

September 18, 2015

Changing Workplaces Review, ELCPB
400 University Ave., 12th Floor
Toronto, ON M7A 1T7
Cwr.specialadvisors@ontario.ca

Dear Sirs/Mesdames:

Re: Consultation: The Changing Workplaces Review

The Portfolio Management Association of Canada ("PMAC")¹, through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to participate in the Changing Workplaces Review Consultation (the "Consultation"). The Consultation considers how the *Labour Relations Act, 1995* and *Employment Standards Act, 2000*² (the "Act") could be amended to best protect workers while supporting businesses in our changing economy. The Consultation includes the question as to whether new exemptions should be considered under the Act. Our comments will focus specifically on this question.

We recommend that portfolio managers and other financial professionals acting within the portfolio management industry in a professional capacity be exempt from the provisions of the Act regarding hours of work, minimum wage, public holidays and vacation pay, including overtime pay. Currently, the Act includes exemptions that apply to other professionals which work to exclude these professionals from overtime eligibility, for instance.³ However, these provisions of the Act are limited in application and do not apply to various other skilled professional roles. Professionals, such as architects, lawyers, engineers, accountants, surveyors, veterinarians, most regulated health professionals, teachers, real estate brokers, and outside salespeople are exempt from these provisions of the Act.⁴ Currently, there are no express provisions exempting investment professionals such as portfolio managers or other financial services professionals.

OVERVIEW

PMAC represents investment management firms registered to do business in Canada as portfolio managers. PMAC Members manage investment portfolios for private individuals, foundations, universities and pension plans. Portfolio managers are firms and financial professionals who manage investment portfolios for their clients. They may also be known as Investment

¹ PMAC was established in 1952 and currently represents over 200 investment management firms that manage total assets in excess of \$1.4 trillion. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at www.portfoliomangement.org.

² Employment Standards Act, (Ontario) 2000, S.O. 2000, c. 41.

³ See section 2(1) of Ontario Regulation 285/01 (the "Regulation")

⁴ See Parts VII, VIII, IX, X and XI of the Act.

Counsellors, Asset Managers and Investment Managers. These investment professionals typically have discretionary authority over investments they manage for their clients and have a duty to act in the best interests of their clients: also referred to as a "fiduciary duty". Portfolio Managers have the highest education and experience level in the investment industry: typically, a Chartered Financial Analyst (CFA) designation plus a set period of relevant experience. Under provincial securities regulation, portfolio managers must be registered as advising representatives and meet specific proficiency requirements. They are also subject to the oversight of a professional standard setting body, the CFA Institute. Like the other exempt employees enumerated under the Act, portfolio managers are highly trained professionals, working in a highly regulated industry.

Portfolio managers are also generally highly compensated and often have share ownership in the firms they work for. According to PMAC's 2014 Annual Compensation Survey (the "PMAC Survey") which provides PMAC Members with compensation data for 22 job positions, over 90% of the firms that participated in the survey reported that some positions in the firm provide employee ownership opportunities in the firm with almost 95% of portfolio managers having ownership in the firm. Similarly, in addition to having ownership in the firms, most portfolio management positions reported compensation arrangements which included not only a typically high base salary but bonus payable as well.

Portfolio managers also require significant flexibility in hours of practice and often work more than the traditional eight hour day. Imposing maximum hourly restrictions may impede or, in certain circumstances may be contrary to their professional obligations to clients as well as third party clients. For this reason, we believe portfolio managers should be exempt as "*Financial Services Professionals*" (defined below) in the Act, in a manner similar to other professionals who are currently exempt.

In addition to portfolio managers, there are various other types of professionals employed in the portfolio management context that we also believe are operating as professionals with specific expertise, qualifications, proficiencies and skill sets that should be exempt. For example, individuals who are not yet full portfolio managers but are registered as associate advising representatives and are under the supervision of a registered portfolio manager. There are also Research Analysts that work collaboratively with portfolio managers. Typically these individuals are in the process of obtaining their CFA designation and the prescribed period of relevant investment management experience in order to obtain registration with securities regulators. Similarly, compliance professionals and Chief Compliance Officers registered under provincial securities legislation must also meet certain qualifications and function in a similar professional capacity. There are other roles in portfolio management firms that are senior compliance or operations roles that might not fall under the "management exemption" in the Act but should be captured under the proposed definition below because the nature of their role and compensation arrangement elevates them to professional status akin to the other professions currently exempt in the Act from the overtime provisions. Notably, in the PMAC Survey, these individuals (for example, Head of Compliance, Chief Operations Officer, etc.) also reported having an ownership interest in the firms they work for.

RECOMMENDATION

We agree with the proposal in the Investment Industry Association of Canada (IIAC) submission that a broad definition that would encompass the various professional roles described above should be considered for an exemption from the Act. Specifically, an exemption for "***Financial Services Professional***" as defined below.

"Financial Services Professional" means any employee of an entity registered under the legislation of any province or territory of Canada to provide advisory, underwriting, financial planning, research, investment management, portfolio management or other services related to the purchase or sale of financial instruments, where such employee is

registered under the legislation of any province or territory of Canada to provide such services or is performing such services based on specialized knowledge, proficiency or professional judgment.

This definition would capture portfolio managers, associate portfolio managers, compliance officer positions, senior operations staff, etc. We believe this new exempt category of professionals would treat the highly skilled and well-paid professionals working for regulated financial services industry companies, including portfolio management firms, in the same manner as the regulated professionals in other industries. This change would also level the playing field for financial industry professionals employed in other provinces (such as British Columbia, Alberta, and Saskatchewan) where equivalent exemptions already exist. We believe that the exemptions for professionals included in employment legislation should be harmonized nationally.

We urge the Ontario government to consider the above-noted exemption as both appropriate and necessary and to prioritize amendments to the Act that would harmonized the treatment of similar skilled works across the country. If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie A. Walmsley
President, PMAC



Scott Mahaffy
Vice President and Senior Counsel
MFS Investment Management Canada