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Sent via e-mail

Kathryn Royal
Manager, Strategic Planning and Reporting
Ontario Securities Commission

kroyal@osc.gov.on.ca

Re: OSC Notice 11-797 Statement of Priorities - Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2024

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments regarding OSC Notice 11-797 Statement of Priorities - *Request for Comments Regarding Statement of Priorities for Financial Year to End March 31, 2024* (the **Statement of Priorities**).

PMAC represents over [310 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 \$3 trillion for institutional and private client portfolios.

OSC GOALS & PMAC'S TOP ADVOCACY REQUESTS

PMAC is supportive of the four overarching goals set out in the Statement of Priorities, as well the work plans set out in support of those goals. We are pleased to have the opportunity to provide the following feedback on certain aspects of the OSC's priorities of specific importance to PMAC's members, starting with four of our most urgent advocacy requests - two that are expressly mentioned in the Statement of Priorities and two that we believe merit inclusion in the final Statement of Priorities:

Goal 1 - Building Trust and Fairness in Ontario's Capital Markets:

- **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 SRO¹.

¹ PMAC submissions:

- **Total Cost Reporting (TCR):** PMAC was disappointed to learn that, notwithstanding the significant stakeholder concerns expressed with respect to TCR, as currently proposed, the CSA intends to publish final amendments in April of 2023. PMAC is supportive of measures that increase investor understanding and transparency and, from a policy perspective, we were supportive of the proposals. However, as discussed in more detail below, PMAC voiced several material issues with the proposals that we do not believe have been addressed² and that merit further consultation.

Goal 3 - Adapting Regulation to Align with Innovation and Evolving Markets:

- **Ease of Doing Business – expanding opportunities:** The COVID-19 pandemic brought many changes to the investment landscape, including that individual registrants and their clients may be residing and/or working in different locations. We believe there are opportunities to support registrants with respect to advising clients in other Canadian jurisdictions where the registrant firm is not registered, which often is in the client’s best interest. The process of becoming initially registered in an additional CSA jurisdiction gives rise to additional compliance obligations (in the form of bi-annual surveys, sweeps, questionnaires) and fees that can outweigh the benefit of registering in order to advise a small number of clients. We have discussed the possibility of a limited registration exemption in certain circumstances with OSC and other CSA staff and will be submitting a formal submission on this issue early in the new year.
- **Ease of Doing Business – removing barriers:** We value the work being done by OSC Staff across all branches of the Commission. We believe that there are several ways in which reducing barriers to compliance can increase the ease of doing business for OSC registered firms *and* support the work of the OSC, recognizing that both the tight labour market in our industry and budgetary constraints are not within the control of the OSC itself. These include ensuring that the OSC is appropriately resourced from a staffing and technical capacity. An increase in staffing could reduce backlogs in approvals, reviews and exemptive relief, providing greater certainty for firms and enabling them to more efficiently serve their clients in the context of turbulent markets. Systems improvements could reduce friction, confusion, and unnecessary frustration, especially as it relates to NRD filings. We discuss these issues in

- 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 PMAC Submission:

-CSA and CCIR Joint Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP, and Proposed CCIR Individual Variable Insurance Contract Ongoing Disclosure Guidance – Total Cost Reporting for Investment Funds and Segregated Funds

more detail below. We strongly believe that any changes made by the OSC – be they regulatory or technical in nature (such as the NRD password updates) – should be evidence-based and tested to ensure that the change is of benefit to investors and Ontario’s capital 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. BUILDING TRUST AND FAIRNESS IN ONTARIO’S CAPITAL MARKETS

1.1 Advance work on ESG disclosures for reporting issuers

PMAC applauds the CSA’s work in advancing ESG disclosures for reporting issuers and in publishing guidance around the disclosure practices of investment funds as they relate to ESG considerations. We are pleased to see the international lens this work is taking – from assessing the impact of international developments on current proposals (such as the proposed Disclosure of Climate-related Matters) to active leadership and engagement in ISOCO’s Sustainable Finance Taskforce. Creating a uniform standard of ESG disclosure that is meaningful to investors, compliant with internationally recognized standards and that can be implemented for the Canadian markets is of utmost importance, as outlined in [PMAC’s submission](#) on CSA Notice and Request for Comment – Proposed National Instrument 51-107.

We are also pleased to see that the OSC will be engaged in targeted consultations with Indigenous organizations to inform ESG disclosure requirements and best practices. [PMAC’s submission](#) on CSA Consultation Paper 43-101- *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* stressed the importance of prioritizing enhanced environmental, social and Indigenous People’s rights due diligence and disclosure (not limited to mineral projects) and the imperative to engage Indigenous partners. The OSC’s priority of engaging Indigenous perspectives is critical to meeting Canada’s pledges to reconciliation commitments and in support of its adoption of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDRIP).

PMAC is anticipating the results of the focused review of ESG disclosures by investment funds in accordance with CSA Staff Notice 81-334 and we look forward to opportunities to discuss the CSA’s findings and any subsequent guidance. We believe that OSC Staff could enhance clarity of the application of CSA Staff Notice 81-334 by reminding IFMs that the staff notice does not change the existing disclosure requirements of full, true and plain disclosure of material facts and that the inclusion of ESG considerations in an IFM’s investment strategies is required where use of ESG considerations is a material aspect of the strategy. We believe there has been some misapprehension around the applicability of

Staff Notice 81-334 for IFMs who, for example, consider governance as a part of – but not a material aspect of – investments.

1.2 Enhance fee transparency through Total Cost Reporting

As noted above, PMAC was concerned to learn that, notwithstanding the significant stakeholder concerns expressed over TCR, as currently proposed, the CSA intends to publish final amendments to implement TCR in April of 2023. Due to the importance of our outstanding key recommendations on the proposals, we have also duplicated them below:

1. Provide investors with total cost information.

We believe that investors want to know three key pieces of information: (1) what their investments are worth today; (2) how much their value increased (or decreased) over time; and (3) how much it cost them to get from A to B. In simple terms, it is about performance net of cost. This is critical as investors work with their investment counsellors to set financial goals and need to understand if they are on track in meeting these goals. We strongly support reporting all costs of investing as a simple percentage. The Client Focused Reforms include a requirement to consider product costs when selecting products to offer to clients. The importance of communicating about investment costs to clients should continue to be emphasized, and advisers and dealing representatives should receive training on product and total costs, including how to take them into account when making investment decisions and recommending products to clients.

2. Consult with independent behavioural science experts to test any reporting templates prior to moving forward.

Investor disclosure should highlight key information: value of investments; performance over time; and cost of investing - preferably on the first page. Additional details can be included in subsequent pages, or on a website. The CSA should determine the minimum information to be included in client disclosure and suggest a presentation template based on behavioural research. We recommend this research be conducted prior to publication of final amendments. The presentation of the information will be critical to the success of TCR.

3. Provide investors with information that is consistent and comparable to allow them to evaluate investment advice and services.

There is a gap in the current reporting that needs to be filled to enable a proper comparison between dealers and advisers, and between and among funds and other products. In order for transparency about costs to encourage competition, investors must be able to compare the costs of the products and services they receive so that the comparisons are valid. It is key that the total costs for advice and services be expressed as a percentage, and that the presentation of the information be understandable. Dollars will fluctuate from month to month, year to year, and account to account. Additionally, the dollar amount of costs will be higher as the account value increases. The only constant is the percentage of client assets paid in fees and costs for the products and services received. PMAC believes that including the total costs for advice and services as a percentage, in a format that is understandable to investors, will encourage competition.

4. Exclude certain non-individual institutional clients from the proposal.

Certain non-individual institutional clients that do not qualify as permitted clients should be excluded from TCR. These clients have unique reporting requirements that are different from retail investors and this reporting may or may not include TCR. We believe that an exemption is warranted for these types of sophisticated investors, which can negotiate their own terms, and that providing an exemption would balance the regulatory burden in a way that is consistent with the CSA's policy rationale for implementing TCR.

5. Revise the implementation plan following consultation with stakeholders.

We believe that TCR should be implemented as soon as possible but acknowledge that significant technological and systems changes are necessary. We do not believe these can be achieved within the timeframe proposed in the TCR consultation. These changes will require an investment of money and time for registrants and service providers. As described in our comment letter, we believe that some aspects of the proposals could be simplified to facilitate a faster transition. We believe that it would be advisable to strike an industry working group with representatives from various issuers, dealers, advisers, and service providers to provide additional feedback before the amendments are finalized and to assist with the implementation process.

We further stress that it is clear from our discussions with our members and other industry organizations that, due to the time and costs involved in implementation, monthly/quarterly reporting will not be possible with the timeframes proposed in the TCR consultation. And, for this reason, we recommend annual reporting in a single report – the Annual Report on Charges and Compensation.

We urge the OSC and its CSA colleagues to address these material stakeholder concerns to ensure the success of the TCR project for the benefit of investors.

1.4 Incorporate Indigenous Peoples' issues and Perspectives into CSA policy work

PMAC is pleased to that the OSC has made an explicit priority of centering Indigenous People's perspectives in securities regulation. We also support and applaud the creation of the CSA's Taskforce on Indigenous Peoples in the Capital Markets. We believe that the actions outlined for 2023-2024 regarding training to better understand how to work effectively with Indigenous Peoples and to integrate the consideration of Indigenous Peoples and reconciliation in securities regulation will be of great benefit to Ontario and the wider CSA.

1.5 Complete the development of the OTC derivatives regulatory framework

PMAC supports the enactment of National Instrument 93-101 – Derivatives: Business Conduct, as proposed. As set out in our [March 2022 submission](#), we believe that the rule strikes the correct balance between meeting IOSCO's standards for OTC derivatives

regulation, protecting the Canadian markets and imposing a proportionate regulatory burden.

PMAC is appreciative of the opportunity to participate in the CSA's roundtable on the Derivatives Business Conduct rule and we are pleased that the CSA will be considering our feedback on introducing a proposed appendix to NI 931-101 which provides a roadmap delineating the application of the instrument to registered portfolio managers that are already complying with NI 31-103. We believe such an appendix will increase compliance and decrease compliance burden.

We view the derivatives business conduct consultation as an exemplary balancing of regulatory burden against investor and market protection issues.

1.6 Implement the new single enhanced SRO

As the CSA initiates the work under Phase II to assess incorporating registration categories currently regulated by the CSA (such as PMs and EMDs) into the new SRO, PMAC once again strongly asserts our members' belief that PMs, EMDs and IFMs should *all* continue to be directly regulated by the CSA. We cannot overstate the importance of this issue to our members – over 70% of whom are registered as both PMs and IFMs.

As outlined in previous submissions, including [PMAC's June 2022 letter](#), we are strongly opposed to PMs being regulated under the new SRO for the following reasons:

- Direct regulation of PMs by the CSA is effective and CSA staff have the experience and expertise to understand the nuances and unique features of the PM business and the fiduciary duty that PMs owe to their clients.
- Dividing the regulation of PMs and IFMs between the new SRO and the CSA would increase cost, complexity and regulatory burden without a corresponding policy rationale. More than 2/3 of PM members are also IFMs.
- Direct regulation is aligned with international regulation of portfolio managers which is predominantly principles-based, direct government regulation.
- The CSA's principles-based approach to PM regulation is critical to maintaining investor choice and competition. In contrast to the more prescriptive regulation enacted by SROs, principles-based regulation provides the flexibility required for a wide variety of business models.
- Moreover, prescriptive regulation is not appropriate for certain client types that form a key part of the Canadian asset management ecosystem (and of Ontario's economy), namely: pensions, foundations and other institutional clients serviced predominantly by PM firms.
- SRO-regulated businesses are primarily focused on distribution and are directed at retail clients. Prescriptive rules designed to protect retail investors are not suited for pension, foundation and other institutional clients for whom this additional regulatory burden would have a significant negative impact without any corresponding investor protection benefit.

PMAC will provide comments on any consultations pertaining to the regulation of new registration categories by the SRO, stressing our concerns about the negative impacts this would have on investors, asset managers, innovation and the capital markets.

2. STRENGTHENING INVESTOR SAFEGUARDS

2.1 Expand the focus on retail investors through specific education, policy, research and behavioural science activities

PMAC believes that investors will be well served by the OSC's expanded focus on retail investor initiatives of the variety detailed in this priority. Specifically, we believe that the continued application of behavioural science to improve the OSC's policymaking and programs will be of significant benefit to all capital markets stakeholders. We support the introduction of policy proposals that are evidence-based and that reflect thoughtful consideration of research findings and investor perspectives. While market participants can adopt a variety of disclosure requirements and changes, this work will only be meaningful if the disclosure is relevant to the needs of investors and understood by them. The use of testing and behavioural science to support more effective policies is encouraged and we also urge the CSA to revisit missed opportunities to publish behavioural science research and to test disclosure templates in respect of the TCR project.

2.2 Strengthen investor redress and the OBSI

PMAC will be commenting on the Ombudsman for Banking Services and Investments' (**OBSI**) consultation regarding its organizational governance to share our views on how the composition and selection of the directors of the OBSI's board can better support the ombudsman and strengthen investor redress. Consistent with PMAC's advocacy around the importance of the fiduciary duty, we are supportive of a fiduciary board of directors, instead of one comprised of certain industry representatives. This is consistent with corporate governance best practice of moving to skills based fiduciary boards. We look forward to sharing a copy of our submission with the CSA OBSI Joint Regulators Committee in the early new year.

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.

Other – Liquidity Risk Management

We note that liquidity risk management practices are not mentioned in the Statement of Priorities for the year ahead. As firms continue their work to implement the guidance in CSA Staff Notice 81-333 – *Guidance on Effective Liquidity Risk Management for Investment Funds* and in light of IOSCO recommendations and SEC proposals, 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. ADAPTING REGULATION TO ALIGN WITH INNOVATION AND EVOLVING MARKETS

3.1 Strengthen oversight and enforcement in the crypto asset sector

Confidence in Ontario’s capital markets requires strengthened oversight, greater clarity and deeper knowledge and investor education with respect to the crypto asset sector.

3.2 Streamline period disclosure requirements for corporate finance and investment fund reporting issuers

PMAC is pleased to have had the opportunity to comment on the CSA’s Notice and Request for Comment on Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers. PMAC has long been in favour of an access-based delivery model. Our members have raised some concerns with the proposal such as the need to build systems and technology to maintain standing instructions and/or deliver electronic documents to Securityholders. We recommend that the CSA allow investment fund reporting issuers the option of continuing to use the existing notification by mail, and to provide a long transition period if new systems are required. We emphasize that a true access-based model would be preferable, and recommend that the CSA focus on educating investors with respect to the ability to access documents via the issuer’s website and SEDAR.

PMAC is also pleased that the CSA will be reviewing and considering feedback on the CSA’s regulatory proposals to reduce the frequency of mutual fund prospectus renewal. [PMAC’s submission](#) highlighted our concerns over the requirement for prospectus amendments to be filed as an amended and restated prospectus, noting that the elimination of the “slip sheet” amendment system would remove all burden reduction benefits of the proposal. We are looking forward to additional details regarding the base shelf prospectus proposal to be able to provide more meaningful feedback.

3.3 Modernize delivery options of regulatory and continuous disclosure filings for issuers

As noted above, PMAC supports moving to a true access-based system for investment fund reporting issuers, where notifications are not required, as recommended by the Ontario

Capital Markets Modernization Taskforce (CMMT) in its Final Report. We recommend that investor notification features be made available through SEDAR+.

3.4 Complete transition to SEDAR+

We are pleased to see the work being done by the CSA to complete the transition to SEDAR+, recognizing the obstacles posed to market participants by the current legacy systems, especially NRD. Considering the recent amendments to National Instrument 33-109 – *Registration Information*, it is more important than ever that NRD be updated to reduce burden and promote accurate filings.

We remain 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, especially as relates to the NRD portion of the update.

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 in 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.

PMAC was pleased to be able to welcome senior staff from the SEDAR + team to speak with our members and we look forward to additional collaboration and dialogue as the project continues.

PMAC has also expressed concerns about the regulatory and compliance burden, as well as the overall security, of the new NRD password policy that was published in August of 2022. PMAC noted that the various requirements, including the need to change passwords frequently, being locked out after three failed attempts, having to re-set passwords after 90 days of not having logged into NRD, are likely to complicate firm operations without a corresponding improvement to NRD security. Our members are already experiencing challenges with senior staff at firms having to spend time on the phone with NRD personnel to re-set employee passwords. We would like to better understand why changes to the NRD password system have been made in this particular way, as opposed to – for instance – a long pass phrase that does not require frequent updates and the use of 2-factor authentication (which is the industry standard).

3.6 Further initiatives that promote capital formation and foster competition

Ease of Doing Business – expanding opportunities and removing barriers

The COVID-19 pandemic brought many changes to the investment landscape, including that individual registrants and their clients may be residing and/or working in different locations. Additionally, with the coming intergenerational wealth transfer, adult children or

other family members of a firm's existing clients may wish to invest with a registrant while living in a province or territory different from their relative.

We believe there are opportunities to support registrants with respect to advising clients in other Canadian jurisdictions where the registrant firm is not registered, which often is in the client's best interest. The process of becoming initially registered in an additional CSA jurisdiction gives rise to additional compliance obligations (in the form of bi-annual surveys, sweeps, questionnaires) and fees that can outweigh the benefit of registering in order to advise a small number of clients.

We have discussed the possibility of a limited registration exemption in certain circumstances with OSC and other CSA staff, and we hope to continue this dialogue into 2023 as a way to expand Canadians' access to investment advice and enable ease of doing business across the country.

Add Ontario and the OSC to the Hong Kong SFC's AIR list

PMAC continues to 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 with respect to having the Ontario and the OSC added to the AIR list. We are encouraging the addition of Ontario and other Canadian

provinces to all be added to the AIR list to maximize the ability of Canadian portfolio managers to advise Hong Kong funds.

4. ENABLING THE ORGANIZATION TO DELIVER EFFECTIVE REGULATION

4.1 Attract, develop and retain talent

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, especially as relates to crypto regulation, which is beneficial not only for Ontario, but to the entire CSA.

Recognizing the tight labour market and that the Commission's resources are limited, members have noted delays in reviews and approvals of applications for firms and individual registration and in approvals of exemptive relief applications. The OSC does critically important work and supporting its ability to attract, develop and retain talent is of utmost importance for Ontario's markets.

4.2 Execute OSC's inclusion and diversity strategy

PMAC is pleased to see the OSC's continued 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.

4.3 Integrate data and processes to support effective decision making and risk monitoring

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 this as beneficial for the OSC, registrants and the Ontario markets more broadly.

CONCLUSION

PMAC is supportive of the four overarching goals set out in the Statement of Priorities, as well the work plans set out in support of those goals. 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, particularly over the past two years. 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 2023-2024.

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

"Katie Walmsley"

Katie Walmsley
President

"Margaret Gunawan"

Margaret Gunawan
Director
Chair of Industry, Regulation & Tax
Committee,

Managing Director – General Counsel,
Americas (ex-US) & Canada CCO
BlackRock Asset Management Canada
Limited