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**Sent via e-mail**

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**Re: OSC Notice 11-794 Statement of Priorities - Request for Comments  
Regarding Statement of Priorities for Financial Year to End March 31, 2023**

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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 11-794 Statement of Priorities - *Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2023* (the **Statement of Priorities**).

PMAC represents over [300 investment management firms](#) registered to do business in Canada as portfolio managers (**PMs**). In addition to this primary registration, the majority of our members are also registered as investment fund managers (**IFMs**) and/or exempt market dealers (**EMDs**). PMAC's members encompass both large and small firms managing total assets in excess of \$2.9 trillion for institutional and private client portfolios.

**OVERVIEW**

PMAC is supportive of the four overarching goals set out in the Statement of Priorities. We are pleased to have the opportunity to provide the following feedback on certain aspects of them.

We have made several recent submissions to the Ontario Securities Commission (**OSC**) and the Canadian Securities Administrators (**CSA**) on a range of advocacy issues impacting portfolio managers and their clients, all of which can be found [here](#).

## ACKNOWLEDGEMENT OF ACTIONS IN FURTHERANCE OF THE OSC'S PRIORITIES

Before we discuss the priorities for the coming year, we would like to acknowledge with appreciation the work that the OSC and your CSA colleagues did to implement and publish the following:

- The OSC's decision to ban the use of deferred sales charges (**DSCs**) and trailing commissions;
  - PMAC news release:
    - <https://pmac.org/pmac-applauds-osc-decision-to-ban-deferred-sales-charges-on-funds/>
- The proposed strengthened self-regulatory organization governance and oversight;
  - PMAC news release:
    - <https://pmac.org/pmac-applauds-the-strengthened-self-regulatory-organization-governance-and-oversight-in-csa-position-paper/>
- The publication of regulatory burden reduction measures for investment funds;
- The continued development and updates to the Client Focused Reforms FAQs; and
- The white label materials designed to assist registrants in serving Senior and/or Vulnerable investors.

These publications were responsive to stakeholder feedback with respect to reducing regulatory burden and provided additional flexibility and/or clarity on issues of importance to our members. These tangible actions are aligned with the OSC's goals.

## REGULATORY WISH LIST

In lieu of re-iterating all our key recommendations on various consultations here, and in recognition of the diligence and consideration with which the OSC and CSA review stakeholder comments, we are instead setting out the following topics (along with submission links, where applicable), which highlight PMAC's regulatory "wish list" for the year to come. We believe that these issues are very closely tied in several ways to the OSC's goals, especially promoting competition and fostering capital formation, promoting confidence in Ontario's capital markets, reducing regulatory burden, and facilitating financial innovation. They are as follows:

1. **Self-Regulatory Organizations (SRO):** Maintain direct regulation of PMs (and IFMs and EMDs) by the CSA and do not delegate regulation of these registrants to the new SRO in Phase 2 of the SRO Consultation.
  - PMAC submissions:
    - [CSA Consultation Paper 25-404 – New Self-Regulatory Organization Framework](#)
    - [CSA Consultation Paper 25-402 Consultation on the Self-Regulatory Organization Framework](#)
    - [Canadian Capital Markets Modernization Taskforce \(CMMT\)](#)
2. **Regulatory Burden Reduction:**
  - i) Continue the excellent work on burden reduction measures; and

- ii) Publish the consultation paper on modernized disclosure delivery, including access equals delivery, for investment fund issuers (including ETF issuers)
  - PMAC Submission:
    - [CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers](#)
- 3. **Derivatives Regulation:** Regulate PMs advising on derivatives under National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) instead of under a parallel set of derivatives instruments. PMAC reads the re-naming of the derivatives business conduct rule to the “Derivatives Dealer Business Conduct Rule” to indicate that advisers will not be included and urge the CSA to take a similar position with respect to registration.
  - PMAC Submissions:
    - [CSA Second Notice and Request for Comment – Proposed National Instrument 93-101 Derivatives: Business Conduct and Proposed Companion Policy 93-101CP Derivatives: Business Conduct](#)
    - [CSA Notice and Request for Comment – Proposed National Instrument 93-102 Derivatives: Registration and Proposed Companion Policy 93-102 Derivatives: Registration](#)
- 4. **Add Ontario and the OSC to the Hong Kong Securities and Futures Commission (SFC)’s list of “acceptable inspection regimes” (AIR):** Ontario and the OSC should be added to the [Hong Kong SFC’s AIR list](#) to provide increased access by Canadian asset managers to the Hong Kong capital markets. Regulator-to-regulator dialogue between the OSC and the SFC could benefit all Canadian portfolio managers wishing to manage retail funds in Hong Kong, regardless of whether these firms have affiliates that are Hong Kong registrants. This would align with the OSC’s mandate of fostering capital formation and competition. As further described below, gaining such access to Hong Kong also offers the potential to provide significant access to select China markets.

We note our appreciation for the thoughtful and detailed dialogue that OSC Staff have engaged in with PMAC and our membership on the issues listed above. Due to the importance of certain of these issues to our members, we have elaborated on them in greater detail below.

## **PMAC'S FEEDBACK ON STATEMENT OF PRIORITIES**

We have set out our comments below using the order of topics covered in the Statement of Priorities, followed by additional member feedback relevant to each of the four goals.

### **1. PROMOTE CONFIDENCE IN ONTARIO'S CAPITAL MARKETS**

#### ***Strengthen Dispute Resolution Services for Investors, such as the OBSI, through Policy and Oversight Activities***

PMAC is supportive of fair dispute resolution mechanisms and effective and trusted avenues for the redress of investor losses. As such, PMAC is generally supportive of the OSC's goal of continuing to engage with the CSA on strengthening OBSI.

We believe that investors deserve more than a "name and shame" process for firms that refuse to pay an OBSI recommended settlement. However, we believe that the power to make binding decisions requires clear methodologies regarding the determination of settlement amounts, extensive in-house expertise to ensure that loss calculations and recommendations are fair and consistent, as well as additional procedural and administrative fairness measures. Our members would also support the availability of other dispute resolution mechanisms and alternatives to OBSI. Members look forward to commenting on the detailed proposals regarding OBSI's ability to impose binding decisions and with respect to increased claim limits.

#### ***Continue Efforts to Implement a new SRO and Consolidate the Current Two Investor Protection Funds Independent from the new SRO***

As stated in our news release "[PMAC applauds the strengthened self-regulatory organization governance and oversight in CSA position paper](#)", we were pleased to see the CSA's response to stakeholder feedback in developing its SRO proposal. PMAC supports the governance changes proposed for the new SRO. In our [recommendations to the CSA](#), we encouraged the CSA to strengthen CSA oversight of the new SRO and ensure the inherent conflicts of interest within an SRO structure are managed. This would include maintaining the current CSA oversight of certain dealer firm and individual dealing representative registrations. PMAC supports the continued direct regulation of PMs, EMDs, and IFMs by the CSA, and we look forward to responding to a future consultation regarding the regulation of PM firms in Phase Two of the implementation process.

#### ***Develop a Rule Setting out Climate Change-Related Disclosures for Reporting Issuers***

PMAC is pleased to have the opportunity to respond to the CSA's proposed rule on climate change-related disclosures for reporting issuers. As set out in [PMAC's submission](#) to the International Organization of Securities Commissions (**IOSCO**) on its *Consultation Report: Recommendations for Sustainability-related Practices, Policies, Procedures and Disclosures in Asset Management*, we believe that, in order to prevent greenwashing, it is critical to focus on the reliability and quality of ESG data and disclosure. We view the CSA's consultation on climate change-related disclosures as an important first step.

## ***Investment Funds ESG Staff Notice***

PMAC looks forward to the CSA's Staff Notice on ESG Related Investment Fund Disclosure and believes that guidance provided by the CSA on these matters should represent best practices and guidance; any requirements should be limited to what is currently set out in National Instrument 81-102 – *Investment Funds (NI 81-102)*. To the extent that the CSA believe additional disclosure requirements beyond those provided for in NI 81-102 are merited, we would expect that a draft rule would be published for public comment.

## ***Develop Total Cost Reporting Disclosures for Investors***

PMAC will be providing feedback on the proposals to develop total cost reporting disclosures. PMAC is supportive of measures that promote transparency for investors and welcomes the total cost reporting consultation. We note with approval that the OSC plans to leverage existing disclosure documents as opposed to adding new requirements, and that this consultation will endeavour to reflect feedback from industry associations and back-office service providers with respect to practical considerations and costs. We believe that these are key stakeholders to have engaged at an early stage and encourage continued dialogue around both theoretical and practical implementation issues.

## **2. MODERNIZING THE REGULATORY ENVIRONMENT**

### ***Implement an Enhanced Framework for Modernizing Regulation***

PMAC is appreciative and supportive of the policy-making work undertaken by the OSC. We support prioritization of coordinating policy projects to ensure a streamlined process to achieve desired policy outcomes on high priority issues. As PMAC will comment to the Government of Ontario, however, we urge the OSC to continue to engage in public stakeholder comment periods that provide sufficient time to gather meaningful feedback.

PMAC is supportive of the platform approach to legislation being adopted by the proposed *Capital Markets Act* (Ontario) (**CMA**) to foster efficient rule making. However, in our view, the CMA's suggested minimum comment timeframe of 60-days is insufficient to gather and provide nuanced feedback. This is especially the case for issues of greater complexity or which merit a multijurisdictional Canadian and/or international analysis of regulation, practices, and impacts. We believe that, for most consultations, 90-day comment periods are more appropriate and that the benefit of gathering more fulsome feedback outweighs the cost of the extra time.

### ***Work to Modernize Delivery Options of Regulatory and Continuous Disclosure***

PMAC is very pleased to see that a consultation paper focused on modernizing and exploring alternative delivery requirements, including an access equals delivery model, is forthcoming for investment funds. In our [submission to the CSA](#) on the consultation "Consideration of an Access Equals Delivery Model for Non-Investment Fund Issuers," we express our support for an access equals delivery model for most investment fund issuer continuous disclosure, including for ETF issuers.

## ***Continue to Enhance Systemic Risk Oversight***

### ***a) Enhanced Systemic Risk Oversight - Derivatives***

PMAC continues to support the CSA's aim to establish a robust investor protection regime that meets the IOSCO standards with respect to over-the-counter (**OTC**) derivatives, and we support the CSA's efforts to ensure that all firms remain subject to certain registration and minimum standards in relation to their business conduct towards both investors and counterparties.

We note that the Statement of Priorities refers to the derivatives business conduct rule as the proposed "Derivatives Dealer Business Conduct Rule" and welcome that change. We believe that a focus on dealers would result in more proportionate and impactful derivatives regulation. We urge the CSA to leverage NI 31-103 for the registration of advisers, including those advising on derivatives. With respect to business conduct, we also urge the CSA to leverage NI 31-103 which we believe is sufficiently comprehensive to cover business conduct where an adviser advises on derivatives. We believe it would be beneficial for the CSA to issue a statement updating market participants as to the status and scope of both proposed new derivatives rules which had previously been targeted for publication in early 2021.

We note that, as in 2022, the Statement of Priorities references the design and building of an enhanced derivatives data mart. Members would like to better understand the timing of this project with respect to the yet-to-be-finalized regulations regarding business conduct and registration. Our concerns relate to the CSA knowing who has the data, possible duplications of data infrastructure, as well as efficiency.

### ***b) Enhanced Systemic Risk Oversight - Liquidity Risk Management***

As firms work to implement the guidance in CSA Staff Notice 81-333 – *Guidance on Effective Liquidity Risk Management for Investment Funds (LRM Staff Notice)*, we believe there may be opportunities for additional dialogue with industry participants regarding practical LRM strategies and unique tools for effective LRM in the Canadian market. PMAC would be pleased to organize a group of member firms to further this discussion.

## **3. FACILITATE FINANCIAL INNOVATION**

### ***Engage and Support Novel and Innovative Business in our Capital Markets***

#### ***a) Add Ontario and the OSC to the Hong Kong SFC's AIR list***

We believe there is a real opportunity to foster competition and support Canadian asset managers by having Ontario and the OSC added to the Hong Kong SFC's acceptable inspection regime (AIR) list. Adding Ontario and the OSC to the AIR list would enable Ontario asset managers to manage Hong Kong retail funds, opening avenues for new business and competition in Hong Kong. Further to the recent coming into force of [China's Greater Bay Area Wealth Management Connect Scheme](#), retail Hong Kong funds may also qualify for

offering across the Greater Bay Area which includes Hong Kong, Macau, and nine cities in Guangdong province (as of 2020, the Greater Bay Area has a cumulative population of 86 million). In other words, adding Ontario and the OSC to the AIR list would open a gateway for Ontario portfolio managers to Hong Kong and across the Greater Bay Area.

We believe that many Ontario asset managers would consider availing themselves of this international opportunity and note that this would be open to all asset managers, not only those with Hong Kong registered affiliates. This would align with the OSC's mandate of fostering capital formation and competition.

While Australia, the United States, France, Germany, and the United Kingdom are among the many developed markets on the AIR list, there are currently no Canadian jurisdictions included, representing a missed opportunity for Canadian firms. The [SFC states](#) that, as a general guide, they look to the following in determining the acceptability of an overseas regime: 1) that the overseas regulatory authority carries out inspections of investment management firms within its jurisdiction in a manner generally consistent with the SFC; and ii) that the SFC and the overseas regulatory authority have satisfactory procedures for the timely exchange of information regarding investment management firms.

We note the existence of Memoranda of Understanding (**MOUs**) between the OSC and the SFC on [information exchange](#) and [innovative fintech businesses](#), and believe these represent an excellent basis for dialogue on having the Ontario and the OSC added to the AIR list. We are encouraging the addition of Ontario and other Canadian provinces that have such MOUs in place to all be added to the AIR list to maximize the ability of Canadian portfolio manager talents to be offered to Hong Kong funds.

*b) Continue to focus on Alternative Funds*

PMAC would like to reiterate the need to expand investor choice by supporting and facilitating the development and launch of structured investment products and to enable portfolio managers to manage fund assets with more flexibility and efficiency. This goal was included in the 2019-2020 Statement of Priorities but has not been a priority in subsequent years. We believe this goal remains valid for the coming year and ask that it be reinstated in the 2022-23 Statement of Priorities. This goal should apply to all funds, whether alternative or otherwise.

PMAC has [suggested ways](#)<sup>1</sup> to modernize fund regulation by updating the definition of "illiquid assets" in NI 81-102. Additionally, we encourage amendments to NI 81-102 that reflect the reality of Canada's fragmented equity markets in lieu of linking requirements to trading securities or providing information about the "primary market" or "marketplace"<sup>2</sup>. Furthermore, certain of the operational requirements of NI 81-102 in Part 9 – Sale of Securities of an Investment Fund and Part 10 – Redemption of Securities of an Investment

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<sup>1</sup> Please see pages 2–3.

<sup>2</sup> See Section 6.2 of National Instrument 81-107 – *Independent Review Committee for Investment Funds* and, related to ETFs, Instruction 14 of Form 41-101F4 – *Information Required in an ETF Facts Document*.

Fund are overly prescriptive, out of date, and would benefit from amendments to make them more flexible and reflective of current business practices.

#### **4. STRENGTHEN OUR ORGANIZATIONAL FOUNDATION**

##### ***Redevelop CSA National Systems***

PMAC views the National Systems project as an important opportunity to improve information flow that is worth the short-term investment for the longer-term benefit of all stakeholders, including investors and the CSA. PMAC responded to the [CSA Notice and Request for Comment – Proposed National Systems Renewal Program Rule and Related Amendments](#) and [CSA Notice and Request for Comment – Proposed Repeal and Replacement of Multilateral Instrument 13-102 - System Fees for SEDAR and NRD](#).

We are concerned that the National Systems renewal process has been somewhat opaque, and our members do not have a good understanding of what the new system will look like, what functionality it will provide or when it will be completed. We reiterate our view that extensive user-testing of the various functionalities of the technology should be prioritized prior to launch for a variety of reasons. These include the need to ensure that the system will function as anticipated for firms, the cost of implementation, and the need to train (and re-train) staff on the use of the system. Failure to address issues prior to implementation can lead to operational problems, reducing the usability and effectiveness of the systems and requiring cumbersome fixes and updates.

Members also request additional information about the costs and timeline of the National Systems project as part of the Statement of Priorities, given the scale and timeframe of the project.

##### ***Continue Technology Modernization, Digital Transformation and Data and Analytics Enablement at the OSC***

OSC Staff have engaged with PMAC in numerous ways to leverage and improve existing technology and data collection to reduce regulatory burden. We believe that technology is an important tool for improving the OSC's efficiency and ability to be a data-driven regulator. We support all measures to strengthen digital capability and view it as beneficial for the OSC, registrants and the Ontario markets more broadly.

##### ***Foster/Improve Inclusion, Equity and Diversity***

PMAC is pleased to see the OSC's focus on growing and sustaining equity and diversity and ensuring the employee experience is equitable and inclusive for everybody. PMAC would like to stress our support for measures, such as increasing inclusion and diversity, which we believe will bolster the OSC's ability to attract and retain staff with strong industry knowledge and other necessary skills. We believe that the OSC has, and continues to seek, deep regulatory and industry knowledge. We encourage the continued development and addition to that knowledgebase, which is beneficial not only for Ontario, but to the entire CSA.

# CONCLUSION

PMAC values the securities industry expertise of the OSC’s Staff and leadership. We look forward to continuing to work collaboratively with and assisting the OSC, where possible, in attaining the goals set out in the Statement of Priorities.

We have seen a great deal of collaboration, consultation and proactive problem-solving led by OSC Staff. We are very appreciative of these opportunities and efforts and commend the team at the OSC for their continued transparent engagement with various stakeholders. We believe that the goals set out in the Statement of Priorities are critical to a successful 2022-2023. We also believe that in the future, additional information about both budget and timing expectations with respect to these goals will help solicit more informed and insightful stakeholder feedback.

If you have any questions regarding the comments set out above, 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

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