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May 29, 2012

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

**Re: OSC Notice 11-766 -- Statement of Priorities - Request for Comments
Regarding Statement of Priorities for Financial Year to End March 31, 2013**

The Portfolio Management Association of Canada ("PMAC"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to submit the following comments regarding *OSC Notice 11-766 Statement of Priorities - Request for Comments Regarding Statement of Priorities for Financial Year to end March 31, 2013* (the "Statement of Priorities").

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. PMAC was established in 1952 and currently represents over 160 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.

General Comments

PMAC supports the overall direction of the Statement of Priorities. In particular, we applaud the OSC's commitment to evolving in order to be an effective, efficient and responsive regulator. We agree with a number of the goals included in the Statement of Priorities and see the underlying theme of investor protection throughout these goals as a positive step forward. We are supportive, generally, of additional research and analysis to support the OSC's ongoing and potential

initiatives along with transparency of such research efforts. Included below are our specific comments on the draft Statement of Priorities along with some recommendations on additional goals and priorities for the OSC's consideration.

Goal #1 -- Deliver Responsive Regulation

PMAC believes that the demands of changing business environments domestically and globally has required the adoption of more flexible forms of regulation such as risk based regulation and responsive regulation. As a general comment, PMAC applauds the OSC's continued efforts regarding consultations on regulatory initiatives with market participants and industry. We believe that open dialogue with stakeholders facilitates responsive regulation and the OSC should be responsive to the conduct of those they seek to regulate.

We support the OSC's efforts in reviewing and considering the accredited investor and \$150,000 minimum amount exemption. As indicated in our submission and in-person consultation with OSC staff members earlier this year, we do believe, in general terms that updating securities laws to reflect the current investment landscape is a step in the right direction of delivering responsive regulation. We also believe, as indicated in our submission, that Ontario should give careful consideration to harmonizing its capital raising exemptions with those exemptions provided by the other provinces and territories.

We also support the OSC's goal of conducting research and analysis, and publishing a discussion paper on the cost of ownership of mutual funds in Canada. As indicated in our submission to the CSA on cost disclosure and performance reporting amendments to NI 31-103, we support the objective of ensuring that investors receive clear and complete disclosure of all charges associated with the products and services they receive.

Goal #2 -- Deliver Effective Enforcement and Compliance

As a general observation, we agree with the OSC's goal of preventing non-compliance as opposed to finding non-compliance after fact. In this regard, efforts should be made to ensure that: (i) regulations are streamlined across the country in order to prevent confusion and asymmetry among market participants nationally; (ii) market participants have the level of clarity and guidance needed to comply efficiently and effectively with all facets of securities legislation applicable to their business; and (iii) investors have the level of protection necessary to instill confidence in Canadian capital markets.

In our view, the OSC's goal of completing compliance reviews of website and marketing disclosures should not be limited to smaller issuers. We believe the OSC should also consider expanding its review to mutual fund print ads and websites.

We fully support all initiatives by the OSC to conduct educational seminars for market participants and to publish practice directives and guidance geared toward small and medium enterprises. Further direction on understanding the regulator's expectations regarding filings is beneficial and alerts registrants to issues that may be of focus during review programs.

Goal #3 -- Deliver Strong Investor Protection

We understand that the OSC is continuing to work with the Ombudsman for Banking Services and Investments (OBSI) and the CSA to support a sustainable and robust system of informal dispute resolution for investors. We have concerns with mandating OBSI as the only dispute resolution option for investors and do not believe that a monopoly on this important service is optimal nor desirable. We question whether OBSI's decisions are transparent in all cases and whether it does in fact act impartially. We recommend the OSC take a broader review of dispute resolution options and broaden its mandate beyond just considering OBSI.

Earlier this year, PMAC launched a dispute resolution program in which we have partnered with the ADR Institute of Canada (ADRIC). The purpose of this program is to facilitate independent dispute resolution services for PMAC member companies (PMAC Members) and their clients. This service is designed to comply with the requirement in NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) (s.13.16) that will come into effect in September 2012. We believe this solution is optimal due to, among other things, the independence of the professional mediators and arbitrators under ADRIC, who are not employees of any corporation but are truly independent qualified professionals and the investors' ability to choose from an impartial and qualified roster of individuals with relevant industry experience. PMAC would be pleased to provide you with information which may be helpful in your deliberations regarding a suitable dispute resolution regime.

We are pleased that the OSC will create an Office of the Investor to establish a stronger investor focus and understanding. We support any initiatives where the OSC will deepen its understanding of investor issues and act as the focus for investor concerns and ensure investor issues are considered in policy and operational activities within the OSC.

Goal #4 -- Run a Modern, Accountable and Efficient Organization

One of the objectives of the OSC in the next fiscal year is to prioritize and coordinate policy development. We understand that a dedicated committee will be established for the control and prioritization of policy initiatives, to ensure they are aligned with the goals and objectives of the organization and that investors' concerns and operational issues are considered early in the policy process.

We applaud the OSC for placing greater emphasis on assessing the implications of policies, testing implementation of regulations and on collaboration with other domestic and international regulators. In particular, we believe the OSC should prioritize coordinating policy development with the rest of the country. A more recent example is the two inconsistent and differing sets of registration approaches for investment fund managers (IFMs) as contemplated by proposed Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers* and Companion Policy 32-102CP *Registration Exemptions for Non-Resident Investment Fund Managers* ("Proposed MI 32-102") and Proposed Multilateral Policy 31-202 *Registration Requirement for Investment Fund Managers* ("Proposed MP 31-202").

As indicated in our submissions for these bifurcated proposals, we do not support having two separate sets of registration requirements for IFMs in Canada as this will lead to unnecessary uncertainty for investment fund managers, including non-resident investment fund managers. We have consistently advocated for harmonized rules across Canada that ensure the registration process is streamlined for registrants. In our view, Proposed MI 32-102 and Proposed MP 31-202 are a backward step in light of the progress achieved in registrant regulation in the last few years. We are opposed to regulatory initiatives which increase regulatory fragmentation and confusion in the investment fund and asset management industry.

We also note that the recent Supreme Court of Canada decision on the national securities regulator provides an opportunity for the OSC to continue working cooperatively with its CSA colleagues and to make the regulatory system more efficient. In our view, the ruling suggests that the next step forward is for the government to develop constitutionally sound legislation that supports streamlined securities regulation in Canada and there is more work to be done to move towards a national securities regulator. The ruling provides some principles and boundaries to move in this direction.

PMAC has long advocated that Canada adopt one national securities regulator to:

- Protect against unfair and improper practices and ensure better enforcement against fraud and white-collar crime;
- Provide consistency for businesses operating across Canada's provinces through a clear set of rules that apply from coast to coast;
- Strengthen the financial system by developing faster policy responses to emerging trends;
- Reduce inefficiencies and duplication inherent in operating 13 regulatory structures: minimizing red tape will encourage foreign issuers to include Canada when offering securities; and
- Streamline the registration process for advisors and other registrants by having one national process.

While the OSC has indicated its commitment to continue to work cooperatively with its CSA colleagues and other regulators to make the regulatory system more efficient, we recommend that the OSC also work collaboratively and actively with the Department of Finance and CSTO to develop a more national solution to securities regulation in Canada. The Supreme Court of Canada indicated in its decision dated December 22, 2011 that "a cooperative approach that permits a scheme recognizing the essentially provincial nature of securities regulation while allowing Parliament to deal with genuinely national concerns remains available and is supported by Canadian constitutional principles and by the practice adopted by the federal and provincial governments in other fields of activities". We note that the CSTO aims to continue its work with provinces and territories on a cooperative basis towards a common securities regulator. Reflecting this continuing work, on April 7, 2012, the government extended the CSTO's three-year mandate by one year, to July 12, 2013. We hope the OSC continues to be a catalyst and driver in the process towards really becoming a "national" modern, accountable and efficient organization.

Goal #5 -- Support and Promote Financial Stability

PMAC supports the OSC's goal to increase cooperation by developing more formal and regular working relationships with the CSA and other financial service regulators in Canada and internationally. We believe that in order to promote financial stability in our country this is crucial. We also think that financial stability can be supported by a vigorous and cutting edge enforcement regime where there is effective deterrence for breaches of securities laws. As indicated in our submission regarding OSC Staff Notice 15-704 *Request for Comments on Proposed Enforcement Initiatives*, we support the OSC's objective of resolving enforcement matters more quickly and effectively, for the benefit of investors and the capital markets. PMAC believes the OSC should carefully access such initiatives.

Recommendations

PMAC recommends the OSC also consider adding the following to its Statement of Priorities:

1. Goals should have target dates for implementation

As a general observation, PMAC suggests that the Statement of Priorities clearly set out target dates for the implementation of each of its goals. We believe this provides more accountability on results and promotes more transparency in attaining the goals enumerated.

2. An improved National Registration Search

We believe the national registration search should contain the names of all registrants (individuals and firms) in Canada, including those registered in

Ontario. We don't think it's practical to have a separate OSC registrant list and instead recommend that Ontario work with the CSA to create an inclusive and comprehensive national system that allows investors and market participants to easily access information on all registrants, including information relating to registration history, proficiency and disciplinary history.

3. *Additional consideration of the costs of compliance with regulations*

We recommend the OSC take an aggregated review of the overall costs of compliance for registrants. We believe the rising costs of compliance, particularly for smaller firms, presents a barrier to entry and stifles industry growth. Changing client expectations and demands along with shifts in the competitive landscape are reshaping the playing field for many portfolio managers. We believe the OSC should acknowledge the consumer demand for the services provided by smaller firms and take this into account when assessing the costs of compliance on such firms.

We note that the OSC should have regard to the fundamental principle that "business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized".¹ In this regard, we believe it is worthwhile for the OSC to conduct more research and analysis in this area, particularly, when it is proposing policy initiatives and/or amendments to securities regulations. For instance, we note that it is often reported in OSC and CSA-wide notices and requests for comments under the title "Anticipated Costs and Benefits"² that while the proposed amendments may impose certain costs on market participants, such costs are not material. We don't believe this is a sufficient analysis, explanation or thorough review of the costs associated with regulation or compliance with such regulation.

4. *Improve the OSC Complaint Process*

We believe that the OSC's internal complaint handling and investigation process into registrant or issuer misconduct is inefficient and unresponsive. In particular, we find the lack of transparency to the complainant problematic. For instance, a complainant is not provided any updates, information or insight into whether a formal investigation is being conducted or guidance on the status of his or her complaint. We recommend the OSC consider improving its complaint process in light of its commitment to dispute resolution for investors.

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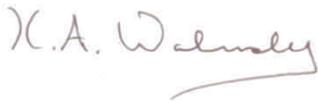
<sup>1</sup> See section 21(6) of the *Securities Act* (Ontario), R.S.O. 1990, Chapter S.5 (the "Act")

<sup>2</sup> Section 143.2(2)(7) of the Act.

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

Handwritten signature of Katie Walmsley in blue ink.

Katie Walmsley  
President, PMAC

Handwritten signature of Scott Mahaffy in blue ink.

Scott Mahaffy  
Chair, Industry, Regulation & Tax Committee  
Vice President Legal, MFS McLean Budden Limited



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