summary of PMAC's October Submission to the Committee

The Issue:
Member firms expressed concern over a shortage of candidates with client relationship skills that meet the requirements to be registered as an AR and, to a somewhat lesser extent, as an AAR, in light of the guidance from the CSA around the requisite relevant investment management experience found in the Companion Policy to NI 31-103 and CSA Staff Notice 31-332 – *Relevant Investment Management Experience for Advising Representatives and Associate Advising Representatives of Portfolio Managers*.

The requirement that all ARs, regardless of whether they make investment decisions, have sufficient experience performing securities research and analysis in order to be registered as such, has led to a number of issues and concerns for our member firms. The top five problems as a result of this issue that were identified are:

Top 5 Issues Facing PM Firms Registering ARs in a CRM Role

1. Shortage of individuals who can be registered;

2. Biased hiring decisions whereby firms are selecting individuals who have been previously registered and/or whose experience is aligned with the CSA's experience requirements, as opposed to hiring individuals whose experience and skill is aligned with the client's needs and the firm's requirements;

3. Hiring decisions may also inadvertently inhibit diversity in the industry as a result of encouraging firms to hire only those individuals who have been previously registered;

4. Efficiency issues as a result of the logistics and impracticalities of being required to use non-registered professionals to perform CRM functions who are required to be supervised by registered, but non-client facing professionals. This creates challenges in terms of efficiency, value-add and human resource problems that are not in the best interests of investors; and

5. Succession planning problems due to challenges in graduating individuals from the AAR to the AR registration category where the roles do not incorporate responsibilities that provide the relevant experience to progress to AR.

The Request

We ask that the CSA allow for: (1) The registration otherwise qualified individuals who do not have stock picking experience - but who will not be in a stock picking role, as ARs (in one of the ways set out below); and (2) AARs in a CRM role to qualify for registration as ARs in a CRM role after an appropriate amount of time.

We believe this could be accomplished in the following ways but are open to other ideas that would be practical and efficient from the CSA's point of view.

1. Expanding on the CSA's willingness to grant exemptions[3] from the experience requirements in Division 2 of NI 31-103 for AARs and ARs in a CRM role, with terms and conditions associated with such registration restricting the registrant from engaging in investment decision activity; or
2. The creation of a new, restricted category of client relationship management advising representative registration ("**CRM AR**") in NI 31-103 that precludes the AR from engaging in research or analysis of individual securities but permits the AR to engage in all other activity permissible under the AR registration.

We appreciate the time involved in conducting and responding to a public consultation to change a National Instrument, and we appreciate the volume of requests for registration that members of the CSA process annually. We do, however, believe that a near-term solution is important for registrants and believe that the imposition of terms and conditions for now, followed by a consultation on the introduction of the CRM AR category would be ideal.

B. RESPONSES TO FOLLOW UP QUESTIONS POSED BY THE COMMITTEE

1. What is the scale of the problem?

The Committee asked what kinds of firms are affected, in terms of clients, operations and size.

We spoke with members representing large firms with global operations focused on institutional clients as well as medium firms and small, local firms dealing with high net worth individuals. Each echoed the other's commonly-felt frustrations and desire for a solution from the CSA that would allow them to more easily and reliably register skilled candidates to perform registrable CRM activities. This would provide clients with the most qualified personnel to perform KYC and suitability analyses as well as to interface with investors.

The Committee asked for an estimate of the number of:

[3] CP Section 3.3 – Granting Exemptions

- firms affected;
- representatives that would be CRM AARs and CRM ARs; and
- Individuals not employed as AARs who would have been if we already accommodated CRM specialists within the AAR category.

While we understand the importance of ascertaining the scope of the issue, this data is challenging for PMAC to estimate. For smaller firms – for instance, those with three or less registrants –most of these portfolio managers will be wearing many hats and performing client-facing activities alongside making specific investment decisions. However, as firms start to grow, efficiency and the need to put the most appropriate people in front of clients makes the ability for registrants to specialize in either CRM activities or investment and stock-picking specialists more appealing. What we heard from firms and lawyers is that they all faced and continue to face, to some degree, issues as a result of the challenges in registering individuals. In larger firms and firms that segregate duties for specialization, control and/or efficiency reasons, the individuals who are researching and picking stock are not necessarily client-facing. There are different competencies and soft skills involved in excelling in the more analytic stock researching and picking realm than those required to effectively build relationships with clients and to gather critical information. Competition for talent in the industry is stiff. Currently, firms are in the position of having to recruit and hire people who can be registered as full ARs or AARs in order to perform CRM functions. This is because a number of the CRM functions may trigger registration yet individuals cannot become registered without stock picking experience.

As a result, these firms' compliance and/or human resources staff have learned to set aside the résumés of applicants who appear to not qualify for AR or AAR registration because they are not able to clearly show the requisite relevant investment management / stock picking experience or because they have never been previously registered, despite having years of excellent client relationship experience.

The time, cost and uncertainty of trying to register an individual who may be an excellent CRM candidate but lacks the requisite relevant investment management / stock picking experience or previous registration serves as a deterrent to firms considering a broader spectrum of potentially excellent client-facing candidates. Our understanding is that firms receive a number of very promising and otherwise qualified candidates who would be hired to perform the CRM AR or CRM AAR role, if that were a possibility. To reiterate, the numbers requested by the Committee are hard to determine since those candidates without the relevant investment management experience or previous registration tend to be discarded *ab initio* as a result of the hurdles to registration. This is worrisome in and of itself as it limits the available talent pool at a time when Canadian investors need access to the highest caliber of investment professionals that can build trust in the industry.

The CFA Institute's recent publication: From Trust to Loyalty: A Global Survey of What Investors Want 2016 emphasizes the importance of strong and open client / firm relationships stating, "the investing experience can only be successful with high levels of trust and loyalty which require stronger client relationships."[4] Firms and investors benefit from being able to place individuals with excellent CRM skills in front of clients and to grow long-term relationships between these parties.

2. Where is the line drawn?

The Committee asked what further registrable activities would a traditional AAR or AR do that their CRM counterpart would not do.

Members indicated that distinction between a "traditional" or "full" AR and a CRM AR (or CRM AAR) is that the full AR would be able to pick specific securities and make the final investment selection decisions for clients.

For ease of reference, PMAC had set out for the Committee the following list of CRM services that a CRM AR or CRM AAR would perform:

Meeting with clients to: describe the services offered by the firm; conduct KYC analyses; assess financial needs; assess risk tolerance; assess suitability and KYP; develop the investment policy statement; determine asset allocation; research and analyze the economy or asset classes generally; monitor client portfolios; conduct portfolio rebalancing based on the instructions of the client and on the advice of an AR qualified to do so; design client presentation materials, all in compliance with all applicable regulatory requirements and firm policies and procedures.

While there are many combinations and permutations of client-facing roles in the industry, some encompassing non-registrable activity and many requiring registration, we have determined that the above job description is an appropriate representation of what most firms wish to see their client-relationship staff being permitted to do. Additionally, after our most recent discussion with members, we believe that "debriefing on investment performance" should be added to the job description for a CRM AAR or AR set out above. Put simply: the client-facing aspects of a portfolio manager's job would be carried out by the CRM while the execution of portfolio management and trading decisions or other investment decisions related to the management of the assets would be carried out by a full AR.

The Committee also wanted to better understand what is meant by "determine asset allocation" in the list of CRM services in PMAC's memo.` The Committee asked whether this means:

> (a) "assign the client to one of a suite of model portfolios designed by the firm's full (non-CRM) ARs", or

[4] CFA Institute From Trust to Loyalty: A Global Survey of What Investors Want 2016 at pg. 22.

(b) "design a personal asset allocation mix for the client (leaving the firm's full, non-CRM, ARs to simply select the securities that would populate the asset mix", or
(c) something else?

The conclusion of the majority of members we spoke with is that it would be appropriate and useful to have a CRM AR or CRM AAR do both (a) – assign the client to one of a suite of model portfolios designed by the firm's full ARs and (b) design a personal allocation mix for the client (leaving the firm's full AR to select the securities that populate the asset mix).

PMAC believes this is appropriate because CRM ARs and CRM AARs will have the appropriate education and relevant investment management experience to make these general recommendations for clients. Importantly, there will be a full AR reviewing and executing final investment selection decisions for each client so there is a structural backstop that requires an AR to approve such recommendations before they become investment decisions. As a result, the CRM AR or CRM AAR would be providing clients with professional, well informed services while not compromising investor protection.

In response to some hesitation we noted on the part of the Committee about asset mix allocation activities being undertaken by a registrant that is not a full AR, members raised the point that financial planners – who are not required to be registered – routinely perform asset mix allocation for clients and that, CRM AARs and CRM ARs who are experienced, credentialed and owe a fiduciary duty of care to their clients ought to be able to perform the same function.

Member firms with institutional clients noted that, for these types of clients, asset allocation is not necessarily done by the portfolio manager – the client has dictated what they want and so the institutional client firm model warrants even more flexibility to be able to register CRM professionals. Additionally, where consultants – who are typically not registered - are engaged, they are responsible for reviewing and performing asset allocation services for the institutional client, including assessing products and reviewing managers.

3. How much change is necessary?

The Committee wanted to better understand the link between succession or career progression and this issue.

Succession

One of main concerns with succession and career progression is that an otherwise excellent CRM professional may not qualify for registration as an AAR. This may result in such a CRM professional being limited to a narrow and administrative role so as to not trip over the registration requirement. Those CRM individuals who do qualify for registration as AARs require the

supervision of ARs. AARs may not be performing the necessary research, analysis and stock picking required to graduate to being full ARs since they may be performing only the CRM activities set out on page 3. In these cases, the AAR cannot gain the requisite investment management / stock picking experience to become an AR unless the firm changes the person's job description. When an AAR is performing CRM activities, supervision by an AR is required but this supervisory requirement adds no value to the client (since the AAR is only performing CRM activities) and does not improve investor protection. Without filling a "pipeline" of AR-qualified talent, firms are looking at a dwindling supply of people who can be registered as ARs in contrast to the continued need for ARs to provide supervision of AARs.

Supervision

There are significant inefficiencies and logistical problems arising out of requiring a full AR to supervise a CRM professional. In many firm models, full ARs are doing the stock picking and are behind-the-scenes professionals. To require these ARs to supervise the work of client-facing CRM professionals can be cumbersome and is not the best use of AR resources. In addition, ARs that are not client-facing may lack the "soft skills" or other CRM-focused nuances that professionals in a CRM role would have. From an organizational perspective, portfolio management employees and client relationship employees can be in different departments and do no report into each other for any other purpose. Having portfolio management ARs supervise CRM AARs creates confusion with respect to responsibilities and reporting lines. Allowing a CRM AR to supervise an AAR would free up the AR to oversee investment decisions and this is preferable.

Career Path

The AAR category is intended to be a stepping stone for registrants and many CRM AARs will wish to progress in their career to be CRM ARs without the need for supervision of their CRM activities. The CRM role is often a separate and distinct career track.

It is important to firms to have a CRM AAR and a CRM AR category as a result of the inefficiencies and other supervision issues described above as well as for maximizing employee retention, loyalty and career trajectory. Client-facing individuals are an essential component of a firm's relationship with their investors. CRM professionals build trust and learn to understand and interpret the nuances of KYC and suitability analysis with the clients they work with. It is in investors' best interests for these professionals to have longevity, security and satisfaction in their roles.

PMAC believes that, in addition to the benefits of establishing a CRM category mentioned above, this category of registration could also help increase diversity in the profession for the benefit of investors, registrants and firms.

The Committee asked in what ways firms are limited in their ability to recognize and promote as a result of the registration categories' current restrictions. Is it contemplated that a CRM AR would succeed to the leadership of a firm?

The client relationship aspect of being a portfolio manager is one of the hallmarks of many firms' business models. The CSA has emphasized the critical importance of client communication, disclosure, full and open KYC and KYP processes. CRM professionals are on the front-line of delivering and explaining this disclosure as well as uniquely skilled at gleaning important information from investors to discharge their fiduciary duty towards their clients. In the face of a growing number of on-line advisors, there are still many traditional firm models that believe that the client relationship aspect of discretionary advice is of utmost value. For these firms, it will be important for them to be able to promote CRM AARs to CRM AR (recognizing, of course, that a full AR will always be required to conduct stock picking).

As firms grow, many of the firm's leaders become less hands-on and client-facing and focus instead on more strategic and operational roles. If these leaders wish to interact meaningfully with clients, many of the CRM activities they undertake trigger the requirement for registration. In this way, a CRM registration category would be essential.

While remuneration for these professionals is up to an individual firm, coupled with market forces, the requirement for a CRM AAR to be constantly supervised by a full AR is a barrier to career development. When skilled individuals are empowered to succeed and progress in their role to be able to oversee their own sphere of influence, those individuals can grow to be leaders.

The vast majority of firm business models will always require at least one full AR to perform the stock picking functions. That should not preclude a talented CRM AR with valuable client knowledge and relationships from becoming part of such a firm's leadership. In fact, client interests would be strengthened by the combination of these two spheres of expertise – securities selection and client relationship management. Additionally, from an organizational perspective, a CRM employee eventually lead of the firm's client relationship group (and generally be responsible for all employees in the sales channel), and may, in some cases, succeed to leadership of a firm.

The Committee asked if regulators were to expand the relevant investment management experience guidance for AARs whether the problem would be solved. In other words, is a CRM AAR or AR necessary? Or, is the issue also about efficiency in approving CRM decisions (vs stock picking decisions) by ARs (i.e., CRM ARs could review and approve, or decide directly, without involving "full" non-CRM ARs)?

PMAC believes that expanding the relevant investment management experience guidance for AARs to expressly allow for the registration of an

AAR (we assume with terms and conditions) without stock picking experience would be a beneficial interim solution to the issues being faced by firms in this regard.

While this would be a welcome development that would allow firms the opportunity to more easily register AARs in the near future, the issue of the inefficiency created by the necessity for supervision by a full AR of *all* of a CRM AAR's activities would remain.

We believe that an expansion of the relevant investment management experience guidance to allow for the registration of both CRM AARs and CRM ARs would address many of the issues members are concerned about.

It would be beneficial to firms and registrants – and would not compromise investor protection – to have a model whereby an individual can be registered as CRM AR to supervise the work of a CRM AAR, leaving full ARs to supervise only the stock picking / trade decisions.

We believe that there should be a clearly delineated path for qualified individuals to be registered as CRM AARs and CRM ARs, uniformly across the country. This would allow firms to entertain new, skilled and appropriately qualified candidates for roles as CRM ARs and CRM AARs – removing the barriers to entry into the industry; and removing the inefficiencies caused by a full AR supervising all of the activities of an AAR.

Members of the CSA, including the OSC, have recently undertaken important projects to examine the ways in which existing securities regulation may not fit squarely with innovative business models. We believe these important examinations should not be limited to Fintech companies and that the CSA has an opportunity to recognize that traditional firm structures and client needs are evolving in ways that merit consideration around improved efficiency, such as changes to expand the relevant investment management experience and/or permit the registration of CRM ARs and CRM AARs.

4. Concluding Comments

We thank the Committee for your time and willingness to discuss solutions to this pressing issue. We believe that the client-registrant relationship is of utmost importance to the integrity and efficient functioning of our capital markets, the Canadian economy and to the well-being of Canadian investors. We further believe that taking steps to enable the registration of skilled CRM ARs and CRM AARs will benefit both investors and the industry.

We reiterate the concerns raised by our members regarding: shortage of individuals who can be registered as full AARs and ARs leading to HR issues and biased hiring decisions; the efficiency and structural issues caused as a result of logistics and the impracticalities of currently having to hire fully registered CRM professionals and the succession planning and employee

retention issues arising out of the challenges in training people who can go on to become full ARs.

We ask that the CSA explicitly recognize and allow for registrants in the CRM stream to become registered as ARs and AARs – subject to a restriction on investment decision making.

We are, of course, open to alternatives put forward by the CSA to solve the serious concerns described above.

We would be pleased to speak with you further about our responses to the Committee's questions or the issue in general.

Sincerely,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

Katie Walmsley
President, PMAC
Counsel, PMAC

Melissa Ghislanzoni
In House Legal

Appendix B

PMAC submission on User Feedback on 2016 Risk Assessment Questionnaire

PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

Advancing Standards™

PMAC Member Feedback on the OSC 2016 Risk Assessment Questionnaire

Positive feedback regarding the RAQ and OSC process

1. Firms felt that the OSC's Risk Assessment Questionnaire (the "RAQ") was done at a good time of the year and appreciated that it did not occur during the summer;
2. The OSC did a good job of alerting firms far enough in advance that the RAQ would be issued so as to allow firms to prepare and staff appropriately; and
3. Firms appreciated the outreach to registrants in the form of the Webinar and FAQ.

Most common concerns regarding the RAQ:

1. The frequency of the RAQ: the 2 year gap in between is too short considering the very significant amount of work and firm resources required and in light of the goal of the questionnaire to assess firm's risks.
    - A firm's risk profile is unlikely to change materially in a 2 year period so the OSC's goal could still be met by issuing the RAQ every 3 years instead.

2. Different sections of the RAQ ask for data as of different dates which creates confusion and necessitates extra calculations.

3. The user interface and programming of the spreadsheet is not user-friendly[5]:
    - Certain questions did not allow "0"s to be entered as an answer;
    - Decimal restrictions;
    - Font was too small;
    - Did not allow the user to make corrections to answers;
    - Comment sections did not print properly; the entirety of the comment section would not show;
    - Spreadsheets were not professionally programmed;
    - Unable to upload files other than the Fund Level Questions;

[5] We have a sample, revised Excel spreadsheet created by one of our Members that improves user experience of the document.

- Format did not lend itself to collaboration amongst various internal stakeholders which created extra time and work to gather and input data.

4. The sections are numbered in the same way; all four sections have Q1 as the first section which causes confusion for reference purposes.

5. Certain questions that focus on EMD firms are difficult to answer for firms that are dually registered as both PM and EMD where the PM side is the core business. Other questions are more oriented towards retail firms and are hard to answer for non-retail firms.

6. For employees filling out the RAQ for the first time found that there was insufficient information and directions on the RAQ itself and the Webinar was not very helpful because the discussion jumped from section to section which added to confusion.
   - Necessitated emails to the OSC in order to understand the tasks.

Recommendations for these issues:

1) Revisit the frequency of the RAQ and consider increasing the span of time between each RAQ ;
   - Provide firms with a summary of changes that have been made from the previous RAQ to the upcoming questionnaire.

2) Allow firms to use their own end of fiscal year or Dec. 31st as the reporting date for data in order to reduce the burden of extra calculations.

3) Use a working group and do focus sessions to improve/redesign/rebuild the user interface.

4) Have a comment box for each question to allow firms to more clearly set out additional details, assumptions and information with respect to each question.

5) General Layout:
   - Clearly name each section and question in the RAQ differently, i.e.: divide into A1, B1, C1, and D1 instead of renumbering each section starting from question 1.
   - Provide a separate PDF for each section
   - Provide fillable PDFs

6) Allow firms to focus on the section of the RAQ representing their primary business / primary source of revenue rather than fill out entire sections that are not relevant to the business.

7) Provide more information and instructions on the RAQ itself as opposed to having Webinars and FAQs. Consolidation of **instructions**

on completing the RAQ will make the process more efficient and collect better data for the OSC.