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British Columbia Securities Commission
Alberta Securities Commission
Autorité des marchés financiers
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
New Brunswick Securities Commission

January 14, 2011

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

-and-

Madame Anne Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sir and Madam:

Re: Response to Consultation Paper 91-401 on Over-the-Counter Derivatives
Regulation in Canada

The Portfolio Management Association of Canada (“PMAC”), through its Industry, Regulation and Tax Committee, is pleased to have the opportunity to submit the following comments regarding Consultation Paper 91-401 on Over-the-Counter Derivatives Regulation in Canada (“Consultation Paper 91-401”).

As background, the Portfolio Management Association of Canada (“PMAC”, formerly the Investment Counsel Association of Canada (“ICAC”)) represents investment management firms registered to do business in Canada as portfolio managers. Our 140 + members represent both large and small firms managing institutional and private client portfolios. PMAC was established in 1952 and manages in excess of \$750 B assets (excludes mutual funds assets). Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members.

PMAC wishes to comment on the Consultation Paper 91-401. This discussion is timely and necessary. The timing of these regulatory initiatives and the similarity of the issues that have been raised, serve to highlight the very high degree of integration of the North American and global financial markets. While the Canadian marketplace has distinctive features that are unique to it, obviously we cannot be out of sync with the global markets.

Below please find our comments/suggestions on the following topics:

- **Clearing –**

We are supportive of the recommendation to require mandatory central clearing for over the counter (“OTC”) derivatives that are determined to be appropriate for clearing and are capable of being cleared. Whether a Canadian central counterparty clearing house (“CCP”) is created or we leverage the global CCP model, we strongly encourage the CSA to continue its consultation with market participants, including both dealers and end-users of OTC derivatives, to design an efficient and transparent OTC clearing framework that meets the needs of both groups.

For certain specialized Canadian OTC products, we would support a Canadian CCP model as it is uncertain that foreign CCPs would be willing (or able) to clear such contracts. We would also support a Canadian solution if Canadian market participants are unable to access the international CCPs on reasonable terms, both economically and operationally at the expense of the Canadian derivatives market.

In determining which contracts would be appropriate for mandatory clearing, we are of the view that this decision should rest with CCPs rather than the regulators. However, we would encourage the regulators to require institutional investor representation on the operating committees of clearing corporations, which are responsible for approving new products and managing risks and defaults. It is institutional investors who are best able to explain why certain products are useful and how risks associated with such products can be prudently managed. This would alleviate our concern that if the regulators mandate additional contract standardization in order to centrally clear OTC contracts, this could limit the customization currently available to meet the investment objectives of institutional investors and other end-users.

- **Trade Repositories –**

PMAC agrees with the CSA’s recommendation requiring reporting of all derivative contracts traded by Canadian counterparties to a trade repository, regardless of whether central clearing is utilized. This access to information is necessary and appropriate from a regulatory oversight perspective.

However, the CSA must ensure that it considers issues such as timing of reporting (pre-trade, real-time or post-trade), liquidity and anonymity. These issues must be thoroughly considered and adequately addressed. For example, real-time reporting may result in less favourable execution opportunities for clients, as their counterparties need time to hedge the risks taken on by the trade. This could result in widening spreads. The timing of release of information could also have a negative impact on liquidity. There are also confidentiality concerns regarding the public release of this type of information and we would like to see the identity of trading partners protected to ensure the confidentiality of proprietary trading strategies and identities of market participants. We strongly prefer that no data be publicly available, even if the trade repositories charge a fee for such use.

- **Capital and Collateral –**

We are supportive of the recommendation that capital and collateral requirements should be proportionate to the risks that an entity assumes. We would strongly urge the CSA and IROC to coordinate any such efforts with other Canadian financial service regulators to ensure that the capital and collateral requirements related to OTC derivatives does not favour one type of regulated entity over another.

We would like the CSA to continue to monitor developments in the US and UK related to capital and collateral requirements, particularly as it relates to the types of collateral which can be posted as initial or variation margin. There are opportunity costs associated with holding cash as collateral and we would favour regulation that also permits the use of high quality, liquid non-cash instruments as collateral.

- **End-User Exemptions –**

We would be supportive of exemptions for certain end-users of OTC products. We look forward to seeing further clarification of what entities would be defined as “end-users”. Defining the exemptions is crucial because as the CSA points out, there are those that use OTC derivatives only for hedging purposes. As well, other regulation currently in place, such as National Instrument 81-102 – *Mutual Funds* already permits the use of derivatives for hedging purposes, and restricts the use of derivatives for non-hedging purposes to non-leveraged transactions meeting certain criteria. There should be consistency when creating new end-user exemptions with the policy objectives of current laws.

- **Other Recommendations and Considerations –**

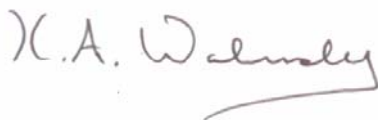
- Segregation of Collateral –

We would encourage the CSA to monitor developments globally related to the establishment of the CCP model and whether collateral posted by multiple clients will be held in individual, segregated accounts or aggregated into a single omnibus account. Two alternatives to the requirement of segregated accounts would be to operate a legally segregated but operationally commingled account or to change the order of loss liability in the default waterfall at the CCP so that the customer collateral pool is last in line, rather than first.

If you have any questions regarding our submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



Katie Walmsley
President, PMAC



Mark Pratt
Chair, Industry, Regulation & Tax Committee
AVP Legal, Mackenzie Investments

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