



October 23, 2020

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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Dear Sirs/Mesdames:

Re: Request for Comment - CSA Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework*

The Private Capital Markets Association of Canada (“**PCMA**”) is pleased to provide our comments in connection with the Canadian Securities Administrators (“**CSA**”) Consultation Paper 25-402 *Consultation on the Self-Regulatory Organization Framework* (the “**Consultation**”) as set out below.

About the PCMA

The PCMA is a not-for-profit association founded in 2002 as the national voice of the exempt market dealers (**EMDs**), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to the private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies and other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at www.pcmacanada.com.

General Comments

From a registrant demographic perspective, the PCMA primarily represents exempt market dealers (“**EMDs**”), as well as certain investment fund managers (“**IFMs**”) and portfolio managers (“**PMs**”) where these firms participate in the private capital markets. Currently, firms registered in these categories (“**Non-SRO Firms**”) do not fall under the jurisdiction of either of the existing self-regulatory organizations (“**SROs**”); the Investment Industry Regulatory Organization of Canada (“**IIROC**”) and the Mutual Fund Dealers Association of Canada (“**MFDA**”).

As many PCMA constituent members are not regulated by one of the SROs, we will limit commentary on the efficacy of the existing SRO regulatory framework and comment primarily on the possibility of Non-SRO Firms being integrated into any new SRO regulatory framework.

There has been significant industry discussion relating to the merging of current SROs and the potential integration of Non-SRO Firms like EMDs into any resultant SRO. Part of this discussion

included a recent proposal from the Capital Markets Modernization Taskforce and the PCMA's comments are available at:

https://cdn.ymaws.com/www.pcmacanada.com/resource/resmgr/comment_letters/2020/200911_-_ontario_modernizati.pdf.

The PCMA is strongly opposed to any inclusion of EMDs in the SRO Regulatory Framework.

The PCMA embraced the EMD category when it was created. Over the last decade CSA members have gained extensive knowledge about EMDs and other constituents of the private capital markets. Both the Ontario Securities Commission and Alberta Securities Commission have spent countless hours on their respective committees dedicated to EMD operations with the PCMA having continuously had one or more representative on these committees. There have been positive results from these efforts most notably the understanding that one size regulation does not fit all and that EMDs are different in many ways from investment dealers and mutual fund dealers.

The primary concern our members have with the idea of being integrated into a convergence of the existing SROs is the ability and willingness of IIROC and the MFDA to accommodate Non-SRO Firms, in particular EMDs. This concern stems from both IIROC and the MFDA's historic bias towards prospectus exempt products as well as the industry trend of the consolidation of smaller dealers into larger dealers, which may be attributable, at least in part, to the regulatory environment of SROs.

In contrast to the above, despite the vast scope of both National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and National Instrument 45-106 *Prospectus Exemptions* ("NI 45-106"), the CSA and the private capital markets have provided an environment where smaller dealers are able to survive and in some cases thrive. As small firms make up the vast majority of EMD registrants, it would be destructive to move regulation of them to the same group or groups that have already led to the lessening of competition in Canadian financial markets.

Of the combined 257 IIROC and MFDA registered firms there are 107,188 registered individuals averaging out to 417 individuals per firm.¹ EMDs average 5 individuals per firm (240 registered firms with 1,140 individual registrants).² These numbers speak to the huge variance between the sizes of firms in each respective category and why having the same SRO governing all would ultimately lead EMDs to the same fate as many small IIROC and MFDA members have already experienced. IIROC and MFDA registrants, as well as regulators like to speak to "leveling the playing field." How can a 5-person firm be expected to implement the same compliance systems and regime as a 417-person firm?

The continuing shuttering of small and mid-sized firms has had rippling effects on the Canadian economy as these firms, often being small businesses themselves are the only ones that will undertake the raising of capital for the small business community.

¹ Consultation Appendix A and Appendix B

² Consultation Appendix C

The SRO model is being abandoned around the world due to the inherent conflicts of interest. Even the National Association of Securities Dealers (NASD), now Financial Industry Regulatory Authority (FINRA) had to recreate itself to address the concerns raised by the United States Securities Exchange Commission (SEC). It is now considered a private regulator rather than an SRO. The United Kingdom, Hong Kong, Singapore, Australia and others have all stepped away from the SRO model due to the conflicts of interest. Given the global regulatory shift away from SROs, the PCMA is wondering why the CSA would consider expanding the scope or restructuring of the existing SROs.

Notwithstanding the above, there are attributes of the SRO model which would be beneficial to the members of the PCMA. The regulatory regime in relation to the private capital markets is the least harmonized in Canada. Harmonizing the regulatory approach to registration and compliance across Canada would reduce some of the uncertainty faced by EMDs, especially those registered in multiple jurisdictions, as well as the harmonization of regulations, in particular NI 45-106. We believe it is fully within the capabilities of the CSA members to create an uniform level of regulation and application of supervision across the country with one set of rules applicable to all EMDs as is enjoyed by SRO members while allowing truly unique jurisdictional matters to be addressed at the local level.

The CSA should seek to rely on its existing structures and strive for better collaboration and standardization between provincial and territorial securities regulators across the country before seeking to abandon its cultivated expertise over Non-SRO Firms and instead outsource this responsibility to an SRO that has to rebuild these skillsets from the ground up.

Closing Remarks

The PCMA would like to thank to the CSA for soliciting feedback from various stakeholders.

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We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

PCMA COMMENT LETTER COMMITTEE MEMBERS

“Craig Skauge”

PCMA Vice Chair & Executive
Committee Member

“Nadine Milne”

Co-Chair of the PCMA Compliance
Committee

CC: Tommy Baltzis, PCMA Chair
PCMA Board of Directors