



Advancing Standards™

December 20, 2011

Office of the Secretary  
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**Re: OSC Staff Notice 15-704 - *Request for Comments on Proposed Enforcement Initiatives***

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The Portfolio Management Association of Canada ("PMAC", formerly the Investment Counsel Association of Canada ("ICAC")), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding OSC Staff Notice 15-704 *Request for Comments on Proposed Enforcement Initiatives* (the "Proposed Initiatives").

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 \$800 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.portfoliomangement.org](http://www.portfoliomangement.org).

We would like to express our support of the Ontario Securities Commission's ("OSC") Proposed Initiatives and the objective of resolving enforcement matters more quickly and effectively, for the benefit of investors and the capital markets. PMAC believes that initiatives aimed at providing market participants with incentives to self-police, self-report and self-correct matters that may involve breaches of Ontario securities law, particularly those breaches that are de

minimums, reflect the view that the public interest is best served if staff can obtain information needed for enforcement action more quickly and less expensively, allowing the OSC to impose protective sanctions in an agreed settlement sooner and in more cases. While we applaud Ontario's leadership in this area, it is our view that regulatory cooperation and coordination of these matters across all jurisdictions in Canada would promote further efficiency in Canadian capital markets to the benefit of investors.

Our comments on the Proposed Initiatives focus on the areas discussed below.

### ***New Program for Explicit No-Enforcement Action Agreement***

We agree that where market participants self-report and remediate promptly, no-enforcement action agreements should, in most cases, be made available. However, this area of the Proposed Initiatives does not seem to clearly articulate the types of breaches of Ontario securities law or activities that could be harmful to Ontario capital markets that would be considered ineligible for a no-enforcement action agreement. It is our view that the circumstances in which an a no-enforcement action agreement is available, as currently described, are too broad. Is the program only contemplated for de minimus compliance breaches or minor violations where there is little or no harm to the market? Consideration should be given to the magnitude of the breach in order to determine whether a no-enforcement action agreement is appropriate and the market should be aware of the types of breaches that would most often fall under this program. Further clarification should be provided on the process involved in initiating self-reporting with staff, the timeframes for which reporting should occur and the length of time it will take to conclude the agreement.

We recommend that the OSC develop some form of screening criteria for participation in this type of program which is based on prior experiences and current policy objectives and that would inform a market participant's decision to pursue or initiate self-reporting under this program.

### ***New No-Contest Settlement Program***

We agree that settlement agreements support a number of public interest objectives, namely, obtaining earlier regulatory sanctions in respect of, and commitments from, market participants to prevent ongoing and/or future harm to investors or capital markets. The elements of the new no-contest settlement program as outlined seem to overlap with some of the objectives outlined in the no-enforcement action agreement initiative and it is not clear where one avenue may be pursued by market participants as opposed to the other. One of the key elements of the program includes the requirements that the respondent not previously be the subject of enforcement or "regulatory activity" by the OSC or any other agency. This condition seems quite broad and should be clarified so that market participants understand the limitations of participation under this program.

As a general comment, we support a more clear and robust set of guidelines for self-reporting to the OSC and agree with the key elements set out in the "Clarified Process for Self Reporting" section of the Proposed Initiatives.

We also take the view that any enforcement initiatives or new programs offered by the OSC should inherently factor in the harm or potential harm to investors as a result of breaches of Ontario securities laws. Investor protection must remain an integral tenet of enforcement powers delegated to the OSC as a regulatory body.

Our key recommendations can be summarized as follows:

- Regulatory cooperation and coordination of enforcement matters across all jurisdictions in Canada in order to promote consistency and further efficiency in Canadian capital markets to the benefit of investors.
- Clarification of process, procedures and parameters for no-enforcement action agreement program, including detailed screening criteria for participation in the program and a list or discussion of breaches or conduct that would most typically fall within the parameters of the program or that would render the program unavailable to market participants.
- Clarification on the differences between the no-enforcement action agreement program and no-contest settlement program and the types of breaches that would be reviewed under each program.
- A more detailed discussion of the eligibility criteria for participation in the new programs.

In summary, PMAC endorses the efforts of the OSC to enhance its enforcement regime. 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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