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January 10, 2011

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

and

Madame Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Mr. James Twiss, Vice President, Market Regulation Policy
Kevin McCoy, Senior Policy Analyst, Market Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 1600
121 King Street West
Toronto, Ontario
M5H 3T9

Dear Sirs and Madams:

**Re: Response to Joint CSA/IIROC Consultation Paper 23-405
Dark Liquidity in the Canadian Market**

The Portfolio Management Association of Canada ("PMAC"), through its Industry, Regulation and Tax Committee, is pleased to have the opportunity to submit the following comments regarding Consultation Paper 23-405 – Dark Liquidity in the Canadian Market.

As background, the Portfolio Management Association of Canada (PMAC, formerly the Investment Counsel Association of Canada (ICAC)) represents “buy side” investment management firms registered to do business in Canada as portfolio managers. Our 140 + members represent both large and small firms managing institutional and private client portfolios. PMAC was established in 1952 and manages in excess of \$750 B assets (excludes mutual funds assets). Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members.

To begin, we would once again like to express our support of your efforts in seeking industry input into policy formulation and rule-making in this area. We also commend your consideration and preference for alignment with international developments relating to dark liquidity while balancing the need for some appropriate Canadian specific rules which reflect unique issues/needs in our market. While the Canadian marketplace has distinctive features that are unique to it, obviously we cannot be out of sync with the global markets. This could lead to liquidity migrating to other markets, especially in the case of inter-listed securities.

In summary, we are very supportive of the general direction and views expressed in this paper. We believe the proposal appropriately aligns trading incentives with value contribution and the Position Paper recognizes the important function Dark Pools serve in the marketplace. **PMAC believes that there is, and has always been, a need and a role in the marketplace for hidden (i.e. non-displayed) liquidity. With effective and efficient regulation, Dark Pools support the objective of best execution for investors.**

We also applaud the general direction of your recommendations, which provide a positive balance between improved regulation of the Dark Pools without jeopardizing the inherent benefits of Dark Pools nor causing a significant reduction in available liquidity in the visible market.

Below are specific responses to the key questions raised in this paper.

i) Minimum Size Exemption - Under what circumstances should Dark Pools or marketplaces that offer Dark Pools be exempted from the requirements of pre-trade transparency under NI 21-101

The CSA/IIROC view expressed in this paper is that exemptions to the pre-trade transparency requirements should only be available where an order meets or exceeds a minimum size.

As stated in our earlier submission, in support of the key principle of fairness and equal treatment, we believe access to markets should not be limited based on order size. Along these lines, **we believe orders of all sizes should have equal access to liquidity in Dark Pools, however orders below certain sizes should be subject to pre-trade transparency.**

We appreciate the concerns raised in the Position Paper related to pre-trade transparency. In particular, one objective in the exercise of regulating Dark Pools is to ensure that liquidity on transparent markets is not impaired by the use of Dark Pools. So absent a compelling reason, pre-trade transparency should be the rule rather than the exception. As the Position Paper states, we believe it is reasonable for large orders to be exempt from pre-trade transparency. Such orders, if exposed to the market, could have a substantial price impact. Because of this, institutional traders have every incentive not to execute such orders on the lit markets. Orders that fall under a certain

size threshold—i.e., order sizes that typically would not be expected to have a significant price impact—should have pre-trade transparency.

We agree that the minimum order size for exemption from the pre-trade transparency requirement should be substantial. The suggested size of 50 standard trading units makes sense and is consistent with the threshold specified in the Client Principal Trading rule of UMIR (Rule 8.1).

ii) Dark Orders and Price Improvement – Should Dark Orders be required to provide meaningful price improvement over the NBBO, and under what circumstances?

We believe Dark Orders should be required to provide meaningful price improvement over the NBBO. Dark Pools should not be tools for “jumping the lit market queue.” There is a cost to having a Dark Order divert order flow from the lit market: the order that set price on the lit market does not get a fill and the incentive to set price is thus diminished. As a result, it makes sense that Dark Orders should be required to pay a price for diverting order flow. The price for being able to access Dark Pools, rather than contributing to the price discovery process in the visible markets, is that users should offer meaningful price improvement with very limited exceptions. We would suggest meaningful price improvement should be at least one cent except if Dark Pools cross at mid market.

That said, we believe an exception should be available where two Dark Orders - both meeting the minimum size threshold - can be executed at a negotiated price that is at or within the NBBO. This is essentially the same trade between two parties that otherwise would have executed through a broker in the upstairs market rather than in the lit market.

iii) Execution Priority at the NBBO – Should visible (lit) orders have priority over Dark Orders at the same price on the same marketplace?

We support the Position Paper’s view that visible orders on a marketplace should execute before Dark Orders at the same price on the same marketplace. We agree that this is fundamental to the price discovery process, and enhances the visible liquidity displayed in marketplaces’ limit order books.

iv) Meaningful Price Improvement - What is a “meaningful” level of price improvement?

We agree that meaningful price improvement means that the price is improved over the NBBO by a minimum of one trading increment as defined in UMIR, except where the NBBO spread is already at the minimum tick. In this case, meaningful price improvement would be at the mid-point of the spread.

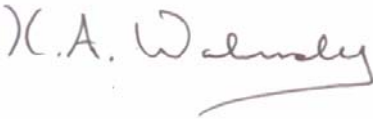
Conclusion:

In summary, we commend your progress in addressing this important, evolving market issue and recognition of the need, growth and complexity of Dark Pools as part of the global market place. PMAC believes that there is, and has always been, a need and a role in the marketplace for hidden (i.e. non-displayed) liquidity. Dark pools balance price discovery while meeting specific investor needs. With effective and efficient regulation, Dark Pools support the objective of best execution for investors and the over-riding benefits must be taken into account when considering any additional regulation and its associated costs.

We would be pleased to participate in a future roundtable on this issue. If you have any questions or concerns regarding our submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley
President, PMAC



Mark Pratt
Chair, Industry, Regulation & Tax Committee
AVP Legal, Mackenzie Investments



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