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March 19, 2014

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RE: CSA Staff Notice 91-303, Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives

We are pleased to offer comments on the Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives (the "Rule") published by the Canadian Securities Administrators ("CSA").

Stewart McKelvey is a regional Canadian law firm with offices in each of the Atlantic Canadian Provinces. Our comments are those of individual lawyers in Stewart McKelvey's securities practice group and do not necessarily represent the views of Stewart McKelvey, other Stewart McKelvey lawyers or our clients.

We acknowledge the purpose of the Rule being to improve transparency in the derivatives markets to regulators and the public and to enhance the overall mitigation of risks and we recognize the benefit to be achieved by requiring certain counterparties centrally clear derivatives in accordance with the Rule. That said, the somewhat unique position that the New Brunswick and Nova Scotia corporate jurisdictions play in the Canadian and global corporate landscape, be that as a result of the availability of unlimited liability companies, the lack of a Canadian resident director requirements or otherwise, has resulted in there being a significant number of companies organized in these two provinces that have no place of business in the province or, in many cases, elsewhere in Canada. In many cases these companies are part of large international corporate groups which are managed from head offices located outside Canada.

Definition of "local counterparty"

Under the Rule a "local counterparty" will, subject to certain exceptions, be required to centrally clear derivative transactions it enters into.

Paragraph (a) of the definition of local counterparty includes a person that is organized under the laws of a province *or* that has its head office or principal place of business in a province.

We represent a large number of companies that are organized under New Brunswick or Nova Scotia law whose head office but have no actual presence or business in Canada. The effect of paragraph (a) of the definition will be to bring into the clearing requirements of the Rule numerous companies that conduct no business and, in particular, do not carry out any derivative trading activities, in Canada. For example, a New Brunswick or Nova Scotia incorporated company that carries on no business in Canada, has no management present in Canada and does not carry out any aspect of a trade in a derivative in Canada, will nevertheless be required to clear the trade under the Rule. This ignores the fact that, under parallel efforts underway in other jurisdictions, it may be subject to conflicting requirements to centrally clear trades in the jurisdiction where its head office or principal place of business is located.

We note that Section 4(2) permits an affiliate referred to in paragraph (b) of the definition of "local counterparty" to clear a trade in either another province of Canada or in specified foreign jurisdiction recognizing that, in the case of affiliates, there may be jurisdictions more closely connected with the counterparty and the trade where it is more appropriate to clear the trade. We submit that if the approach taken with affiliates in section 4(2) applied to all local counterparties (or at least those that do not have a head office or principal place of business in the province), the objectives of promoting transparency and mitigation of risk would continue to be achieved while avoiding the possibility of counterparties being required to clear in Canada trades that have no connection to Canada beyond the mere fact that the counterparty is incorporated in a province.

We thank you for allowing us the opportunity to comment on the proposed Rule. Please contact the undersigned at the contact details provided below if the CSA members would like further elaboration of our comments.

Yours truly,

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