



Advancing Standards™

December 21, 2018

DELIVERED VIA EMAIL

Maureen Jensen,
Chair and Chief Executive Officer
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON M5H 3S8

Re: OSC Internal Taskforce on Regulatory Burden Reduction

PMAC APPLAUDS THE OSC'S LEADERSHIP ON REGULATORY BURDEN REDUCTION

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is making this submission to the Ontario Securities Commission (**OSC**) to assist in the formulation of priorities for the OSC's regulatory burden reduction taskforce.

On behalf of PMAC's [260 investment management firms](#) registered with the Canadian Securities Administrators (**CSA**) to do business in Canada as portfolio managers, we are providing the following feedback on registrant-specific regulatory burden. We believe this industry-informed perspective is valuable for the OSC to consider as part of your policy making.

Regulatory burden represents an existential concern for many of our member firms who collectively manage assets in excess of \$1.8 trillion for private and institutional client portfolios. Ultimately, higher regulatory burden and compliance costs facing portfolio managers have a negative impact on their end investors as well as on the Canadian capital markets.

We applaud the OSC for recently taking a leadership role in exploring the opportunity for regulatory burden reduction. Your efforts to stem the negative impacts of this burden while maintaining high standards are both necessary and welcome.

This letter outlines some specific recommendations that we would be pleased to explore further with the OSC and our members in greater detail in the New Year.

REGULATORY BURDEN REDUCTION REQUIRED FOR PORTFOLIO MANAGERS

PMAC was pleased to have the opportunity to participate in discussions regarding the Rationalization of Investment Fund Disclosure Project (**Project RID**). We believe that 2019 marks an opportune time for the OSC to turn its focus to the regulatory burden facing registrants. Two of our recommendations could be instituted by the OSC early in 2019 with great effect in easing the regulatory burden. The other seven recommendations, while no less pressing, require the OSC's continued leadership, along with consensus building with your CSA colleagues in order to be implemented.

As further background to our submission, we have included Appendix **A** showing survey results from our membership which illustrates the significant costs and staffing supporting compliance. We believe the rising costs of compliance, particularly for small and mid-sized firms, present a

barrier to entry and stifle industry growth and investor choice. Small firms managing under \$1B in AUM currently represents 59% of PMAC's membership.

PMAC believes that Canadians and the Canadian markets are best served by ensuring broad access to investment advice that is provided with the highest levels of integrity and skill. To do so, firms have the time and resources to focus on the most meaningful aspects of investor protection, on their highly professional skills, and on building relationships with and serving their investors. Portfolio managers do so in the context of the fiduciary duty they owe their clients.

PMAC'S RECOMMENDATIONS

PMAC's key recommendations are set out below, with each recommendation discussed in greater detail in the body of this submission. At a high level, the over-arching vision behind our recommendations falls into five themes. These themes are woven throughout each of PMAC's recent advocacy submissions and are directional principles through which the OSC can reduce regulatory burden while maintaining investor protection.

1. More principles-based regulation – Securities regulation needs to be more principles-based and less prescriptive;
2. Portfolio managers are fiduciaries and professionals – Overly prescriptive regulation impedes professional and ethical judgement and is inappropriate and ineffective in the management of discretionary client accounts;
3. Institutional/sophisticated clients do not need retail client protection – Securities regulation should provide carve-outs, where appropriate, and avoid a one-size-fits-all approach to different client types and business models;
4. International competitiveness is critical – Securities legislation should preserve and strengthen - not hinder - the industry's international competitiveness. Investment jobs and capital can easily move to other jurisdictions if the domestic regulatory burden remains significant and misaligned with that of other international jurisdictions; and
5. Regulatory burden has particularly adverse impacts on smaller businesses and new entrants – Securities legislation should ensure the imposition of proportionate regulatory burden and should not be unworkable for small businesses or a deterrent to entry for new businesses.

We recognize that the proposed amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* referred to as the **Client Focused Reforms** and the proposed derivatives instruments are on-going consultations being considered by the wider CSA and have provided comments below based on the most recently proposed amendments. We stress the critical opportunity these still-developing rules present for striking the right balance between regulation, efficiency, and investor protection.

PMAC would appreciate the opportunity to share further commentary and examples on each of the topics set out below. We have included Appendix **B** which summarizes each specific issue, requested action, the parties involved, and our assessment of the potential timeframe for each request.

A. OSC - SHORT-TERM REGULATORY BURDEN REDUCTION RECOMMENDATIONS

1. Streamline and simplify outside business activity (**OBA**) reporting requirements clarify existing OSC expectations; and
2. Continue to improve the Risk Assessment Questionnaire (**RAQ**) process and defer the 2020 RAQ to 2021. Administer the RAQ every three years instead of every two years.

B. CSA – SHORT AND LONGER-TERM REGULATORY BURDEN REDUCTION RECOMMENDATIONS

1. Allow for the registration of advising representatives (**ARs**) and associate advising representatives (**AARs**) who perform registrable client relationship management (**CRM**) duties in the absence of certain relevant investment management experience (**RIME**) through the imposition of standardized terms and conditions;
2. Restate the fiduciary duty owed by portfolio managers in each Canadian jurisdiction - whether statutory or common law - and implement selected, tailored amendments to NI 31-103 that are responsive to specific regulatory concerns, instead of implementing the one-size-fits-all overly burdensome Client Focused Reforms without tailored approaches for portfolio managers and the investors they serve;
3. Regulate portfolio managers advising on derivatives or derivatives strategies under NI 31-103 and include general derivatives proficiency and risk-management requirements with respect to derivatives in NI 31-103 instead of requiring portfolio managers to register under proposed National Instrument 93-102- *Derivatives: Registration* (**Registration**) and proposed National Instrument 93-101 – *Derivatives: Business Conduct* (**Business Conduct**);
4. Modernize and improve the national registration database (**NRD**) and simplify and streamline reporting requirements through NRD;
5. Eliminate the requirement to file quarterly reports under Form 24-101F1 – Registered Firm Exception Report of DAP/RAP Trade Reporting and Matching (**Form 24-101F1**) arising out of National Instrument 24-101 – *Institutional Trade Matching and Settlement* (**NI 24-101**);
6. Urge new fee structure and industry categories for the Ombudsman for Banking Services and Investments (**OBSI**); and
7. Increase harmonization between and deference amongst CSA members to ensure efficient and consistent decision-making.

A1. CLARIFICATION AND STREAMLINING OF OUTSIDE BUSINESS ACTIVITY REPORTING

PMAC welcomes the additional guidance with respect to OBAs in the OSC's Compliance and Registrant Regulation Branch 2018 Annual Summary Report for Dealers, Advisers, and Investment Fund Managers (**2018 Report**).

In particular, PMAC applauds the clarity that coaching recreational or "house league" sports is generally not viewed to be a position of influence, and therefore is not required to be reported as an OBA. We are encouraged by the inference that firms can evaluate the materiality of an OBA in the context of whether it is a position of influence that must be reported.

During a Q4 OSC Registrant Outreach seminar, a number of members were concerned that OSC staff communicated their view that certain activities that would not reasonably be thought of as being a "position of influence" would, in fact, need to be reported as an OBA. Additional coordination between the messaging in OSC Staff Notices and outreach sessions may be beneficial as the confusion arising out of the Q4 OSC Registrant Outreach seminar was fairly widespread.

Members have frequently questioned whether acting as a "big brother" or "big sister" is truly a position of influence when looked at from the point of view of who the registrant could improperly influence.

Furthermore, members have raised concerns over requirements to report the following as OBAs: owners and directors of one's own private investment holding company (as this is already supervised under personal trading policies); being a trustee of one's own family trust; and being a trustee of a private family foundation (as this is reported to the Canada Revenue Agency on form T3010).

PMAC members have noted with appreciation that the OSC has recently ceased fining registrants for the late filing of non-material OBAs. We urge the OSC to continue with this practice and note that it aligns with the ways in which other CSA jurisdictions have been treated non-material late OBA filings.

In the context of what would need to be a wider CSA project, PMAC continues to query whether it is necessary to report all OBAs to the CSA when weighed against the resources required to do so. Members have raised questions about the utility of such reports and whether the current system could be replaced by reporting internally to firms' own compliance departments. The internal OBA reporting could be subject to audit by the CSA and, by extension, reduce the regulatory burden on CSA members who would only be receiving relevant OBA reports, as opposed to all outside business activities of a registrant, no matter how low a risk they pose of a conflict. We understand the CSA uses OBA reports to assess individuals' continued fitness for registration, but we believe our suggestion would continue to allow for this periodic assessment.

A2. REDUCED FREQUENCY & IMPROVEMENTS TO THE RAQ

PMAC requests that the OSC consider administering the RAQ every three years¹, instead of every two.

After the 2016 OSC RAQ, PMAC was approached by a number of member firms with feedback designed to reduce the significant time burden the RAQ presents for many firms, as well as to improve the user experience and data collected by the RAQ – several of these recommendations were incorporated by the OSC into the 2018 RAQ.

¹ For firms that have undergone a substantial change in business, the RAQ could be administered sooner than every 3 years.

In the fall of 2018, PMAC shared additional feedback with the OSC on the most recent questionnaire, noting certain improvements while, overall reflecting the incredible time and resource crunch required to complete the RAQ every two years.

Member feedback on the 2018 RAQ resulted in the following suggestions for continued improvement:

- **Frequency.** The most common feedback was that the timing of the RAQ is too frequent, given the amount of time and resources it takes to complete. PMAC is requesting that the RAQ be administered every 3 years. Additionally, members would like to see the frequency extended for existing firms that have filled out multiple RAQs, that have recently undergone a CSA audit and/or for lower risk firms.
- **Volume and type of information.** Members believe that information already provided to the commission should not be requested during the course of the RAQ. For example, the OSC receives Reports of Exempt Distribution under 45-106F1, so this information ought not to be requested again. Members generally find the RAQ to be too long, requiring too many firm resources to complete. To the extent that there is data being collected in the RAQ that is not used to assess or address investor protection or market concerns, consider eliminating or reducing the collection of such data.
- **User-friendly features.** Members noted a number of very positive improvements in the user-friendliness of the 2018 RAQ. Additional suggestions for continued improvement include the ability to fully print the completed RAQ in a way that doesn't cut off the comments in the comment boxes; to increase the character limit in each comment box and to include comment or explanatory boxes for each question. This is particularly important for firms with unique business models to help provide context for their responses.
- **Additional guidance.** While there was improvement from the 2016 RAQ, members requested more descriptions and explanations for each question. Members also requested that the OSC session to review the requirements for the RAQ be held within a couple of days of issuing the RAQ².
- **Timing.** Members appreciated the OSC's email alerting them to when the RAQ would be issued. Many members were pleased with the new dates as of which information was to be provided, as well as with the extra time to complete the fund spreadsheet.
- **Coordination with other CSA members.** For firms who are not principally regulated by the OSC, members would appreciate the OSC coordinating the RAQ with any questionnaires being administered by other members of the CSA to minimize the regulatory burden or the provision of the same data to multiple regulators.

We continue to believe that the OSC has the opportunity to harness fintech to leverage existing data and to create a more streamlined, user-friendly and nimble RAQ experience.

Such improvements can minimize regulatory burden while simultaneously bolstering the ways in which the OSC can leverage the vast amounts of data that it collects through this survey.

² On behalf of members, PMAC would like to acknowledge and thank OSC Staff who fielded member questions about the RAQ on a very timely, professional, and helpful basis.

B1. ALLOW THE REGISTRATION OF CLIENT RELATIONSHIP MANAGEMENT ADVISING AND ASSOCIATE ADVISING REPRESENTATIVES WITH TERMS & CONDITIONS

Since 2015, PMAC has been advocating for a mechanism to enable the registration of ARs and AARs who perform registrable CRM in the absence of certain RIME. Namely, those who do not have individual stock picking and research experience where that skill is not relevant and required for the CRM professional to perform their duties. The OSC has taken a very proactive leadership role in formulating a possible solution, for which we are thankful.

As a reminder, PMAC is not asking for any change to the proficiency requirements for AARs or ARs. The high proficiency standards would remain in place.

Draft standard Terms & Conditions are being discussed by a CSA registration working group that would permit the registration of CRM AARs and ARs. This marks an important development in tackling the regulatory burden, inefficiencies, and cost associated with the RIME requiring individual stock picking and research skills for individuals who will not be performing those duties for clients.

To reiterate the nature of the burden created by the current registration model, there is currently:

- a shortage of individuals who can be registered;
- increased costs of hiring registered individuals since firms feel compelled to only hire individuals who have been previously registered. This is driving up salaries without a corresponding client service benefit;
- hiring individuals who have individual stock research and selection experience when that is not a skill set required to perform their client relationship management function or part of their responsibilities;
- hiring decisions which may also inadvertently inhibit diversity in the industry as a result of encouraging firms to only hire previously registered individuals;
- efficiency issues as a result of the logistics and impracticalities of being required to use non-registered professionals to perform CRM functions who are required to be supervised by registered – but non-client-facing – professionals. This creates challenges in terms of efficiency, value-add and human resource problems that are not in the best interest of investors; and
- Succession planning problems due to challenges in graduating individuals from the AAR category to the AR category.

This issue presents a long-standing challenge and significant regulatory burden for many of our members. Ultimately, our members are seeking help to register the most skilled people to conduct know your client duties and to build meaningful relationships investors – a goal we know the OSC shares.

We urge the OSC to continue to provide leadership to its CSA colleagues on this matter by approving a standard set of Terms and Conditions for this purpose.

B2. CLIENT FOCUSED REFORMS: RESTATE THE FIDUCIARY DUTY FOR PORTFOLIO MANAGERS

Opportunity to strike the right balance

The Client Focused Reforms represent a monumental opportunity for regulators to improve investor protection, improve the competitiveness of Canadian firms, and bolster investor protection. As currently drafted, however, the Client Focused Reforms cause very serious concerns for portfolio managers as they are not appropriate for or optimized for the investors these professionals serve.

PMAC's submission on the [Client Focused Reforms](#) proposed alternative ways to achieving the CSA's consultation goals. Responding to very serious concerns that the imposition of the full suite of Client Focused Reforms on portfolio managers would not strike the appropriate balance between investor protection and fostering efficient capital markets, PMAC noted a number of specific instances where the Client Focused Reforms would result in significant regulatory, compliance, and financial burden without a corresponding increase in investor protection. PMAC also noted a number of specific instances where the rule or Companion Policy (**CP**) guidance would be inapplicable to portfolio manager's business models and/or not applicable or responsive to the needs of their clients.

We view our alternative suggestions on the application of the Client Focused Reforms to portfolio managers as a responsible, effective and competitive way to address industry's concerns, as well as those of the CSA.

Restate the fiduciary duty owed by portfolio managers in each Canadian jurisdiction

PMAC's alternative request on the Client Focused Reforms is that the CSA reiterate and clarify the fiduciary duty owed by portfolio managers³ for more responsive, effective regulation of this registrant category. This will provide the duty of care and professionalism framework within which certain of the enhanced Client Focused Reforms can be implemented to address the CSA's specific investor protection concerns for portfolio manager's clients.

PMAC supports the application of titling and holding out reforms, as well as certain aspects of the enhanced KYC, suitability, conflicts of interest, and disclosure proposals (as set out in detail in our submission on the consultation). We ask the OSC to take the lead in drafting more principles-based guidance that has been tailored to the portfolio manager registration category with respect to the remaining proposed Client Focused Reforms. For instance, we believe that, as drafted, the proposed KYP requirements and amendments to referral arrangements are unworkable for portfolio managers and their clients.

PMAC sees potentially material negative consequences of the proposed referral arrangement amendments and has requested that this particular set of reforms be moved into a separate work stream to allow for greater consultation and impact assessment.

Carve-outs are required for non-individual permitted clients

A significant – though far from only – opportunity to strike the correct balance between regulatory burden and investor protection arises in the context of non-individual permitted clients. As set out in detail in PMAC's submission, carve-outs from certain of the Client Focused Reforms are required for non-individual permitted clients, including for the managed accounts of such clients. These types of client are sufficiently protected by the investment management agreements or

³ We note with approval the cooperation, information and data-sharing between the OSC and the United States' Securities and Exchange Commission (**SEC**). We support the approach recently taken by the SEC to propose a clarification and restatement of the fiduciary duty owed by investment advisers which was proposed alongside different rules for broker dealers.

arrangements and investment policy statements they enter into with portfolio managers, combined with the fiduciary duty of care. The imposition of the full suite of Client Focused Reforms on sophisticated investors will not appropriately meet client expectations. These clients are able to negotiate for the protections they require, tailored to their unique circumstances and objectives.

Risk of reduced investor access to portfolio management

Portfolio managers offer several different types of business models and, more than ever, through technology and pooled funds, our members are able to service a broader population and account size of Canadian investors. We believe that any cost pressure on firms that does not carry a clearly articulated investor protection or market efficiency benefit, should be carefully reconsidered.

Several aspects of the Client Focused Reforms seek to create best practices and PMAC supports the CSA's intentions. However, in several cases, our objection is to the very prescriptive nature of the amendments and the material increase in documentation that would need to be produced to evidence compliance. PMAC has concerns about both the significant one-time transition costs forecast for registrants by the OSC in Annex E and the on-going compliance costs inherent in the Client Focused Reforms. As acknowledged by the OSC, these costs will be passed on to clients. PMAC is concerned that, without a careful balance, an unintended consequence of the Client Focused Reforms may be a reduction in clients' access to investment management due to increasing account minimums in order to permit firms to continue to service accounts while meeting these highly prescriptive regulatory obligations.

Risk of reduced competitiveness

PMAC is particularly concerned that the costs of compliance with the Client Focused Reforms will more acutely impact the ability of smaller and mid-sized firms to service investors. For this reason, we implore the CSA to tailor the Client Focused Reforms applicable to portfolio managers and their clients in order to ensure that the compliance burden is, in fact, commensurate with the benefits that investors, the CSA, and the Canadian capital markets will experience as a result of their implementation.

Pages 4 through 8 of [our submission](#) provide an overview PMAC's ten recommendations with respect to the Client Focused Reforms. We feel our solution represents a meaningful and impactful way to prudently reduce regulatory burden while positioning Canadian portfolio managers for success on behalf of their investors and for the Canadian economy going forward.

B3. REGULATE PORTFOLIO MANAGERS ADVISING ON DERIVATIVES UNDER NI 31-103

Derivatives regime would be duplicative and onerous without evidence of investor benefit

Similar to the Client Focused Reforms, PMAC believes that the OSC's leadership is also required with respect to proposed Registration and Business Conduct Rules.

PMAC's analysis is that many of the obligations proposed in both Business Conduct and Registration are already addressed by well-established and effective registration, proficiency and market conduct requirements that portfolio managers are already subject to under NI 31-103⁴.

⁴ We respectfully disagree with the CSA's response to the 2017 Business Conduct Consultation that the proposed regulatory regime for derivatives advisers does not unnecessarily duplicate certain requirements under NI 31-103 for portfolio managers.

Imposing onerous, overlapping and unclear registration and compliance requirements on portfolio managers through Business Conduct and Registration may pose a disincentive to using derivatives in investment strategies, despite firms having the required expertise and documented investment rationale. This increased regulation could be detrimental for instance, if it were to result in higher costs translated to investors or result in fewer advisers engaging in hedging strategies for the benefit of their investors.

Proposed derivatives regime focused on dealing activities, not advice

PMAC is supportive of the CSA's aim to establish a robust investor protection regime with respect to over-the-counter (**OTC**) derivatives that meets the International Organization of Securities Commissions' (**IOSCO**) standards.

However, as set out in PMAC's submissions on [Registration](#) and [Business Conduct](#), both proposed instruments are primarily focused on addressing policy issues arising from dealing activities and do not identify specific investor or market protection issues with respect to the activities of advisers, particularly, portfolio managers, vis-à-vis derivatives. Further, we are not aware of any significant enforcement action involving a portfolio manager advising in derivatives or derivatives strategies.

Portfolio managers advising in derivatives best regulated with minor enhancements to NI 31-103

We strongly believe that the imposition of additional, prescriptive and onerous regulatory requirements on portfolio managers is not an effective or efficient solution to the CSA's stated policy concerns, nor that they are necessary to meet international standards.

In the context of portfolio managers, the CSA's laudable policy objectives of creating a uniform approach and protecting participants in the OTC derivatives markets from unfair, improper and fraudulent practices can be best achieved by leveraging NI 31-103.

Instead, firms and individuals registered under NI 31- 103 that advise on derivatives and derivatives strategies and that comply with Section 18(1), Section 29 - Chief Derivatives Risk Officer Requirement (subject to PMAC's comments in our submission) and, Section 39 (subject to PMAC's comments in our submission) of NI 93-102, should not be required to be registered under that instrument. PMAC believes that these requirements for advisers should be set out in a principles-based way in NI 31-103 for clarity and simplicity.

Concerns about impact to Canadian derivatives market, investors and firms

PMAC has concerns that a Canadian derivatives regime that goes beyond IOSCO's standards and that captures advisers in a way that the U.S. Commodity Futures Trading Commission (**CFTC**) does not, may have a negative impact on the Canadian derivatives market, as well as on Canadian investors. PMAC also has concerns regarding the absence of exemptions for international advisers and sub-advisers, similar to those found in NI 31-103. Without such exemptions, there could be unintended adverse consequences to investors and the Canadian market if existing business relationships with foreign advisers were to be interrupted.

PMAC respectfully disagrees with the CSA's cost benefit analysis with respect to implementing the derivatives regime for advisers. We note that NI 93-102 and NI 93-101 would require material additional compliance resources and costs and the repapering of existing derivatives agreements, client documentation and policies and procedures, all without demonstrated investor or market harm being addressed.

B4. MODERNIZE AND IMPROVE USER EXPERIENCE WITH NRD

Over a number of years, members have voiced frustration with the NRD especially with respect to the user experience, interface and technology. NRD is a vital database and the posting and maintenance of correct and current information on NRD is a core obligation for registrants. The NRD technology, as well as the associated User Guide, is a prime candidate for the use of fintech innovation and for a revamp of the user communication associated with it.

For example, functionality that would provide a choice to enter data directly through a web-based workflow process or by a file upload, combined with flexible field-based reporting, would improve the ease and timeliness by which registrant data are submitted and tracked.

Members noted several instances where a change in a registrant's information necessitates that the same amendments be made to other forms filed via NRD. It would be more efficient and provide less room for human error were NRD to include an option to update all relevant filings with the same new information. Members also noted that it would make sense to require all registrant filings with the CSA to be effect through an updated NRD system. PMAC appreciates that the OSC does not solely control budgeting and technology decisions with respect to NRD, but we ask you to play a leadership role in significantly improving this vital system.

Members have also requested the creation of one centralized, secure portal for the filing of all non-public information (such as the information requested by the CSA through sweeps or audits).

B5. ELIMINATE QUARTERLY REPORTING OF FORM 24-101F1

Members query the value of requiring portfolio managers to file Form 24-101F1 with the CSA on a quarterly basis and have requested that they instead provide this information annually, perhaps in connection with their financial filings to the CSA.

Members have noted that trade matching is, for the most part, out of the control of a portfolio manager. We are curious to understand how the CSA reviews and uses the data received from Form 24-101F1 to determine whether less frequent reporting could satisfy the CSA's need for and use of this information.

B6. REVIEW OBSI FEE FORMULA AND CATEGORY FOR PORTFOLIO MANAGERS

Through your role on the OBSI Joint Regulators Committee, we urge the OSC and your CSA colleagues to petition for the development of a new fee formula and industry category for OBSI participants, especially for CSA registered portfolio managers.

Since the OBSI continues to be the mandated dispute resolution service for firms other than those with solely permitted clients (as such term is defined in NI 31-103), PMAC continues to raise concerns about the quantum of fees paid by portfolio managers in comparison to the volume of complaints OBSI receives from clients of portfolio managers. Members have also expressed concerns over the year over year fluctuation in fees based on the overall number of OBSI participants and complaint volume in each fiscal year. We have had productive dialogue with OBSI staff on several issues, including fees and we value their time, thoughtfulness and candour on these concerns raised.

PMAC is requesting OSC leadership to address the very pronounced fluctuations in OBSI participating firm fees per advising and associate advising representative paid by registered portfolio management firms. These fees are unpredictable and, we believe that such fluctuations are unwarranted. A new fee calculation formula could provide a pooling effect to smooth the fees and improve predictability of annual OBSI costs for firms, as well as assist firms in understanding

the cost of their mandated OBSI membership. The current year over year variation in fees would be extraordinary in any other business model and members do not believe such fluctuations should be considered acceptable merely because OBSI is a mandated service provider. The table below illustrates the unpredictable nature of OBSI fees over a four year period, including the percentage fluctuation.

Year	Fee per representative	% increase or decrease from previous year
2016	\$165	N/A
2017	\$92	Decrease of 44%
2018	\$78	Decrease of 15%
2019	\$155	Increase of 99%

Moreover, given the differences in business models and risks presented by portfolio managers who are also registered as an exempt market dealer (**EMD**) as opposed to that of sole EMDs, PMAC believes that portfolio managers (including those with IFMs and EMDs) should be grouped in one industry category with sole EMDs in a separate category. We believe this would more accurately reflect the number of complaints OBSI is receiving with respect to each type of registrant and that it may create a more fair budgeting process with respect to allocation of fees resulting from number of complaints for each industry sector.

B7. INCREASE HARMONIZATION/DEFERENCE AMONG CSA MEMBERS

A number of comments from member firms that are registered in more than one CSA jurisdiction highlight the cost, delays and inability to deliver services to investors when other commissions take differing views regarding a regulatory requirement. Examples provided by members include inconsistent interpretations and decisions with respect to the approval of OBAs and the registration of individuals⁵.

PMAC appreciates that the interpretation and application of principles-based regulation can lead to disagreement between CSA members. This is a very real challenge for regulators to which we are sympathetic. Notwithstanding the challenges of arriving at harmonized decisions which each securities commission feels reflects their mandate, we request that the OSC lead the charge in efforts around further harmonization or deference to a firm's lead regulator on such matters, understanding that delays and inconsistencies are frequently very costly and can create standstills that are not of benefit to investors.

REGULATION NEEDS TO SUPPORT PORTFOLIO MANAGERS' PROFESSIONAL JUDGEMENT WHICH SHOULD NOT BE SUPPLANTED BY OVERLY PRESCRIPTIVE REGULATION

The following comments about portfolio managers provide important context for consideration with respect to each of our regulatory burden reduction recommendations.

We know that the OSC and its CSA partners are tasked with the incredibly complex job of addressing and anticipating issues with securities regulation, market and product evolution, and investor protection across all aspects of Canada's capital markets. However, we would like to stress

⁵ An example of the consequences of differing decisions among CSA members involved a firm whose lead regulator approved an OBA. The firm had business in Ontario and the OSC declined to accept the lead regulator's OBA approval and instead required the firm to re-submit the application and accompanying fee. The firm was required to answer the same questions as it had for its lead regulator and the OSC denied the approval, causing the individual to have to reject the directorship in respect of which the application had been submitted.

that portfolio managers are unlike other registrants and should be regulated differently to ensure proportional regulatory burden and continued investor access to this highly professional advice and to a diversified universe of securities and investment strategies.

NI 31-103 is written with different strata of proficiency, spheres of permissible conduct and obligations that reflect the diverse business models and roles of different registrants.

Three important overarching principles differentiate portfolio managers from other registrants:

1. As fiduciaries, portfolio managers are bound by the highest duty of care to their investors. This is true regardless of asset class, investor type, or business model;
2. As registrants, portfolio managers are subject to the most stringent regulation, capital, and insurance requirements under NI 31-103; and
3. As professionals, portfolio managers are required to obtain and evidence the very highest degree of proficiency and RIME of any other registrant category.

We ask the OSC keep these important distinguishing features of CSA-registered portfolio managers in mind when assessing the appropriate balance between regulatory burden, investor protection, and market efficiency.

For this category of professionals, we urge the OSC to usher its CSA colleagues away from overly-prescriptive rules that constrain the ways in which firms can service clients and drive up compliance costs.

We view principles-based regulation as fostering ethical and professional judgement while fostering competitiveness and responsible innovation.

CONCLUDING COMMENTS

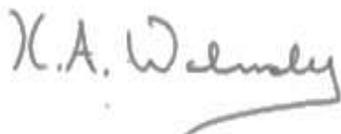
We ask the CSA to consider the many ways in which portfolio managers as individuals and firms differ from other registrants and to keep this fundamental distinction in mind when revisiting the appropriate scope and application of existing and proposed regulation for simplification.

We strongly believe that more principles-based regulation of professionals is warranted and that this approach fosters ethical and professional decision making in a responsive and competitive way.

Please do not hesitate to reach out to PMAC at any time. We would be delighted to elaborate on any aspect of our submission.

Sincerely,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley
President
Portfolio Management Association
of Canada



Margaret Gunawan
Managing Director – Head of Canada Legal
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Limited

**APPENDIX A
COSTS OF COMPLIANCE**

The following has been extracted from the December 2018 PMAC Compliance Officers' Network pre-meeting poll. There were 49 survey respondents in total. The following tables represent the costs of compliance to PMAC member firms. The breakdown is by the amount of assets under management (**AUM**) as of December 31st, 2017. The percentages in the tables represent firm's answers from each AUM category.

1. What percentage of your firm's total revenue did your compliance budget represent in 2017 (Estimate). Please include compensation of your firm's compliance professional(s).

	< 5%	5 - < 10%	10 - < 25%	25 - < 50%	> 50%	Do not know
< \$150 million	-	33%	33%	-	-	34%
>\$150 - \$500 million	-	29%	43%	14%	-	14%
>\$500 - \$1 billion	-	37%	13%	-	-	50%
>\$1 billion - \$5 billion	36%	37%	-	-	-	27%
>\$5 billion	60%	13%	-	-	-	27%

2. Which of the following costs represent over 20% of your firm's compliance-related budget? Please select all that apply. ***Results in this table can add to over 100%**

	Mock audits	AML compliance support	Cybersecurity compliance support	Technology	Compliance industry memberships	Other
< \$150 million	17%	-	17%	50%	17%	-
>\$150 - \$500 million	-	-	-	-	-	-
>\$500 - \$1 billion	-	14%	29%	57%	-	14%
>\$1 billion - \$5 billion	9%	9%	9%	36%	18%	-
>\$5 billion	-	8%	8%	8%	-	16%

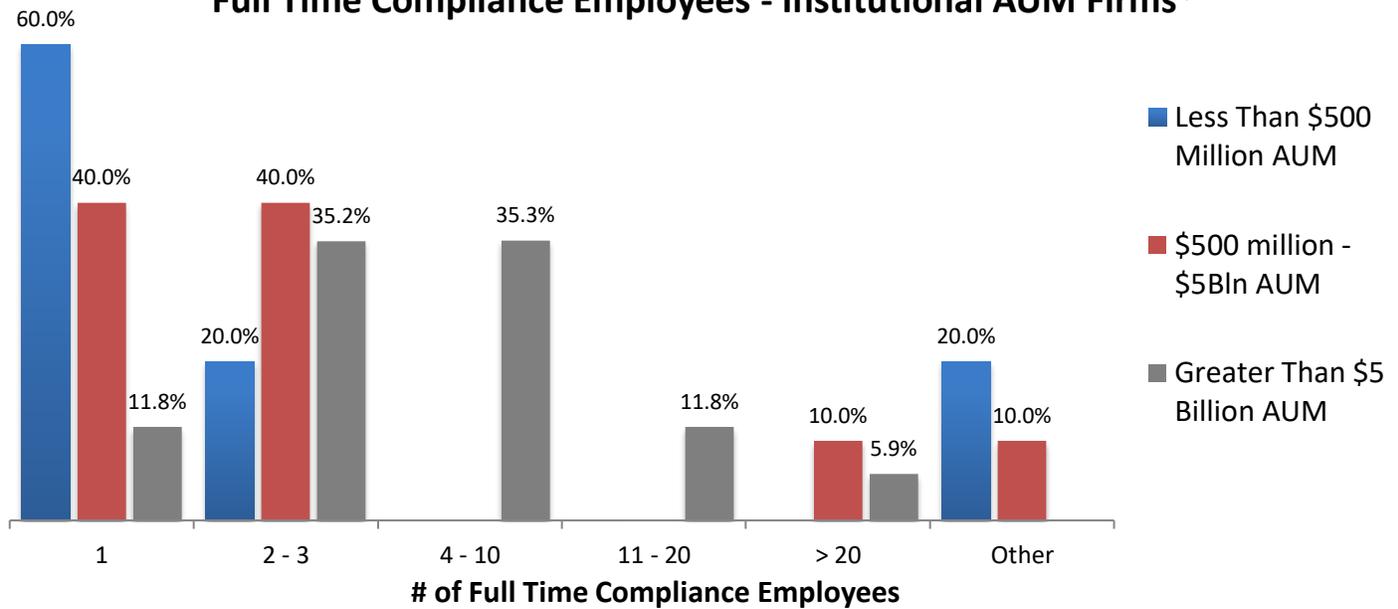
3. How much did you firm incur in total compliance-related costs in 2017 (Estimate)? Please include compensation of your firm's compliance professional(s) (roughly prorated if they wear multiple hats).

	< \$50,000	> \$50,000 - \$100,000	>\$100,000 - \$250,000	> \$250,000 - \$500,000	> \$500,000 - \$1 million	> \$1 million - \$5 million	> \$5 million
< \$150 million	-	33%	67%	-	-	-	-
>\$150 - \$500 million	-	14%	57%	14%	14%	-	-
>\$500 - \$1 billion	14%	-	57%	29%	-	-	-
>\$1 billion - \$5 billion	-	-	87%	13%	-	-	-
>\$5 billion	-	-	17%	33%	25%	25%	-

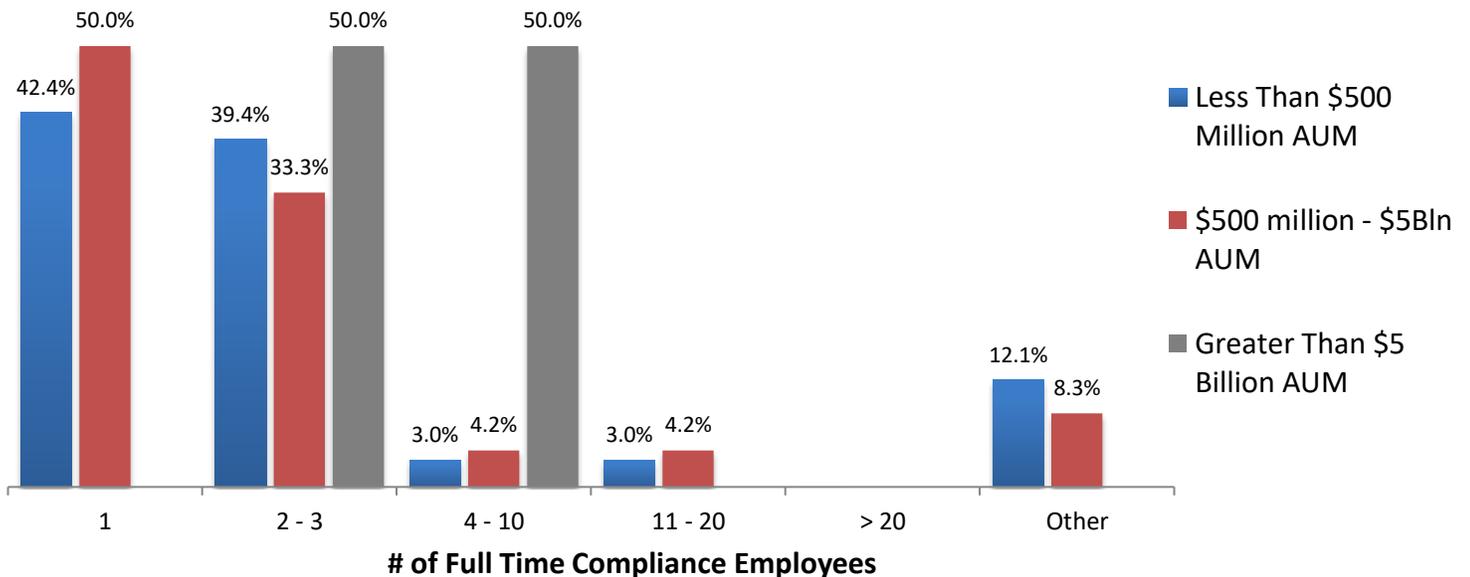
The following has been extracted from the 2018 PMAC Compliance Benchmarking Survey. PMAC's over 260 member firms collectively manage total assets in excess of \$1.8 billion for institutional and private client portfolios. 118 firms responded to the 2018 PMAC Compliance Benchmarking Survey. We note that not all respondents answered every question and the total number of responses per question varies. For questions with multiple responses, the percentage amounts will add up to more than 100%.

Compliance Staffing

Full Time Compliance Employees - Institutional AUM Firms*



Full Time Compliance Employees - Private Client AUM Firms**



*Institutional AUM Firms are those that have greater than 75% of their assets under management as institutional assets.

**Private client AUM firms are those that have greater than 75% of their assets under management as private client assets.

**APPENDIX B
CHART OF ISSUES AND REQUESTED ACTION**

OSC Issues and Requested Action

Issue	Action	Time Frame
OBA Reporting	Clarify OSC's OBA reporting expectation	Near-term
RAQ	Defer RAQ until 2021	Near-term

CSA Issues and Requested Action

Issue	Action	Time Frame
Registration of client relationship management portfolio managers	Continue to urge CSA colleagues to adopt standard set of terms and conditions to allow for registration of client relationship management ARs and AARs	Near-term
Client Focused Reforms	Restate the fiduciary duty for portfolio managers and implement limited targeted reforms specific to regulatory concerns, PM business models and client needs Provide a carve-out for non-individual permitted clients.	During the course of CSA discussions and responses to the consultative process
Derivatives	Exempt portfolio managers who advise in derivatives or derivatives strategies from the application of the proposed derivatives registration and business conduct rule. Instead amend NI 31-103 to include general derivatives proficiency and risk-management requirements with respect to derivatives.	During the course of CSA discussions and responses to the consultative process
OBA Reporting	1. Clarify and harmonize CSA OBA reporting expectations 2. Revise OBA reporting requirements to allow for internal reporting to each firm's CCO with a quarterly or annual filing to the CSA	CSA Staff Notice Could be included in next round of consultation on the Client Focused Reforms / proposed amendments to NI 31-103
NRD	Modernize the NRD reporting system – both the technology and the requirements for reporting.	As soon as feasible
NI 24-101	Determine whether filings made under Form 24-101F1 are truly required from PMs. If the Form 24-101F1 filings are deemed to be necessary, consider allowing for annual reporting of data, instead of quarterly.	As soon as feasible
Increased CSA harmony	Actively work to increase deference and harmony among CSA members	Ongoing

OBSI Joint Regulators Committee Issues and Requested Action

Issue	Action	Time Frame
OBSI	Devise new fee formula for portfolio managers required to use OBSI. Consider whether to create a separate industry sector category for disclosure and budgeting purposes that separates out PMs who have an EMD registration from registrants that are sole EMDs.	As soon as feasible