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July 30, 2021

Via e-mail

FFSP@treasury.gov.au

Regulatory Powers and Accountability Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sirs and Mesdames:

Re: Relief to Foreign Financial Service Providers Consultation Paper

Overview

The [Portfolio Management Association of Canada \(PMAC\)](#), through its International Committee, is pleased to have the opportunity to respond to the request for comment regarding the Relief to Foreign Financial Service Providers Consultation Paper (the **Consultation**)¹ issued by the Australian Treasury. PMAC supports the objective of the Consultation which is to establish a framework for foreign financial service providers (**FFSPs**) in Australia, with the goal of reducing regulatory requirements and encouraging greater engagement by FFSPs in the Australian market while maintaining the necessary market and investor protections.

Capitalized terms used but not defined in this submission shall have the meaning given to such terms in the Consultation.

About PMAC

PMAC represents over [300 investment management firms](#) registered to do business with the various members of the Canadian Securities Administrators (the **CSA**)² as portfolio managers. In addition to this primary registration, most of our members are also registered as investment fund managers and/or exempt market dealers. Collectively, our members manage total assets in excess of CAD \$2.9 trillion.

¹ See Relief to Foreign Financial Service Providers (9 July 2021), Australian Government, The Treasury (“**Consultation**”), available at <https://treasury.gov.au/sites/default/files/2021-07/c2021-189465-cp.pdf>.

² Securities regulators from each of the 10 provinces and 3 territories in Canada form the [Canadian Securities Administrators](#).

All PMAC members are all fiduciaries managing investments in the best interests of their clients, which include private individuals, foundations, universities, and pension plans. Some firms manage large mutual funds or pooled products, and others manage separately managed accounts on behalf of private clients or pension plans and foundations.

In Canada, securities regulation falls under the provincial jurisdiction of the 10 provinces and 3 territories. Each province or territory has its own securities regulator. Generally, firms are registered in the province where their head office is located (and the provincial regulator in that province will be their “principal” regulator), and most are also registered in all or multiple other Canadian provinces to allow them to deal with clients across the country. The Canadian provincial regulators operate under a national umbrella organization, the Canadian Securities Administrators (**CSA**), which works to develop harmonized policies and regulations across Canada.

While over 60% of our members are principally regulated by the Ontario Securities Commission (**OSC**), the remaining portion are principally regulated by the various other members of the CSA across Canada, including the British Columbia Securities Commission (**BCSC**), the Autorité des marchés financiers in Quebec (**AMF**) and the Alberta Securities Commission (**ASC**).

PMAC members also serve clients in 52 jurisdictions outside of Canada, either through formal registration with the applicable securities authorities or in reliance on exemptions from registration requirements. As such, PMAC has a direct interest in the Consultation and in ensuring expanded relief for FFSPs provided by the Australian Securities and Investments Commission (**ASIC**). Of the PMAC firms that recently indicated they have clients outside of Canada, 35% have clients in the Australasia region.

PMAC commends the Australian Treasury for this Consultation and in particular for its consideration of expanding the sufficient equivalence relief to Canadian FFSPs regulated by the OSC. Our comments are limited to the options related to restoring the sufficient equivalence and limited connection class orders, which were repealed by ASIC in March 2020 in connection with the adoption of the “funds management relief.”

Key Recommendations

Our key recommendations on the Consultation are as follows:

1. Adopt a modified version of Option 1A and Option 2 as presented in the Consultation. PMAC supports the restoration of the sufficient equivalence relief and the limited connection relief contemplated under Option 1A; however, Option 1A does not extend the sufficient equivalence relief to countries that have been deemed sufficiently equivalent under the funds management relief adopted by ASIC, in particular, to FFSPs regulated in Canada;
2. As noted above, adopt a hybrid approach to Option 1A and Option 2 and include FFSPs regulated by all provinces and territories in Canada in the list of jurisdictions assessed as being sufficiently equivalent to the Australian regulatory regime for the regulation of financial services (as opposed to only those Canadian FFSPs regulated by the OSC); and,
3. Adopt only those conditions to reliance on the exemptive relief as are strictly necessary for ASIC to have the investor and market protection comfort it requires, without creating additional regulatory burden through an approval process, ongoing provision of information and the uncertainty risk created by potential unilateral action on the part of ASIC.

Each recommendation is discussed in greater detail below.

Discussion of Key Recommendations

1. Adopt a Modified Version of Options 1A and 2, Reject Option 1B

As noted above, Options 1A and B will not extend the sufficient equivalence relief to FFSPs regulated in Canada, including financial services firms regulated by the OSC, which is noted in paragraph 31(f) as being sufficiently equivalent. Option 1B will not restore the limited connection relief, which PMAC believes is important for firms that don't fit squarely into the sufficient equivalence relief or the funds management relief and would otherwise be required to register as a FFSP.

As described in paragraph 3 of the Consultation Paper, such relief encourages FFSPs to offer their products and services in Australia and enables Australian wholesale clients to access a more diversified range of investment opportunities. Canada's portfolio managers are highly regulated and well-placed to assist the Australian superannuation and retirement industry in accessing a broader range of investment markets, assets and/or capabilities, to achieve these Australian investors' desired portfolio diversification.

PMAC supports the reinstatement of the limited connection relief and expansion of the FFSP sufficient equivalence relief to additional FFSP jurisdictions deemed sufficiently equivalent, as set out in Option 2. We believe this would be the most effective course to provide relief to FFSPs as it expands on a workable exemption with which firms, Australian investors and ASIC are already familiar.

2. Include all Canadian jurisdictions in the list of those that are sufficiently equivalent to the Australian regime for the regulation of financial services

While commending Australia's recognition of the sufficient equivalence of Canadian firms regulated by the OSC, we believe that every CSA member jurisdiction (i.e., all provincial and territorial securities regulators in Canada) should be included in the list of jurisdictions that have been assessed to be sufficiently equivalent to the Australian regulatory regime for the regulation of financial services.

The securities laws administered, overseen and enforced by the OSC are materially the same across Canada. Canada has a unique but **effective** securities regulatory framework where the 13 individual CSA members work together.

Canadian portfolio managers registered with one or more CSA securities regulators are subject to a common set of national securities laws, with National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103, a copy of which can be found [here](#)) being the primary instrument governing portfolio managers.

Compliance with NI 31-103 and other applicable securities laws is overseen by each firm's principal regulator – the CSA member in the firm's home province or territory, with a system of cooperation between other, non-primary CSA jurisdictions in which the firm is registered.

Importantly, NI 31-103 is a national instrument and each member of the CSA exercises equally rigorous oversight over its registrants, with Canada-wide standards for each registrant.

For this reason, we believe that *all* CSA jurisdictions merit inclusion in the list of jurisdictions that are sufficiently equivalent to the Australian regulatory regime for the regulation of financial services. Failure to include all CSA jurisdictions would unfairly exclude numerous Canadian FFSPs from providing financial services in Australia without a corresponding investor protection, public policy or market integrity rationale.

While PMAC's strong preference is to extend the exemptive relief to all CSA jurisdictions – and while we believe that there is no policy rationale not to do so – we acknowledge ASIC's past practice of only extending exemptions to jurisdictions with which ASIC has securities regulatory cooperation agreements. If there is a pressing policy reason dictating that ASIC continue with such practice going forward, then we encourage ASIC to extend the relief to FFSPs to those firms registered with the OSC, as well as with the ASC, BCSC and the AMF, all of whom we understand have cooperative agreements with ASIC.

Should you require any additional comfort or information about the national securities law regulatory regime in Canada, if helpful, PMAC would be pleased to facilitate a conversation or connect you with any CSA members.

3. Adopt only those conditions to reliance on the exemptive relief as are strictly necessary for ASIC to have the investor and market protection comfort it requires, without creating additional regulatory burden

Conditions proposed in paragraph 34

Canada has similar exemptions for non-Canadian portfolio managers and dealers wishing to advise or distribute to Canadian "permitted clients" (e.g., Canada's pension plans, etc.; see s.1(1) of NI 31-103 for full definition of permitted client investors), known as the "International Adviser Exemption" in section 8.26 of NI 31-103 and the "International Dealer Exemption" in section 8.18 of NI 31-103, each also subject to conditions.

The conditions for both exemptions are substantially similar, and include but are not limited to the following, which we believe are of particular relevance to the Consultation:

- providing written notice to the CSA (in lieu of approval, in recognition of investor sophistication and the foreign entity's registered status in their home jurisdiction) within 10 days of first use of the exemption;
- prior disclosure to clients;
- annual updates to regulators regarding reliance on the exemption;
- submission to the securities regulatory authority's jurisdiction; and,
- confirmation of having appointed an agent for service in the local jurisdiction.

In general, PMAC believes that the conditions associated with the sufficient equivalence and limited connection relief orders are appropriate to satisfy ASIC's investor protection objectives. PMAC has the following comments and questions regarding the specific conditions set out in paragraph 34 that we believe should not be attached to FFSP relief:

b) applying to ASIC for approval to use the relief;

PMAC does not believe that there should be an approval process to use the relief but rather, that - like in Canada - a notice to ASIC should suffice.

e) complying with directions from ASIC;

PMAC requests additional clarity with respect to the nature of such directions and whether FFSPs would need to proactively monitor for any such directions.

g) not dealing with unauthorised or unlicensed entities;

PMAC is unclear about what this means.

k) complying with auditing and reporting requirements;

PMAC believes that the requirements outlined in subsections k) through o) should not be included as conditions to relying on the FFSP relief. Investment management firms from a jurisdiction deemed to be equivalent should already be complying with these requirements in their home jurisdiction without the need to duplicate these efforts.

l) ensuring that financial services are provided efficiently, honestly and fairly;

PMAC believes that the requirements outlined in subsections k) through o) should not be included as conditions to relying on the FFSP relief. Investment management firms from a jurisdiction deemed to be equivalent should already be complying with these requirements in their home jurisdiction without the need to duplicate these efforts.

m) applying protections for dealing with client's money and property;

PMAC believes that the requirements outlined in subsections k) through o) should not be included as conditions to relying on the FFSP relief. Investment management firms from a jurisdiction deemed to be equivalent should already be complying with these requirements in their home jurisdiction without the need to duplicate these efforts.

n) having adequate conflict of interest arrangements in place;

PMAC believes that the requirements outlined in subsections k) through o) should not be included as conditions to relying on the FFSP relief. Investment management firms from a jurisdiction deemed to be equivalent should already be complying with these requirements in their home jurisdiction without the need to duplicate these efforts.

o) having adequate risk management systems in place;

PMAC believes that the requirements outlined in subsections k) through o) should not be included as conditions to relying on the FFSP relief. Investment management firms from a jurisdiction deemed to be equivalent should already be complying with these requirements in their home jurisdiction without the need to duplicate these efforts.

r) ensuring representatives are appropriated [sic] trained;

PMAC member firms' individual registrants are subject to the highest levels of education and proficiency requirements under the Canadian securities law regime. While we believe that all of our firms have appropriately trained representatives, additional details regarding ASIC's expectations on this point would be helpful. Further, investment management firms from a jurisdiction deemed to be equivalent should already be complying with these requirements in their home jurisdiction without the need to duplicate these efforts.

s) providing periodical information to ASIC including:

PMAC does not believe that the periodic information listed in each part of subsection s) should be included in the conditions to rely on the FFSP relief. We believe that this requirement will increase regulatory burden without providing corresponding market or investor protection comfort with respect to FFSPs or their products and services.

i. the FFSP's fund or business type;

ii. detailed description of the intended business activity, market presence and client groups targeted in Australia;

iii. copy of the FFSP's constitution and/or articles of association;

iv. the FFSP's investment strategy;

If ASIC were to require this information from firms, PMAC queries whether this periodic information would need to be updated for each strategy offered by firms.

v. the number of Australian clients;

vi. confirmation that financial services are only provided to wholesale clients or professional investors;

vii. certain financial statements that cover the financial services provided in Australia;

Does this requirement entail providing the entity's audited financial statements that include the revenues received for the provision of services to Australian clients?

viii. assets under management (AUM) of Australian investors in funds;

ix. increase/decrease in AUM from Australian investors from prior reporting period;

What is the intended frequency of this reporting requirement?

x. dealings with derivatives;

What level of detail is anticipated?

xi. name of foreign legal entity adviser promoting fund(s) in Australia, including name of onshore Australian licensee where relevant;

xii. the agreement with a local agent;

xiii. annual compliance attestation;

PMAC queries whether the intention is for firms to certify compliance with their home regulator or to certify compliance with the conditions of the exemption? We believe the latter would be acceptable while the former is unnecessary.

xiv. liquidity terms of the fund;

While PMAC notes that this requirement is not objectionable in itself, the cumulative effect of each of these conditions risks creating a large regulatory and compliance burden for firms.

xv. for funds that offer liquidity, redemption information from the prior reporting period

While PMAC notes that this requirement is not objectionable in itself, the cumulative effect of each of these conditions risks creating a large regulatory and compliance burden for firms.

t) breach reporting obligations, similar to that of AFSL holders;

Further details about the nature and scope of these breach reporting obligations would be helpful to allow us to assess which mechanisms firms have in place.

w) a condition that ASIC can notify the FFSP of any additional conditions it believes are necessary to address any concerns ASIC may have; and

PMAC believes that the conditions in subsections w) and x) would create undue uncertainty for FFSPs in the absence of a dialogue between the securities regulator and the FFSP.

x) a condition that ASIC can exclude FFSPs from relying on the relief where it has concerns the FFSP is not fit to provide services to Australian clients, or where a provider is using relief in a manner the relief is not intended to be used.

PMAC believes that the conditions in subsections w) and x) would create undue uncertainty for FFSPs in the absence of a dialogue between the securities regulator and the FFSP.

Based on our comments about the various conditions proposed in paragraph 34 set out above, we believe that imposing the full slate of conditions could significantly deter FFSPs from serving Australian clients in reliance on this relief. The conditions create a disproportionate level of regulatory and compliance burden without a corresponding investor protection benefit. PMAC does not believe that all of the conditions listed in paragraph 34 are necessary to provide ASIC with information and Australian investors with a degree of assurance and protection regarding FFSPs. As previously noted, PMAC believes that the conditions previously imposed with respect to reliance on the sufficient equivalence and limited connection relief orders are sufficient to satisfy ASIC's investor protection objectives.

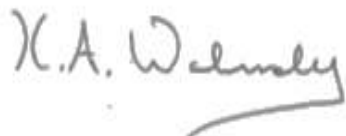
CONCLUSION

We appreciate the opportunity to comment on the Consultation and believe that expanding the relief to all Canadian FFSPs that comply with applicable conditions would provide meaningful additional investment opportunities and capabilities to Australian wholesale investors to further serve their needs.

We would be pleased to discuss any of our comments with you at your convenience.

Sincerely,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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