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January 12, 2022

**Via e-mail**

[FFSP@treasury.gov.au](mailto:FFSP@treasury.gov.au)

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

Dear Sirs and Mesdames:

**Re: Exposure draft legislation: Relief to Foreign Financial Service Providers**

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## Overview

The [Portfolio Management Association of Canada \(PMAC\)](#), through its International Committee, is pleased to have the opportunity to respond to the exposure draft legislation: Relief to Foreign Financial Service Providers Consultation Paper (the **Consultation**)<sup>1</sup> 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 promoting diversified investment opportunities for Australian investors and attract investment and liquidity to the Australian markets through the adoption of the three proposed exemptions: the professional investor exemption; the comparable regulator exemption; and the fit and proper person test exemption).

PMAC responded in support of the Treasury's July 30, 2021 consultation, a link to which is found [here](#). PMAC appreciates the Treasury's consideration of PMAC's previous comments and the incorporation of the expanded approach to the sufficient equivalence relief taken in this Consultation.

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

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<sup>1</sup> 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>.

## About PMAC

PMAC represents over [300 investment management firms](#) registered to do business with the various members of the Canadian Securities Administrators (the **CSA**)<sup>2</sup> 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.

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 over 50 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 the new professional investor exemption which allows the provision of certain financial services by FFSPs to professional investor clients investors as well as the comparable regulator exemption which provides an exemption from the requirement to hold an Australian financial services license for foreign companies that provide financial services to wholesale clients and which would include companies regulated by the OSC.

We also commend the Australian Treasury for imposing far more limited and reasonable conditions on an FFSP’s reliance on these exemptions than had been previously proposed<sup>3</sup>. We believe that these requirements strike the correct balance between ensuring that the regulator has appropriate oversight over FFSP’s to ensure investor protection, while balancing the regulatory and compliance burden for firms relying on the comparable regulator exemption. We also believe that this is more in line with the Australian Treasury’s objective of promoting competition without adversely

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

<sup>3</sup> FFSPs must consent to information sharing between ASIC and the firm’s home regulator; notify ASIC of any significant enforcement or disciplinary actions taken against the firm in any place outside Australia; appointing an agent in Australia and maintain sufficient oversight of its representatives.

impacting the availability and costs to Australian wholesale clients of the financial services and products being provided by FFSPs.

PMAC also supports the proposed professional investor exemption which would allow the provision of financial services to professional investors by firms principally located outside of Australia.

We believe the Consultation significantly expands the ability of FFSPs to service the Australian markets in a way that is designed to balance investor protection with efficiency.

## Key Recommendations

Our key recommendations on the Consultation are as follows:

1. **Expand the comparable regulator list to include each Canadian securities regulator forming the CSA.** We believe that each member of the CSA meets the criteria in proposed Section 911T of the Consultation which sets out the considerations the Minister should take when designating a comparable regulator, including that the regulatory regime is broadly consistent with the Objectives and Principles of Securities Regulation developed by the International Organization of Securities Commissions (**IOSCO**).
2. **In the alternative, expand the comparable regulator list** to include the Alberta Securities Commission (**ASC**), the Autorité des marchés financiers of Quebec (**AMF**) and the British Columbia Securities Commission (**BCSC**) since these jurisdictions have signed the requisite IOSCO Memorandum of Understanding.

Each recommendation is discussed in greater detail below.

## Discussion of Key Recommendations

### 1. Expand the list of regulator jurisdictions to the wider CSA

While commending Australia's recognition that firms regulated by the OSC should be included in the list of comparable regulator jurisdictions, we continue to urge you to expand the comparable regulators list to include every CSA jurisdiction.

As noted in our July 2021 submission, 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.

Subsection 911T(2) of the Consultation outlines the matters the Minister may have regard to in making a determination about which regulators administer comparable regulatory regimes of

authorisations, registrations or licenses. We believe that the members of the CSA meet each of the enumerated criteria, as discussed in further detail below.

(2) In deciding whether to determine a regulator under subsection (1), the Minister must have regard to:

(a) whether the regulatory regime that the regulator administers produces comparable outcomes to this jurisdiction in regulating and improving the performance of:

(i) the relevant financial services system; and

(ii) the financial services providers in that system; and

(b) whether that regulatory regime is clear, transparent, certain and adequately enforced; and

(c) whether that regulatory regime is broadly consistent with the Objectives and Principles of Securities Regulation, developed by the International Organization of Securities Commissions (IOSCO) and as in force from time to time; and

(d) whether the regulator:

(i) is a signatory to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, developed by the IOSCO and as in force from time to time; or (ii) is a party to any other effective cooperation arrangement with ASIC; and

(e) any relevant submission received from any entity in relation to the regulator or that regulatory regime; and

(f) any relevant advice (including any assessment) received from ASIC in relation to the regulator or that regulatory regime; and

(g) any other matters prescribed by the regulations for the purposes of this paragraph.

The Minister may also have regard to any other matter that the Minister considers relevant.

The CSA entered into a Cooperation Agreement with ASIC in 2017 to share information about innovative fintech businesses and we believe that such an agreement of Cooperation indicates the relationship between ASIC and the CSA, and that ASIC views the CSA as a credible and valuable partner in the capital markets. Additionally, we believe that this Cooperation Agreement would meet the criteria set out in subsection 911T2(d)(ii) of the Consultation that a jurisdiction eligible for designation as a comparable regulator "is a party to any other effective cooperation agreement with ASIC."

For this reason, we believe that *all* CSA jurisdictions merit inclusion in the comparable regulator list. Expanding the comparable regulator list as requested by PMAC will have the additional benefit of exempting CSA registered FFSPs servicing wholesale clients from the requirement to satisfy the fit and proper test requirement when applying for an Australian financial services license, incentivizing more Canadian FFSPs to participate in Australia's markets.

Failure to include all CSA jurisdictions would unfairly exclude numerous Canadian FFSPs from the ability to leverage the proposed exemptions designed to encourage the provision of financial services in Australia without a corresponding investor protection, public policy or market integrity rationale.

## **2. In the alternative, add the ASC, AMF and BCSC to the comparable regulator list**

While we believe that all CSA members merit inclusion in the comparable regulator list, in the alternative, we ask that you include the ASC, AMF and BCSC.

As required by proposed subsection 911T(2)(d)(i) of the Consultation, the ASC, AMF and BCSC are, like the OSC, signatories of the Multilateral Memorandum of Understanding Concerns Consultation and Cooperation and the Exchange of Information developed by IOSCO.

Extending the comparable regulator list to these Canadian jurisdictions would allow FFSPs representing the majority of Canadian managers to provide to financial services in Australia to wholesale clients.

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.

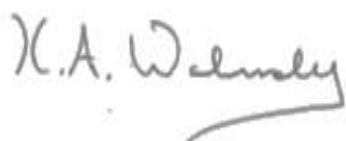
### **CONCLUSION**

We appreciate the opportunity to comment on the Consultation, we appreciate Treasury's consideration of our prior comments in this iteration and believe that expanding the comparable regulator list to include all CSA jurisdictions or, at a minimum, the ASC, AMF and BSCC will 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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