PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
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September 23, 2011

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Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

-and-

Me Anne Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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E-mail: consultation-en-cours@lautorite.qc.ca

Dear Sir and Madam:

Re: Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* and to Companion Policy 31-103CP: Cost Disclosure and Performance Reporting

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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 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 and Performance Reporting (the "Proposed Amendments").

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. In addition to this primary registration, some firms will be dually registered as exempt market dealers or other registration categories but generally 70% of their income is derived from portfolio manager registration to be members of PMAC. We have over 150 members from across Canada that are comprised of both large and small firms managing both institutional and private client portfolios. PMAC was established in 1952 and currently represents over 150 investment management firms that manage total assets in excess of $750 billion (excluding mutual funds assets). 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 would like to express our support of the general principles included in the Proposed Amendments and 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.

Our Members view the objective of the Proposed Amendments as a forward-looking step towards assisting investors with making informed decisions about meeting their investment goals and enhancing the information investors receive from their dealers and advisors. We note that, if adopted, the Proposed Amendments will inevitably impose significant costs on registrants. However, we see the long term investor value in implementing systems to enhance cost disclosure and reporting of performance to investors. Most of our Members already provide some of the information required in the Proposed Amendments to their clients or certain groups of their clients. In turn, we believe that the Proposed Amendments may provide an opportunity to enhance the relationship between investors and registrants and raise the level of cost disclosure and performance reporting uniformly across the industry.

While we express our positive support for the Proposed Amendments, we believe certain areas of the Proposed Amendments need to be clarified and modified 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 clarification and modification, the objective of the Proposed Amendments 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 perform.

We also request that the CSA consider, on a practical level, how the Proposed Amendments will allow for valuable and cost-efficient compliance. We urge the CSA to engage in a consultation process with industry participants prior to the development of final rules such that the operational impact and end investor experience can be thoroughly considered.

Our key recommendations can be summarized as follows:

1. **Clarification of terms and concepts.** Clarification of the content requirements relating to the proposed annual reporting requirement for cost disclosure and reporting requirement for annual account performance reports.

2. **Retaining reporting flexibility**. Retention of reporting flexibility for investors and registrants with a minimum set of core reporting requirements.

3. **Concerns with duplicative reporting.** Enhanced harmonization or integration of reporting requirements so that duplicative reporting is reduced**.**

4. **Transition period.** An extended transition period to effectively implement and test the systems necessary to meet all of the reporting requirements.

A more detailed discussion of our comments is set out below.

1. Clarification of Terms and Concepts

a. Definition of "client" and "account"

We recommend that the Proposed Amendments include definitions of "client" and "account". The addition of these defined terms is important in order to clarify to whom and how the cost and performance disclosure should be provided. Specifically, a definition of "account" should be provided in order to clarify that certain types of accounts are and should be treated separately. For example, it should be noted that different types of accounts may receive different legal treatment for income and tax purposes. In addition, we note that the Proposed Amendments are not explicit on whether cost and performance disclosure are to be provided on an account-by-account basis or whether registrants can provide the disclosure on a consolidated basis. To this end, we recommend that registrants retain some flexibility in reporting to a client about all of his or her accounts, including whether registrants provide (i) separate reports for each account, (ii) one consolidated report for all accounts, or (iii) a series of partially consolidated reports that combine various groups of accounts but together cover all of the client's accounts. This should be determined by agreement between the registrant and client and only in the absence of such determination would the obligation be to provide separate reports on each account.

Generally, we recommend that these terms be defined broadly to allow for the reporting flexibility described above and so that reports can be tailored to meet each investor's specific needs.

b. Cost disclosure and "operating charges"

The definition of "operating charges" may cause confusion amongst registrants and should be clarified so that investors and registrants have a clear understanding of what is and is not included as an operating charge. For example, we recommend that the CSA carefully consider the impact of the inclusion of "look-through" charges such as mutual/pooled fund MERs. In other words, whether registrants are required to "look through" the fund and allocate the embedded fees and/or costs to individual unitholders.

Similarly, the reporting obligation related to charges levied by someone other than the registrant, but which are incidental to the operation of the account, should be clarified. We note that many costs are not charges levied by the registrants in question, but are charges levied by the investment fund managers of the funds for services provided to those funds by the investment fund managers and other service providers. It is unclear whether the CSA contemplates such charges to be captured by the reporting requirements. It would seem unfeasible to "balance" the performance reports required by sections 14.15 and 14.16 of the Proposed Amendments without including such charges, but additional clarification in this area is necessary.

Similarly, the Proposed Amendments include a number of requirements relating to deferred sales charges (DSC) that, in our view, require further clarification. The proposed annual reporting requirement relating to operating charges requires disclosure of the aggregate amount of fees paid to the registered firm by any third party in relation to the client during the past 12 months. It is not clear whether this will also include payment by fund managers of sales commissions to dealers in respect of DSC mutual fund securities. We recommend the CSA include additional guidance on reporting requirements related to DSC, including guidance on commissions such as the initial sales commissions paid in respect of trades in DSC mutual funds.

While it appears that the CSA has intended for a broad interpretation of "operating charge", the proposed guidance in the Companion Policy may not address all of the potential areas of confusion and, in particular, for investors who also hold investments in mutual funds. Additional guidance should be provided so that registrants understand the reporting obligations associated with fees that they themselves have not levied.

c. "Tax cost" and "original cost"

We do not believe the option of permitting the use of "tax cost" as an alternative to "original cost" is ideal for investors. Investors may have difficulty understanding the limitations associated with this reporting method. In addition, from an accuracy perspective, the use of original cost is preferable as it is more widely used and easier to implement. Generally, the use of tax cost would not be meaningful at an account level and would cause investor confusion.

While it is our view that the use of tax cost should not be a requirement, the Proposed Amendments should contemplate that investors may, in certain circumstances, request reporting to be provided to them on a tax cost basis (assuming the necessary information is available to the registrant to provide reporting on this basis). If the CSA does choose to provide registrants with the option of using either original cost or tax cost, then we recommend that the CSA require the registrant to disclose clearly to the investor the reporting method used and any limitations on such reporting method. If the objectives of the Proposed Amendments are to be met, investors need to understand the fact that original cost (invested amount) and book value (tax cost) are not identical. We also presume that a definition of tax cost would be included in the Proposed Amendments.

2. Retaining Reporting Flexibility

While we support a core set of reporting requirements be mandated by the CSA, we believe that registrants should retain the ability to decide with their clients on the

appropriate level, form and frequency of cost and performance disclosure**.** Customizing client information in order to provide clarity to a particular client in light of their investment goals is one area where registrants add value and the ability to tailor reporting to meet a client's needs is important. In this respect, we agree with the CSA's principles based approach on the use of benchmarking. However, we highlight that where a registrant may manage a group of accounts for one client, each with their own objective benchmark, it would pose a significant challenge to the registrant to effectively compare a consolidated valuation to any meaningful benchmark. In addition, we question whether it is necessary to require that a written agreement between the registrant and client be entered into before benchmark information is delivered to a client. It is our view that as long as the registrant has adequately described the benchmark to the client, explained why it is being provided and it's possible limitations, and that it is not presented in a misleading way, the benchmark information can be provided on this basis.

We think it is important to allow flexibility in this area of reporting and we recommend that flexibility also be incorporated in other parts of the Proposed Amendments. We include below some examples to illustrate how investors and registrants would benefit from cost disclosure and performance reporting flexibility:

- *Frequency of reporting*. Registrants and investors should retain the ability to agree as to the frequency of reporting. For example, many of our Members report on a quarterly basis. While we would support a minimum core requirement of annual reporting, there should be flexibility for clients to elect to have more frequent reporting, if desired.

- *Different types of investors have different needs*. Institutional investors will have different reporting needs than retail investors. For example, reporting to accredited investors/permitted clients, who are sophisticated enough to negotiate their own terms and do not necessarily need or benefit from prescriptive reporting requirements. Such institutional clients may prefer to report in a particular format that is more suitable for their internal reporting (i.e. certain pension plan committees may have specific reporting requirements pursuant to their corporate governance policies which may be over and above what a portfolio manager would provide to a typical client). Also, some institutional clients' performance is very often calculated by an independent third party (i.e. a custodian or pension consultant).

3. Concerns with Duplicative Reporting

We believe that an unintended consequence of the Proposed Amendments is the risk of redundant reporting to investors on cost disclosure and performance reporting. The CSA should carefully consider all of the efforts made by SROs in this area over the last several years, and in particular, the impact of new rules on cost disclosure coming into effect in the near future. Our Members have noted with concern that in certain circumstances, there may be duplicative reporting that would defeat the objectives of (i) investors receiving clear and meaningful disclosure of charges associated with their investment products and the services they receive, and (ii) meaningful information to assist investors in evaluating how well their account is doing. We recommend the CSA harmonize or integrate reporting requirements in this area so that investors receive uniform reports.

a. Disclosure Overlap

Many of the reporting requirements in the Proposed Amendments cover the same topics required by other CSA rules (i.e. Fund Facts). In our view, this may result in investors receiving more information that is not necessarily meaningful, a lack of uniformity, inaccuracies, and promote confusion. We recommend the CSA consider the redundancies that will be created by some of the reporting requirements in the Proposed Amendments and the impact such disclosure overlap will have on an investor's ability to understand the information being provided. For example, if an investor moves from one registrant to another, the level of reporting should be comparable. We believe that efforts to harmonize the disclosure requirements so that clients receive uniform reporting will enable the CSA to better meets its objectives in this area.

b. Reporting from Multiple Registrants

Similarly, the Proposed Amendments do not 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. For instance, an account may be covered by two registrants where one registrant is providing a custodian function (providing account statements but not performance reports) and the other registrant has discretion over the trading in the account (portfolio managers, in most cases). Typically, the custodian is providing only trade and account statements, while the performance reporting is provided by the portfolio manager. It is our understanding that the Proposed Amendments contemplate that custodians will also be required to provide performance reporting, which would lead to duplicative reporting and disclosure overlap. While we believe the current reporting done by custodians adds value and is a further assurance to the investor of their account activity, additional reporting by custodians on performance would result in investor confusion and ultimately not achieve the objective of the Proposed Amendments.

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 costs and performance reports can be minimized in order to ensure that clients receive the required reporting once about their accounts from the registrant with whom that client has the complete relationship (generally the portfolio manager). It appears that the Proposed Amendments, as currently contemplated, would require both registrants to provide the same client with cost and performance 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 order to address the concern that the Proposed Amendments 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. If this issue is not adequately addressed, clients may inadvertently receive multiple reports with, possibly, inconsistent information, leading to further investor confusion. If the CSA's objective is to get clear information to investors and to improve investor education on cost reporting, then the concerns around duplicative reporting should be addressed in order to avoid this unintended result.

4. Transition Period

We note that certain requirements in the Proposed Amendments have a one year transition period, while others have a two year transition period. Our Members have expressed concerns with a phased implementation approach and in general, the implementation timelines, given the significant systems and information technology changes required to implement the Proposed Amendments as currently contemplated. We recommend that the CSA consider a delayed transition period of at least three years for the implementation of the final rules. We believe that the transition period for all requirements should be consistent and that a three year transition period would be more appropriate to facilitate the implementation of effective systems designed to achieve the reporting objectives outlined in the Proposed Amendments and final rules.

Conclusion

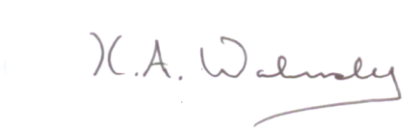
We fully support the objective of providing investors with meaningful information regarding the costs associated with, and the performance of, their accounts and continue to support the general reporting principles outlined in the Proposed Amendments. While we are supportive of a baseline set of reporting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

We urge 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 Proposed Amendments are finalized. Industry input is valuable and warranted as different registrants have different reporting capabilities due to differing roles, knowledge base and experience. Similarly, different types of investors have different reporting needs and demands. The Proposed Amendments should reflect and balance these differences. 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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