September 14, 2012

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Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

-and-

Me Anne Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
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E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sir and Madam:

Re: 2012 Proposal to National Instrument 31-103 *Registration Requirements and Exemptions* and to Companion Policy 31-103CP: Cost Disclosure, Performance Reporting and Client Statements June 14, 2012 (2nd Publication)

The Portfolio Management Association of Canada ("PMAC", formerly the Investment Counsel Association of Canada ("ICAC")), through its Industry, Regulation and Tax Committee, is pleased to have the opportunity to submit the following comments regarding the second publication of the Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* and to Companion Policy 31-103CP *Registration*

Requirements and Exemptions: Cost Disclosure, Performance Reporting and Client Statements (the "2012 Proposal").

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. We have over 160 members from across Canada that are comprised of both large and small firms managing total assets in excess of $750 billion (excluding mutual funds assets) for institutional and private client portfolios. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. Member firms are in the business of managing investments for clients in keeping with each client's needs, objectives and risk tolerances. For more information about PMAC and our mandate, please visit our website at www.portfoliomangagement.org.

We appreciate that the 2012 Proposal addressed some of the concerns in our first comment letter. We continue to support the general principles of the 2012 Proposal, including the objective of ensuring that investors receive clear and complete disclosure of all charges associated with the products and services they receive, and meaningful reporting on how their investments perform.

While we express our positive support for the 2012 Proposal, we believe certain areas continue to require further clarification and modification in light of the CSA's focus on ensuring investors understand the cost of investing, how their investments are performing, and receive the correct information to assist with this process. Without further modification, the objective of the 2012 Proposal may not be met and as such, the proposed cost disclosure and performance reporting requirements might only serve to provide investors with more "information", without enhancing their understanding of the costs associated with their investments and how they are performing.

SUMMARY OF KEY RECOMMENDATIONS:

1) **The CSA should allow registrants the option of choosing the most appropriate reporting method that best reflects the needs of its clients**:
   - percentage return calculation method**:** time-weighed reporting vs. dollar weighted reporting
   - original cost vs. book cost
2) **The CSA should provide greater clarity around some of the concepts included in the 2012 Proposal**:
   - definition of "client",
   - concept of "account"
   - change in value
3) **The CSA should articulate clearly with whom the cost disclosure reporting responsibility lies in order to ensure the investor is receiving the correct information from the appropriate source**

Set out below are responses to the specific questions raised for comment in the Notice along with additional comments and recommendations on the 2012 Proposal.

A. SPECIFIC QUESTIONS FOR COMMENT

1. Disclosure of Fixed-income Commissions

Issue for comment
In the interest of making fixed-income transactions more transparent, we invite comments on whether it is feasible and appropriate to mandate the disclosure of all of the compensation and/or income earned by registered firms from fixed-income transactions. This would include disclosure of commissions earned by dealing representatives as well as profits earned by dealers on the desk spread and through any other means.

We support the general principle of making fixed income transactions more transparent. The 2012 Proposal would require fixed income related disclosures on trade confirmations. Section 14.12(1) requires dealers to provide trade confirmations to the client or, if the client consents in writing, to the client's adviser. In instances where a dealer provides the information to the client's adviser, we seek confirmation that the obligation to provide trade confirmations to clients will not flow-through to the registered adviser as we do not believe this would be appropriate. We note that, in any case, registered firms would be reporting this fixed income related disclosures to clients directly on an annual report on charges and other compensation.

2. Expanded Client Statement

Issue for comment
We understand that all securities transactions are carried out through an account, even when the securities are not held in that account. We have drafted the Rule on this understanding and invite comments on the practicality of this or other approaches to including the securities listed in section 14.14(5.1) in client statements and performance reports.

As a general comment, we note the various permutations of relationships that exist in the registrant landscape and the importance of creating rules that do not lead to disclosure overlap but at the same time prevent gaps in meaningful disclosure presented to investors.

Section 14.14 of the 2012 Proposal contemplates that client statements maintain distinct sections for transactions, client name accounts and nominee held accounts. We do not believe it is necessary to distinguish those securities held in client name and those held in nominee name. First, this type of proposed reporting assumes the client understands the difference and may actually cause more confusion in the information the client receives. Second, there does not seem to be any proven investor benefit of reporting in this manner. Finally, this seems at odds with the manner of reporting contemplated in the proposed performance reporting provisions, which may cause additional confusion.

In addition, we continue to have concerns about mandating reporting obligations on accounts that are outside the control of portfolio managers. We agree that portfolio managers should have reporting obligations on accounts they have authority over. From our perspective, we are concerned about any disclosure requirements on portfolio managers where such reporting responsibilities should lie with other registrants. In our view, the 2012 Proposal still does not adequately address the possibility of duplicative cost disclosure among portfolio managers and other registrants involved in investment transactions, or where multiple registrants may have reporting obligations. We believe it would be beneficial if the CSA consulted with the portfolio management community to determine how, in these circumstances, the potential for duplicative and overlapping reporting can be minimized in order to ensure that clients receive the required

reporting about their accounts from the registrant with whom that client has the complete relationship (generally the portfolio manager). We note that the Companion Policy clarifies that where there is more than one registrant providing services pertaining to a client's account, the responsibility for *performance reporting* rests with the registered firm with the client-facing relationship. However, as currently contemplated, the 2012 Proposal would still require various registrants to provide the same client with cost disclosure about the same account, whereas the client would only be reasonably expecting to receive a report about his or her managed account from the portfolio manager.

In addition, specifically as it relates to cost disclosure on trades, the client could presumably receive the same or similar cost disclosure information multiple times in a given year, i.e. prior to a trade, on trade confirmation, and annually on the fee disclosure report. Consideration should be given to whether repetitive disclosure may create 'disclosure fatigue' prompting clients to simply ignore the information being provided. We think it's important to reiterate the balance of protecting and informing the consumer vs. putting up barriers to growth and efficiency for the investment industry with overly burdensome, costly and duplicative disclosure requirements.

In order to address the continuing concern that the 2012 Proposal may lead to clients receiving multiple reports from registrants acting on the same account, we recommend the CSA articulate clearly with whom the reporting responsibility lies in order to ensure the investor is receiving the correct information from the appropriate source. Careful consideration should be given to clients inadvertently receiving multiple reports with, possibly, inconsistent information, leading to further investor confusion. The volume of information a client will receive on an annual basis should also be streamlined, concise and helpful in understanding the client's investments. If the CSA's objective is to get clear information to investors and to improve investor education on cost reporting, these concerns should be addressed in order to avoid any unintended consequences.

3. Percentage Return Calculation Method

Issue for comment
We invite comments on the benefits and constraints of the proposal to mandate the use of the dollar-weighted method, in particular as they relate to providing meaningful information to investors. We are not prohibiting the use of the time-weighted method, but if a registered firm uses such a method, it must be in addition to the dollar-weighted calculation.

The 2012 Proposal indicates that it is the CSA's belief that, if implemented, the proposals will help investors understand and assess the costs and benefits of the advice they receive and assess the value of the advice added by the registrant. Mandating the use of dollar-weighed reporting ("DWR") is contrary to this objective. It obscures critical decision-making information (understanding how the advisor is performing) and investors will be left in many instances without information to accurately assess their portfolio manager. Similarly, this reporting method can be materially impacted by the timing and amount of contributions and/or withdrawal's from an account thereby impacting the investor's ability to evaluate the investment advice received and creating an inaccurate picture of what the portfolio manager achieved for the client.

In contrast, if the CSA mandated the time-weighted return method ("TWR"), the remedy for the lack of DWR information is that the client can review their investment goals, with the help of the registrant in many cases, to reflect the changes that have happened since the last time they updated their investment plan. In our view, a more comprehensive way of reporting can be achieved through TWR as opposed to DWR. Investors should be reviewing their entire

investment plan, including refreshing expected investment returns, cash-flow needs and other critical components of an investment plan.

Benchmarking

While 2012 Proposal stipulates that registrants may provide both the DWR and the TWR, we believe that this will lead to more confusion as clients will lose the ability to easily compare performance between portfolio managers, and against benchmark returns, mutual funds, index funds and exchange-traded funds. For example, benchmarks, especially blended benchmarks (e.g., 65% S&P/TSX and 35% S&P500), are, by definition, time-weighted rates of return. As a result, it will not be possible to present benchmark information that is not misleading.

Global Investment Performance Standards

Similarly, we note the inherent conflict in mandating portfolio managers to report in a methodology that is at odds with what is currently mandated by the CFA Institute, through the Global Investment Performance Standards ("GIPS"). For instance, firms that claim GIPS compliance must use TWR. The GIPS standards require TWR because it removes the effects of external cash flows, which are generally client-driven. Therefore, TWR best reflects the firm's ability to manage the portfolios according to a specified mandate, objective, or strategy, and is the basis for the comparability of composite returns among firms on a global basis. The GIPS standards favour TWR when analyzing or presenting results to investors and do not consider DWR a recommended form of return calculation for investment portfolios. We recommend that the CSA permit the flexibility to choose between TWR and DWR and allow the registrant to report in a method that meets their client's needs while also adhering to global reporting standards. The method of reporting chosen by the registrant can be clearly explained to the client. If the CSA prefers to mandate a performance reporting methodology, we recommend that the CSA mandate TWR as mandating DWR will not help the CSA achieve its goals of better performance disclosure for clients.

Please see Appendix A of this letter for two examples that support our position.

B. GENERAL COMMENTS

As an overall observation, we note the 2012 Proposals often use very broad language when referencing cost disclosure in an attempt to capture every form of payment the registrant may potentially receive. In our view, the disclosure required should be relevant and specific to the nature of the activity, product or service being provided to the client at the time. For example, it would be useful to investors to have information addressing what clients need to know as it relates to (i) opening an account, and (ii) purchasing/selling a product. Some of the proposed requirements provide information that is not necessarily relevant or useful to the client at the time the disclosure is provided.

1. Relationship disclosure information

To illustrate the general comment above, take, for example, the cost disclosure obligations set out in subsection 14.2(3) requiring the delivery of disclosure before the first transaction and subsection 14.2.1, pre-trade disclosure of charges. Subsection 14.2(3) indicates that the relationship disclosure must be provided *before* the first transaction rather than at the time of account opening. The list of disclosures in subsection 14.2(2) (see paragraphs (a) to (n)) that must be given are a combination of product, service and account operating disclosures and are

relevant to a client when they first open an account and not necessarily related or applicable to a transaction. The wording in subsection 14.2(3) could be interpreted to imply the disclosure in subsections 14.2 (a) to (c) must be provided in writing each time a purchase or sale of a new security is made, rather than once at the time the account is opened or when there is a significant change to the operating agreement with the client. If subsection 14.2 is intended to provide disclosure related to the operation of the account and subsection 14.2.1 intended to provide disclosure related to the transaction, then the 2012 Proposal should clearly reflect this intention in order to avoid confusion and duplication/repetitiveness of information. Although the Companion Policy attempts to clarify this, the wording of the proposed requirements themselves should be clear enough for a reader to identify the differences in the disclosure that is to be provided.

2. Book cost reporting

We do not agree with a requirement to disclose the "book cost" of securities. In our view, prescribing one method (particularly, a more tax-based method) for this type of reporting will not achieve the stated objectives of the 2012 Proposal. We believe registrants should have flexibility on how to manage reporting the cost of securities to clients and be able to report in a way that meets client needs. We continue to have concerns about the limited usefulness of "book value" in evaluating investment performance, even when it is accurate for use in calculating tax costs. We believe that as a performance measurement yardstick, it falls short of providing meaningful information to investors because it does not capture some of the major components of investment return. In fact, for two otherwise identical investors, book value will grow or remain constant, merely because of the differences in the way distributions may be handled. By way of illustration, consider two hypothetical investments acquired at the beginning of the year:

a) a “growth stock” purchased for $100 and which appreciates in value to $110 during the year; and
b) a “utility stock” also purchased for $100, which pays dividends totalling $10 during the year, and ends the year unchanged in price.

Both securities provide the investor with the same 10% return for the year. However, the book-to-market comparison yields starkly different results for the two securities. Comparing book and market values for the “growth stock” shows there to have been a $10 unrealized gain. However, comparing the two figures for the “utility stock” shows no gain, suggesting that it has been an inferior investment. If the $10 of dividends on the “utility stock” had been reinvested, rather than taken in cash, the book value of the “utility stock” position at the end of the year would be $110, the same as the market value. Comparing book to market values in that scenario still suggests that the “utility stock” has been an inferior investment.

Comparing book and market values provides no meaningful performance information to the holder. If the comparison is unsatisfactory on a security-by-security basis, consider the following example on a portfolio basis:

> Considering the two securities as the sole components of a portfolio, the book value of the *portfolio* at the end of the year is $210, representing the $100 paid for each of the stocks, plus the $10 received as a dividend on the “utility stock”. The market value is $220 – $110 for the “growth stock”, $100 for the “utility stock”, and $10 for the dividends received in cash.

	Book Value	Market Value	Mkt vs. Book	Dvd Income
A. "Growth" Stock	100	110	10	-
B. "Utility" stock	100	100	-	10
C. Cash	10	10	-	-
Combined portfolio	210	220	10	10

The simplistic comparison of book to market in the table above suggests that the portfolio has grown less than 5% from $210 to $220 during the year, when, in fact, it has grown by 10% in value. In fact, the information required to be presented in section 14.17 of the 2012 Proposal is much better for identifying portfolio performance during the year, as illustrated in the table below.

Opening market value	200
+ Deposits / transfers in	-
- Withdrawals / transfers out	-
+ Change in value	20
Closing market value	220

The only informational value of “book cost” is in the calculation of realized and/or unrealized capital gains – *for income tax purposes* – and then only if “book cost” is calculated and presented as required by applicable tax legislation. However, as there is no indication that the objective of subsection 14.14 is to equip investors with meaningful tax information, it is not clear what is accomplished by the requirement to provide “book cost” for each security position.

We note that the 2012 Proposal indicates that the rationale for providing "book cost" is that it will provide investors with a meaningful comparison to the market value of each security position and *provide a more accurate view of the capital appreciation or depreciation of the investment in those securities* [emphasis added]. We do not believe that book cost reporting will achieve this for the reasons set out above and mandating this type of reporting will only create investor confusion. We recommend the CSA provide registrants with the option of choosing the appropriate reporting method that best reflects the needs of its clients.

3. Change in value

The 2012 Proposal provides formulas for calculation of change in value. Essentially, clients would be shown the opening market value of an account, plus deposits into the account, less withdrawals from the account (at market value), which would be compared to the closing market value of the account to determine the change in value of their account over the past 12-month period and also since the inception of the account. This will tell investors how much money they have actually made or lost in dollar terms. It is not clear that this definition represents what the investor actually "earned" but rather how the account changed. Further clarification in this regard would be helpful.

We also believe that this concept should be revised to allow more flexibility and, where appropriate, more frequent reporting, as may be the case with current reporting practices by some registrants. Many portfolio managers report on a quarterly basis, and where agreed upon by the client, quarterly reporting may be preferable in order to show the change in value since inception and since the last quarter.

4. Definition of "client"

While the 2012 Proposal introduces the notion that disclosure can be presented on a "client" basis, rather than an "account" basis, we note that there is still no definition of "client" included. In our submission dated September 23, 2011, we recommended that this term be defined in order to clarify to whom and how the cost and performance disclosure should be provided.

We note that the Companion Policy states that "a registrant may also provide a consolidated performance report for multiple clients, such as a family group, but only as a supplemental report, in addition to reports required under section 14.16". We would appreciate clarification on whether the intention is that a married couple may not qualify as a single "client" for the purposes of providing performance reporting on a less granular than account-by-account basis. Consider the following example:

> *Spouse A has a very low income (and thus pays tax at a low rate). Spouse B has a high income and generous defined benefit pension. The portfolio asset mix for the couple may include more allocation to fixed income securities for Spouse A and more equities for Spouse B.*

In our view, meaningful performance reporting is that which combines Spouse A and Spouse B's holdings into a single report. We feel that additional reports on these accounts would not be as meaningful as a combined report and undermines the notion that the client should be provided with clear, concise and meaningful cost disclosure and performance reporting.

To expand on the example above, consider the scenario where Spouse A and Spouse B have a holding company. Both spouses may have RSPs and TFSAs, where fixed income investments are concentrated, but only hold equities in the Holdco investment account. If "client" means "legal entity", then registrants would be required to provide three different performance reports: one for each spouse and one for the Holdco. In this example, we continue to take the view that only a consolidated performance report is useful/meaningful.

In light of the above, we recommend that the CSA :

a) Clarify that the definition of "client" does not preclude a couple and all their holding companies from being treated as a single client; and

b) Require registrants to report on all accounts, but to do so in whatever combinations/consolidations have been negotiated with and agreed to by the signatories to the investment management agreement.

5. Determining market value

In our view, the market valuation methodology outlined in the 2012 Proposal seems overly prescriptive as compared to IFRS and is not in accordance with Canadian GAAP, which is applicable to the majority of registrants. Specifically, it calls for the use of the bid price for long positions in listed securities and ask price for short positions. We recommend that the 2012 Proposal specify that securities should be presented at fair value in accordance with Canadian GAAP in order to be consistent with the approach taken in other instruments (i.e. NI 31-103 and NI 81-106).

6. Report on charges and other compensation

Some of our members have a number of private clients that only hold units in the pooled funds that the firm manages. While these firms don't charge the client a management fee, the pooled funds themselves are subject to management fees. In these cases, there are no trailer commissions, switch or other transaction charges for these clients. It remains unclear whether portfolio managers would be required to look through the investment fund to determine how much of the pooled funds' management fee related to units these clients held. Further clarity on this issue would be helpful.

7. Referral Fees

We also recommend the CSA provide further clarity on the requirements contemplated in section 14.15. In particular, subsection 14.15(1)(g) requires a firm disclose to clients referral fees it receives. The Companion Policy indicates this disclosure is to be made by the firm receiving the payment. If a registrant refers a client to another firm, it's not always the case that the client also has an account or will remain a client of the referring registrant. Referral fees are not always associated with a specific client account. For example a dealer that refers a client to a discretionary portfolio manager may not necessarily maintain a dealer account for the client. It is not clear whether the expectation is that the referring registrant receiving the payment send annual disclosure reports to the client, who may not have any business with the registrant. We believe the referral disclosure given to a client at the time a referral is made is sufficient. We question the value in continuing to remind clients that the referring dealer is receiving a referral fee that is generally a small percentage of the management fee and is not borne by the client.

8. Transition period

The transition period to provide performance reports has been extended to three years, with a five-year transition to provide five year annualized total returns and a 10-year transition to provide 10 year annualized total returns. Despite mandating these reporting periods, clients will expect to continue to receive performance reports showing one, three and five year returns, along with returns since inception. This would become problematic if DWR is mandated, effectively requiring registrants to incur the cost of restating history for all clients in place at the date of implementation of the 2102 Proposal. The 2012 Proposal does not address this and we recommend the CSA consider this issue before implementing the 2012 Proposal.

D. CONCLUSION

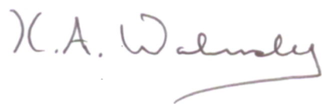
We fully support the objective of providing investors with meaningful information regarding the costs associated with, and the performance of, their accounts and continue to support the general reporting principles outlined in the 2012 Proposal. While we are supportive of a baseline set of reporting requirements, we believe that flexibility in form, presentation and frequency of reporting would be beneficial to both investors and registrants.

We ask the CSA to consider the concerns raised above so that the investor experience is in fact enhanced and the impact on registrants is manageable. To this end, we believe that more consultation with industry participants is required before the 2012 Proposal is finalized. We would be please to participate in further discussions with respect to the above.

If you have any questions regarding the comments set out above, please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Julie Cordeiro at (416) 504-1118.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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Groundlayer Capital Inc.
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West Face Capital Inc.
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Waterstreet Family Capital Counsel

APPENDIX A

Examples of Percentage Return Calculation Method

Example 1

Client decides to contribute more $ after a decline to take advantage of dollar-cost-averaging, which they have been reading about.

	DWR	Performance	TWR
O/B - Period 1	$ 200,000		$ 1.00
performance	-$ 40,000	-20.0%	$ 0.80
E/B Period 1	$ 160,000		
contribution/withdrawal	$ 100,000		
O/B - Period 2	$ 260,000		
performance	$ 65,000	25.0%	$ 1.00
E/B Period 2	$ 325,000		
cumulative performance $	$ 25,000		
cumulative performance %	**4.9%**		**0.0%**

Problem

The client is presented with the DWR on their client statement and is quite pleased to see that their performance is 4.9% and ultimately, is pleased with the manager. The client knows that they gave the manager additional funds throughout the year, but doesn't recall when and certainly doesn't know the impact. Using TWR, the manager's performance is shown to be flat, but the client will never know this.

Example 2a

Client decides to shift assets from Manager 1 to Manager 2 after relatively poor performance by Manager 1.

	DWR		Performance		TWR	
	Manager 1	**Manager 2**	**Manager 1**	**Manager 2**	**Manager 1**	**Manager 2**
O/B - Period 1	$ 200,000.0	$ 200,000			$ 1.00	$ 1.00
performance	-$ 20,000.0	-$ 10,000	-10.0%	-5.0%	$ 0.90	$ 0.95
E/B Period 1	$ 180,000.0	$ 190,000				
contribution/withdrawal	-$ 100,000.0	$ 100,000				
O/B - Period 2	$ 80,000.0	$ 290,000				
performance	$ 8,888.9	$ 11,600	11.1%	4.0%	$ 1.00	$ 0.99
E/B Period 2	$ 88,888.9	$ 301,600				
cumulative performance $	-$ 11,111.1	$ 1,600				

	DWR Manager 1	DWR Manager 2	Performance Manager 1	Performance Manager 2	TWR Manager 1	TWR Manager 2
cumulative performance %	**-3.8%**	**0.3%**			**0.0%**	**-1.2%**
Manager 1 & Manager 2 cumulative perf		**-$ 9,511**				

Problem
The client is presented with the DWR on client statements from both managers and is pleased with their decision to take funds from Manager 1 and give to Manager 2 because Manager 2 has outperformed Manager 1 on a relative basis, according to DWR. Using TWR, you see the opposite: Manager 1 has outperformed Manager 2 and the decision to shift funds was, in fact, a poor one. Furthermore, if the client did not make this shift, they would have been better off by $7,111, as shown below:

Example 2b

What if the client did not make the shift from Manager 1 to Manager 2?

	DWR		Performance		TWR	
	Manager 1	**Manager 2**	**Manager 1**	**Manager 2**	**Manager 1**	**Manager 2**
O/B - Period 1	$ 200,000	$ 200,000			$ 1.00	$ 1.00
performance	-$ 20,000	-$ 10,000	-10.0%	-5.0%	$ 0.90	$ 0.95
E/B Period 1	$ 180,000	$ 190,000				
contribution/withdrawal	$ -	$ -				
O/B - Period 2	$ 180,000	$ 190,000				
performance	$ 20,000	$ 7,600	11.1%	4.0%	$ 1.00	$ 0.99
E/B Period 2	$ 200,000	$ 197,600				
cumulative performance $	$ -	-$ 2,400				
cumulative performance %	**0.0%**	**-1.2%**			**0.0%**	**-1.2%**
Manager 1 & Manager 2 cumulative perf		**-$ 2,400**				
Cumulative perf diff in Ex 2a vs. Ex 2b		**$ 7,111**				