PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

December 8, 2014

SENT VIA EMAIL: commentonlegislation@ccmr-ocrmc.ca

To: Cooperative Capital Markets Regulatory System (CCMR)

RE: Consultation on Draft Provincial Capital Markets Act (PCMA) and Capital Markets Stability Act (CMSA)

The Portfolio Management Association of Canada (PMAC) through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to participate in the consultations regarding the draft uniform provincial capital markets legislation and complementary federal legislation (respectively, the PCMA and CMSA or Consultation Documents). We support the commitment by the governments of British Columbia, New Brunswick, Ontario, Prince Edward Island, Saskatchewan and the Federal government of Canada to establish the CCMR. We believe that the CCMR, if properly constituted, can better protect investors, enhance Canada's financial services sector and global reputation, support efficient capital markets and strengthen the management of systemic risk.

PMAC has been a strong supporter and vocal advocate for a common securities regulator for many years.[1] We have long advocated that Canada adopt a national securities regulator and get in step globally with the administration of securities regulation. We are pleased that the Federal Government has prioritized the creation of a cooperative securities regulator and that it has taken concrete steps toward making this a reality for Canada.

About PMAC

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. The Association has grown steadily to over 200 members from across Canada that are comprised of both large and small firms managing total assets in excess of $1 trillion for institutional and private client portfolios. Many of our Members are also registered as investment fund managers (IFMs) offering a variety of investment fund products to institutional investors and private clients. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at www.portfoliomanagement.org.

General Comments

PMAC is very supportive the formation of the CCMR and believes that it is worth resolving the short term challenges presented by this new regime in order to realize the long term benefits to

[1] See the PMAC website for a listing of all government submissions including most recently, our submission dated August 2, 2013 to the House of Commons Standing Committee on Finance advocating for a national regulator.

capital market regulation in this country that a common securities regulator could deliver. Historically, dating back to PMAC's early days as an Association, the policy objective of a national securities regulator was one of the common views shared by our Members. PMAC has long advocated that Canada adopt one national securities regulator to:

- Protect against unfair and improper practices and ensure better enforcement against fraud and white-collar crime
- Establish simplified, consistent national standards for addressing complaints
- Provide consistency for businesses operating across Canada through a clear set of rules that apply from coast to coast
- Strengthen the financial system by developing faster policy responses to emerging trends
- Reduce inefficiencies and duplication inherent in operating 13 regulatory structures: minimizing red tape will encourage foreign issuers to include Canada when offering securities
- Streamline the registration process for advisors by having one national process

While we acknowledge that the cooperative nature of the new regulator poses some significant challenges and obstacles, we believe that these can be overcome so that the end result is a regulatory organization with true national character. Like any large scale business merger, the benefits that can be realized are not without possible implementation complications; however, we believe that the end goals of operational and financial efficiency, better investor protection and streamlined regulation are attainable. It is important for market participants to keep focused on the end strategic goal at hand, remain engaged in the complex issues that will need to be addressed thoughtfully and carefully and continue to support this initiative. We encourage the CCMR to remain consultative with industry and stakeholders throughout the coming year to ensure that issues are identified quickly and addressed thoughtfully and proactively.

We are urging all non-participating jurisdictions to participate in the CCMR as a truly cooperative system can be best achieved if we have participation from all jurisdictions in Canada. Without full cooperation, it will become increasingly difficult to achieve the desired outcome of creating a national world-leading securities regulatory regime in Canada that contributes to a stronger national economy and allows Canada to better compete in global capital markets. For this reason, continued consultations and dialogue with all of the provinces and territories on establishing a cooperative securities regulator is of paramount importance.

Notwithstanding our support for a cooperatively established common securities regulator, we do have some concerns with certain aspects of the Consultation Documents. The following comments address certain provisions of the CMSA and PCMA in more detail along with our recommendations and views on anticipated operational and transitional issues. We are also seeking clarity on certain issues as discussed below.

I. CAPITAL MARKETS STABILITY ACT (CMSA)

a) Promoting Financial Stability & Managing Systemic Risk

We would like to note at the outset that PMAC supports the effective detection, prevention and management of systemic risk to Canada's financial system and appreciates the objective of having in place comprehensive monitoring and regulation to address such risks. We also support appropriate global efforts to ensure the resiliency and vibrancy of the global financial system. However, we take account of the continuing global controversy over designating capital markets participants as "systemically risky".

As a primary observation, we are concerned that certain provisions in the Consultation Documents, advanced in the name of promoting financial stability, may be far broader than necessary and sweep beyond any demonstrable risks. In this regard, we question the systemic

importance of certain registrants and products. The inclusion of these entities as "capital market intermediaries" (CMIs) under the systemic risk powers of the CMSA has raised significant concerns among our Membership. We also question the lack of due process contemplated in systemic risk provisions of the CMSA.

The CMSA includes a definition of "systemic risk"[2] that is based on definitions used by various foreign regulators and standard setting bodies. In the Canadian context, we believe the definition is overly broad and vague. Given that the systemic risk concepts serves as a primary basis for the Authority's national powers under the new framework, we believe the definition should be clear, unambiguous and include quantifiable guidance around what should be considered systemic risk. A measurable definition of systemic risk would also enable and empower market participants, including registrants, with the ability to evaluate and manage their risk profiles, which would in effect, help to reduce risk in the system generally.

Regarding the national data collection powers contemplated in the CMSA, we believe these powers will work to enable the Authority to collect necessary information and records for the purposes of monitoring capital markets activity and for detecting, identifying or mitigating systemic risk. However, the CMSA does not include provisions aimed at ensuring that to the extent the Authority collects data about specific entities, the entity's rights related to the Authority's data collection efforts are reflected in the process.

With regards to the systemically important designation, our Members are of the view that risk among investment funds, and in the asset management industry more broadly, is not concentrated in individual entities, but instead is more a result of market shifts that may impact the industry across sectors due to many (and not one) factors. We agree with the position taken by the Asset Management Group at SIFMA[3] that it would be more productive to assess and regulate "activities" in which investment funds and other capital market participants engage than it would be to try to identify individual entities that represent concentrated risk to such a degree that they warrant different regulation than their competitors.[4]

The rationale for a cooperative securities regulator was to improve the efficiency and effectiveness of securities regulation in Canada. The systemic risk powers included in the draft CMSA legislation represent a significant departure from that rationale and create regulatory powers that do not currently exist at any of the provincial regulators. These powers could have a very significant impact on PMAC Members and on the functioning of the capital markets in Canada generally. The Consultation Documents do not provide a rationale as to why the definition of CMI includes IFMs, investments funds and portfolio managers (addressed below). We are not aware of any specific mandate domestically or globally that should necessitate the inclusion of these entities in Canadian securities legislation. We are concerned that the CMSA is including overly broad powers and inappropriate regulation of certain capital market participants on the presumption that these entities may pose the same potential for systemic risk as do large financial institutions such as banks, which we believe is not and cannot be the case.

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[2] Section 2 of the Preamble of the CMSA defines systemic risk as "a threat to the stability or integrity of Canada's financial system that originates in, is transmitted through, or impairs capital markets and that has the potential to have an adverse effect on the Canadian economy".

[3] Securities Industry and Financial Markets Association (SIFMA). www.sifma.org.

[4] See SIFMA submission dated April 4, 2014 in response to Consultation for Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions: Proposed High-Level Framework and Specific Methodologies.

b) Systemically Important Capital Markets Intermediaries (CMIs)

Our main concern with the CMSA is the definition of CMI and the entities this definition could potentially capture. We query the inclusion of portfolio managers in the definition as well as the rationale that investment funds (regulated by the Authority and the other members of the CSA) as well as their managers would ever pose a risk to financial system stability that could warrant their designation as systemically important, particularly given the strong regulatory regime that applies to these entities. We address each of these entities below.

- **Portfolio Managers**

The definition of capital markets intermediaries also includes "a person that manages the investments of clients that have granted the person discretionary authority to do so".[5] This subsection implies that a portfolio manager providing investment management services to high net worth individuals, pension funds and institutions could be potentially considered systemically risky. Surely, this is not the intention. We seek clarification on this point and whether this is in fact the intent of the regulator as we would reject the inclusion of portfolio managers in this definition. We do not view the provision of discretionary portfolio management services to clients seeking wealth management or related services under a written agreement (discretionary management agreements) in connection with a managed account leading to a "threat to the stability or integrity of Canada's financial system that originates in, is transmitted through or impairs capital markets and that has the potential to have an adverse effect on the Canadian economy".[6] Certainly, there is no rationale or justification in the Consultation Documents to support this concern or conclusion and similarly, there is no global approach, to our knowledge, that would include portfolio managers as CMIs. Notwithstanding our significant concerns on this point, we will limit our comments on this issue on the understanding that this is not what is intended by subsection (e) of the definition of capital markets intermediary and seek clarification on what is intended to be captured in this provision.

- **Investment Funds and IFMs**

As stated above, we do not agree with the proposed definition of "capital markets intermediary". We also believe the inclusion of IFMs and an investment funds is inappropriate.[7] Correspondingly, we have similar concerns with the inclusion of pension funds but reserve our views on this issue and defer to industry pension associations and stakeholders.

We disagree with the approach taken in the CMSA regarding investment fund and IFMs and instead, believe that to the extent regulators determine specific activities or practices in the investment industry pose risks to the market or to the financial system; provincial regulators should use their rulemaking authority to address those risks through activity-based regulation and not product or entity based regulation. Particularly, when the regulation is drafted in the overly broad manner that has been proposed. We do support the proposed approach to address certain systemically risky practices and activities; we believe there are less targeted regulatory powers that could be used which are not punitive to individual registrants (PMs and IFMs) or products and that do not depend on certain objective *and* subjective factors.

Many foreign regulators, including the Financial Stability Board (FSB) and the Financial Stability Oversight Council (FSOC) have indicated that funds and asset managers do not appear to pose

[5] See subsection (e) of the definition of capital markets intermediary in the CMSA.
[6] See subsection 3(1) and definition of "systemic risk" in CMSA.
[7] See subsections (b) and (d) of the definition of capital markets intermediary in the CMSA.

the types of risks necessary to necessitate a systemic designation.[8] We note that in a recent FSB Consultation[9], the FSB acknowledges that an approach that focuses on certain asset-management related activities or groups of activities could be an alternative way to consider possible financial stability risks in the asset management sector. We support this view and approach. Canadian securities regulators already have the tools required to address excessive risk taking and potential securities laws breaches and have used these tools to improve regulatory oversight over, specific sectors. In addition, global regulatory bodies and standard-setting authorities, also has played an active role in facilitating these efforts.[10]

- ***Factors for Systemically Important Designation of CMIs***

The CMSA grants the Capital Markets Regulatory Authority (Authority) broad powers to designate a CMI as "systematically important" thereby enabling it to prescribe requirements, prohibitions and restrictions that, in our view, are expansive, punitive and potentially detrimental to the CMI and capital markets more broadly. We note that the regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions for systemically important capital markets intermediaries, including in relation to various requirements that are already largely required and mandated under existing securities laws (i.e. policies and procedures for risk management and internal controls, capital and financial resources, business continuity etc.).[11] We understand the regulations are expected to be published for comment in the spring of 2015. We note that we will be reviewing the draft regulations closely and expect to have more detailed comments at that time.

We note that the CMSA contemplates that the Authority may, after consultation with the Chief Regulator, make an order designating a CMI as systemically important if, in the Authority's opinion, the activities or material financial distress of the capital markets intermediary could pose a systemic risk related to capital markets.[12] If a serious risk is perceived by the Authority or about to be realized, then an order could be imposed on the CMI that would require it to, among other things, dispose of an asset, increase its capital or financial resources, prohibit any business combination or merger, terminate or restrict its activities. These powers are overly broad, in our view, and allow for an unfettered level of discretion to regulate capital market participants' activities without very little due process or protections in place to ensure CMIs can continue with their normal course business activities and continue to meet their fiduciary duty as fund managers. In addition, the orders made in respect of a CMI that poses a serious risk would grant the Authority the discretion to do "anything else that is necessary to address the risk".[13] This wording allows for expansive powers that could significantly impact how an IFM would continue to meet its fiduciary duty. This is a significant concern among our Members who are also IFMs and has not been addressed in the Consultation Documents.

Similarly, subsection 27(2) of the CMSA includes a variety of factors the Authority must consider in making a designation order that a CMI is systemically important. We view these factors and the process generally, as overly broad, lacking transparency and conferring too much discretion on the Authority and Chief Regulator. We address each separately below.

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[8] See for example: http://www.treasury.gov/initiatives/fsoc/designations/Pages/nonbank-faq.aspx#3

[9] See FSB and IOSCO Consultation for Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions: Proposed High-Level Framework and Specific Methodologies dated January 8, 2014. http://www.financialstabilityboard.org/wp-content/uploads/r_140108.pdf

[10] For example, this has been the case in the regulation of derivatives.

[11] See section 28 of the CMSA.

[12] See section 27(1) of the CMSA.

[13] See section 29(1)(f) of the CMSA.

a. The capital markets intermediary's vulnerability to material financial distress or insolvency resulting from, among other things, its leverage, liquidity, off-balance-sheet exposure or reliance on short-term funding

We agree with the Investment Company Institute (ICI) that the concept of "financial distress" is derived from experience with banks and has little relevance to investment funds.[14] The CMSA imports the term "material financial distress" and we query the meaning of "material" in this context. In our view, investment losses surely would not constitute "material financial distress". Investors of mutual funds, for example, understand that they are not guaranteed an investment return and have the option of selling their fund units if they so choose. The ability to redeem mutual fund units is one of the underpinnings of the regulatory requirements of the fund regime, as well as, daily valuations of fund assets and liquidity requirements. Similarly, the liquidation process occurs in a highly regulated process with oversight of various parties. In Canadian history, we are not aware of any mutual fund liquidations, for example, that have led to a systemic market impact.

On the issue of leverage, we agree that leverage could be a predictor of vulnerability to systemic risk; however, in the conventional mutual fund context, regulated funds have many regulatory restrictions including limits on leverage, meaning they typically have little or no leverage. We acknowledge that if the degree of leverage is increased for all or certain investment funds that systemic risk may increase. However, such increased risk should be addressed through industry-wide regulation rather than through a case-by-case CMI designation. We discuss leverage below.

b. The capital markets intermediary's size and the volume and value of trading by it;

We do not support the proposition that a CMI's size and the volume and value of trading by it, are *per se,* indicators of risk. We support the position taken by the ICI that the size of an investment fund—in contrast to a bank—by itself reveals very little about whether that fund could pose risk to the global financial system. Based on a fund's investment objectives and policies and portfolios, two funds of the same size can present sharply different risk profiles.[15] A fund's size, by itself, is virtually meaningless to an analysis of the potential for systemic risk.

c. The importance of the capital markets intermediary with respect to particular market activities;

This factor raises an interesting suggestion in that perhaps, the market activity as a whole should be more relevant than the product types (i.e. funds) proposed to be captured by the CMI designation. As already noted, Canadian securities regulators have been actively expanding the regulatory reform of certain investment fund products including, securities lending transactions, alternative investment funds, ETFs, and over the counter derivatives.

d. The availability of substitutes for the capital markets intermediary's products and services;

As in the case in many other global jurisdictions, the investment funds sector in Canada is highly competitive with numerous investment fund product types existing for most investment fund

[14] See ICI submission dated April 7, 2014 to the Financial Stability Board in response to Consultation for Assessment Methodologies for Identifying Non-Bank Non-Insurer Global Systemically Important Financial Institutions: Proposed High-Level Framework and Specific Methodologies.
[15] *Ibid* at 12.

strategies. In other words, Canadian funds are generally substitutable. Thus, in the context of investment funds, this factor suggests that funds do not pose a risk to financial stability.

e. The nature and extent of the capital markets intermediary's interdependencies, relationships and other interactions;

We submit that adequate risk management by the investment fund and its counterparty will mitigate the possibility of losses that result in risk transmission. Moreover, a fund's interaction with counterparties is limited in nature and subject to regulatory constraints and protections. Regulated funds, financing and other transactions with counterparties are largely limited to securities lending, derivatives transactions or borrowing. The extent to which a fund may engage in such activities is strictly limited by the existing regulatory regime administered by the CSA.

f. The nature, interconnectedness and mix of the capital markets intermediary's activities;

We agree that the interconnected nature of certain capital market intermediaries could give rise to a potential disruption. However, in the context of investment funds', interconnectedness is most relevant when considering leverage and we would argue that a funds' interconnectedness with counterparties, for example, is limited in scope and subject to stringent regulatory restrictions. In other words, funds' interconnections pose a modest risk because of the regulatory limits in place to deal with issues such as leverage and counterparty risks.

g. The complexity of the capital markets intermediary's business, structure or operations; and

We acknowledge that the may be some cases where an entity's business, operations and structure can be more complex, and it may have some potential to contribute to systemic risk. However, we do not believe that investment funds have a complex business, structure or operation that could necessitate a CMI determination alone, and in fact, securities regulation restricts regulated funds from being overly complex. We would submit that regulated funds are typically straightforward and transparent largely because these funds are regulated and supervised to make them eligible for sale to a wide range of investors, including retail investors who require more investor protection than a permitted client or accredited investor.

h. Any other risk-related factors that the Authority considers appropriate.

We appreciate the fact that the Authority must be equipped with the statutory ambit to be a responsive regulator when a crisis or potential crisis arises and that this provision contemplates such a scenario. However, we believe this broadly worded and over arching subsection should not remain unfettered. Without corollary provisions to ensure due process, we have concerns with the wording of this subsection and submit that there must be a check and balance on any unfettered discretion granted to the Authority.

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We recognize that the participating jurisdictions are not explicitly directing the Authority to designate CMIs as systemically important, but rather giving the Authority broad discretion to designate as needed, after taking the aforementioned factors into consideration. However, in our view, the factors described above would result in a process by which the Authority and Chief Regulator have such a tremendous discretion to engage in highly subjective deliberations which could create a great deal of regulatory uncertainty for IFMs and investment funds.
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The designation of investment funds and IFMs in Canada as "systemically important" is, in our view, neither necessary nor appropriate and the consequences of doing so could be highly adverse to the designated fund(s), investors, and the overall fund marketplace in Canada. For instance, entity designations would reflect fundamental misconceptions of the market. Investment funds and IFM regulation in the Canadian context has evolved so significantly in the last seven years that we do not believe the risk profile of funds generally along with regulatory framework in place to regulate IFMs necessitate inclusion of these entities as CMIs. The regulation and historical experience of regulated funds in Canada should be considered more closely and there has been little discussion and empirical evidence provided in the CCMR consultation that would point to funds requiring a CMI designation. We are not aware of, nor have we seen any compelling evidence of, a prior Canadian experience where a comprehensively regulated, publicly offered investment fund, for example, has caused or potentially caused widespread market failure or a significant impact to investors.

In summary, we believe that designating investment funds and IFMs as CMIs would not reduce systemic risk yet could have significant and negative regulatory and market consequences. Further, we note that the global community is still assessing whether a large investment fund failure could cause significant disruption to the global financial system. We believe there is a lack of evidence to suggest that this possibility could ever come to fruition and certainly, from a historical perspective, we have not had this experience in our markets in recent history. We do not believe that entity or product focused regulation is the best approach to addressing systemic risk issues in Canada. Our preference would be that registrants are not expressly identified in the CMI definition in the CMSA. Given the current lack of consensus on this issue globally, we do not believe, and in particular in the Canadian context, that investment funds and IFMs warrant a systemically important designation.

Alternatively, if these entities are considered to be systemically important capital market intermediaries we believe the current draft CMSA provisions insufficiently provide for due process of law and must include detailed provisions incorporating safeguards that allow for the right to be informed if a designation is being considered or contemplated, an opportunity to participate in the making of the decision, fairness and the transparency of the processes by which decisions are made, and fairness in the right to recourse or appeal of a decision. We address this in more detail below.

- ***Procedural Protections and Due Process***

As a general comment, we do not believe the systemic risk provisions include adequate procedural protections and due process for the entities impacted by these powers. Despite the fact that the CMSA indicates that before making an order, the Authority must notify the Council of Ministers of its intention to make the order and give the capital markets intermediary an "opportunity to make representations", we have some concerns with the procedural protections in place for investment funds and IFMs. Specifically, it is unclear what would this phrase would mean in practice. It is also not clear at which stage in the determination process an opportunity to make representations would take place. This lack of transparency and lack of fundamental due process is utterly absent from the Consultation Documents.

In addition, we note the following specific omissions:

- there is no provision that a CMI would be notified in advance of it being considered or potentially considered for designation as systemically important;
- there are no provisions to permit funds to provide information that they believe is relevant to a designation determination;
- there is no requirement to consider the relative costs and benefits of a potential designation;

- there is no reasonable notice period specified to allow a potential designee to meaningfully respond to a potential designation;
- there is no provision relating to the review of the authority's determination – the authority must simply "notify" the council of ministers; and
- there are no details on the proposed mechanism to challenge a CMI determination – i.e. an opportunity to make representations – falls short of the due process requirement. For instance, in the case of urgent orders, there is no opportunity for a CMI to make representations.

In light of the above, we recommend the following be added to section 27. In advance of making an order:

- the Authority must undertake a costs and benefits analysis with regards to any designation order it considers under the systemic risk powers;
- the Authority must provide the CMI with formal notice that the Authority is considering a determination including the factors being considered by the Authority in its determination;
- the Authority must provide the CMI with a reasonable timeframe in which it has the right to provide the Authority with information to contest its determination as systemically important;
- for orders addressing serious risk, the Authority must provide the CMI with a reasonable timeframe in which it has the right to contest the order and negotiate any obligations imposed on the CMI; and
- for all other orders, the Authority's determination must be reviewed and approved by the Chief Regulator and Council of Ministers before it is finalized and such order should set out the detailed assessment made by the Authority that necessitates the designation.

Similarly, we recommend that upon making an order, the CMSA include provisions to address the following, including but not limited to:

- the Authority must provide the CMI with a reasonable timeframe in which the CMI can request a formal hearing to contest the designation; and
- provide the CMI with ample time to respond to any requirements, prohibitions and restrictions imposed by the Authority pursuant to the regulations addressing systemic risk.

Given the lack of procedural protections included in the current version of section 27, we would urge the Authority to further reconsider this section of the CMSA and consult with capital market participants on these critical due process provisions.

II. UNIFORM PROVINCIAL CAPITAL MARKETS ACT (PCMA)

As a general comment, we note that certain provisions of the PCMA are entirely new and not currently in the securities legislation of the participating provinces. We regard these changes with some concern as there has been no policy rationale provided in including these provisions as is the case when provincial securities legislation is promulgated through the normal consultation process and transparency is required. We also believe that this will create more fragmentation in the rules applicable in each participating and non-participating jurisdiction.

Set out below are comments on certain sections of the PCMA.

- ***Registration Requirements for IFMs***

We note that the definition of IFM is an expanded definition from the definitions contained in current Canadian Securities Administrators (CSA) member securities legislation and in any of the

CSA rules. In 2012, PMAC submitted comment letters in response to the bi-furcated proposals[16] relating to registration for IFMs and supported the approach taken in Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers*, which requires an IFM to register in a jurisdiction *only if* it engages in the activities of a fund manager *in* that jurisdiction. We agreed that in determining whether registration is required, the regulators should look at the functions and activities of the entity, and that the presence of investors (or the solicitation thereof) in a jurisdiction should not automatically require an IFM to register. We also supported the guidance in MP 31-202 regarding the general principles that apply to determining whether an entity is required to register as an IFM, including guidance on the types of activities that IFMs typically conduct. We urge the Governments to return to the existing definition of investment fund manager. In light of the approach taken in the PCMA, we believe it will create more fragmentation and uncertainty around IFM registration issues and recommend that an effort be made to streamline the registration requirements such that we have a level playing field between participating and non participating provinces. We recommend that the approach to such regulation inherent in Multilateral Policy 31-202 is most consistent with current business practice and should be the regulatory policy adopted.

- ***Derivatives Regulation***

We note the broad definition of "derivatives" in Part 1 of the PCMA and agree that the legislation in this area needs to be flexible and responsible as the landscape for derivatives regulation in Canada is ever-changing and continues to evolve. We have concerns in this area with how regulation of derivatives under the CCMR will interface with derivatives legislation in non-participating provinces.

Similarly, as we've advocated in the past[17], we do not believe that a new registration category for advisers that is based solely on an asset class is necessary. In our view, just as IFMs will continue to be regulated under securities legislation regardless of the assets held by the fund, we believe portfolio managers should be treated equivalently. Derivatives are one of the many types of securities that portfolio managers may include in a client managed portfolio on a discretionary basis to meet a client's investment objectives. We do not believe that a new registration category for advisers should be predicated on the type of assets being advised on as opposed to the established business triggers set out in National Instrument 31-103. If an individual is already registered as an adviser under securities regulation, there should be no additional registration requirements under a derivatives regime. The act of advising on derivatives, in and of itself, in our view should not trigger a registration requirement in a separate category and under a separate regime.

We acknowledge that there remains much work to be done in the area of derivatives regulation and given the number of moving parts under consideration; we believe it is imperative that the CCMR continue to consider all of the issues raised by market participants/stakeholders and maintain meaningful consultations with those it is seeking to regulate.

- ***Notice of Proposed Regulations***

Section 205 of the PCMA requires the Authority to publish a notice of every regulation that it proposes to make for a comment period of at least 90 days. However, there are a series of circumstances and scenarios where the Authority would not need to publish the proposed

[16] See Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers (BC, AB, MB, SK and PEI, NS, NT, Yukon and Nunavut) and* Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Companion Policy 32-102CP (Ontario and Quebec).

[17] See PMAC Submission dated June 17, 2013 in response to CSA Consultation Paper 91-407 Derivatives: Registration.

regulation. We find some of these provisions somewhat concerning and unnecessary. We recommend that these scenarios be narrowed so as to ensure that regulatory policy making remain transparent and consultative. We also believe that if a proposed regulation is published for a second comment period, a 30 day comment period[18] is not an appropriate amount of time for consultation and recommend this be changed to a minimum of 60 days.

- ***Draft Regulations***

We believe the key provisions impacting registrants will be captured by the regulations and thus look forward to reviewing these as soon as they become available. We recommend a reasonable comment period once the draft regulations are published to ensure that market participants have ample time to review them carefully and consider all of the issues.

III. OPERATIONAL ISSUES

As stated above, there are apparent as well as anticipated operational challenges with the new CCMR. Our views on some of these issues are set out below. We recognize there will certainly be other operational issues to consider that have not been reflected here.

- ***Fee Structure***

First, we understand that a simplified fee structure is contemplated however; details on the fee structure are not set out in the draft CMSA or PCMA and will presumably be included in the draft regulations. While we believe that a cooperative regulator will achieve fiscal savings by eliminating the duplication of regulatory functions performed in participating jurisdictions, we query how the fee structure will address registrants that are currently registrants in both participating and non-participating jurisdictions. Finally, we query whether fees may increase initially to address the additional responsibilities of the Authority and the overlay of the council, the Board and deputy chief regulators.

- ***Interface with Non-Participating Jurisdictions***

If the Authority is unable to negotiate and implement an interface mechanism with each non-participating jurisdiction that would effectively make the CCMR of national application, we believe that other interface options must be considered to ensure that the CCMR does not create a less desirable system than what is currently in place. We note that there are several key provisions missing from the Consultation Documents on how the CCMR will interface with non-participating jurisdictions. In particular, how the CCMR will interface with non-participating provinces on administrative issues, regarding oversight of registrants registered in multiple jurisdictions, and in the context of enforcement matters.

There are a number of areas where we foresee operational issues and anticipate there to be significant challenges for capital market participants. Specifically, there will be issues for registrants who are registered in multiple provinces that are both a part of the CCMR as well as non-participating provinces. For example, one general concern we have is how the PCMA interface with the passport system. Further information on this scenario should be provided sooner rather than later. Similarly, for registrants that have obtained exemptive relief from securities laws in the past, what will the effect be of such relief once the CCMR is operational and how will relief obtained in a non-participating province or territory be applied in a non-

[18] We do not support a 30 comment day period for any policy making including Chief Regulator policy statements as contemplated in section 212 of the PCMA.

participating province? We recommend that exemptive relief should have the same effect and force on a go forward basis and some form of grandfathering should be applied.

IV. CONSULTATION PROCESS & TRANSITIONAL ISSUES

We believe that the CCMR must remain transparent and accountable to market participants if it is going to be a fair and responsible regulator. We consider that this is essential for the proper operation and accountability of the Authority.

The CMSA and PCMA do not address important transitional issues. There are many parts of the CCMR framework that have not yet been adequately addressed. The regulations have not yet been published for comment and for this reason we recommend that a reasonable transition period be provided to ensure market participants have adequate time to respond and prepare for the changes associated with this new regime. We understand the objective in having an aggressive timeline to move forward with the CCMR but we believe that if this transition is rushed, the impact on market participants will be significant and may even undermine the efforts of the CCMR going forward. In this regard, we note the short comment period initially provided for the Consultation Documents (60 days) and we recommend the participating jurisdictions and the Authority not rush the completion of any of its initiatives, including the establishment of the Authority and the finalization of the Consultation Drafts. It would be preferable, in our view, to have an additional opportunity to review and comment on the Consultation Drafts once the regulations have been published for comment. We recommend more time is provided for review and consultation of the draft regulations when they are published for comment in spring of 2015. We also believe that it would be appropriate to incorporate a sunset-type of provision in the draft legislation so that it is subject to statutory review within a 5 year period.

Finally, we urge the participating jurisdictions and Authority to publish for comment as soon as possible a detailed proposal relating to the legislative and regulatory framework for an interface with non-participating jurisdictions. While less than full cooperation of all jurisdictions would not be the ideal outcome of the CCMR, it would be beneficial to understand, sooner rather than later, how the Authority plans to work with any non-participating provinces and territories and how registrants can expect to conduct their own regulatory and compliance affairs if they are registered in non-participating jurisdictions.

Given the comments above on the consultation process and transitional issues remaining, we expect to have further comments on some of the areas discussed above in this comment letter.

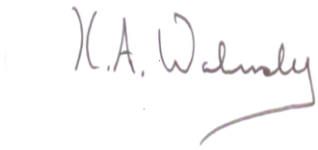
V. CONCLUSION

While certain strides have been made toward harmonizing securities laws across Canada, the industry continues to see competing regulatory approaches and unnecessary duplication which causes persistent inefficiencies in our regulatory system. Now is the time to focus on the benefits of moving on from this patchwork system and creating a streamlined and efficient securities regulatory framework. We believe continued consultations and dialogue with market participants is critical to the success of the CCMR. We continue to support the CCMR and believe that in order to move ahead with this much needed improvement in Canada, we as an industry, must be engaged and willing to work through the issues and address the concerns.

We would be pleased to discuss our comments with you further and answer any specific questions you may have. Please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018 or Julie Cordeiro at (416) 504-1118 ext 202.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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