

February 11, 2013

DELIVERED VIA EMAIL

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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

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Dear Sirs and Mesdames:

Re: Model Derivatives Data Reporting Rule

Introduction

The Canadian Bankers Association (“CBA”) works on behalf of 54 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 274,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada’s economy. The CBA also promotes financial literacy to

help Canadians make informed financial decisions and works with banks and law enforcement to help protect clients against financial crime and promote fraud awareness.

We appreciate the opportunity to comment on the CSA Staff Consultation Paper 91-301 – Model Provincial Rules – *Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting* (“**Model Rules**”)¹. Our member banks are supportive of the comments made by the Canadian Market Infrastructure Committee on the Model Rules in their letter dated February 4, 2013. This comment letter is focused on our member banks’ concerns regarding the jurisdictional issues with the proposed data reporting requirement under the Model Rules.

The commitments regarding OTC derivatives agreed to by the G20 nations in Pittsburgh in 2009 were intended to improve global transparency and reduce systemic risk in the OTC derivatives markets. Improving regulatory oversight of global OTC derivatives markets will benefit market participants by decreasing risk and uncertainty. We have been, and continue to be, supportive of regulators’ initiatives to implement the G20 commitments. We believe that trade reporting improves transparency and is necessary for regulators to manage systemic risk.

These benefits, however, can be negated if, when constructing and implementing appropriate domestic trade reporting rules, care is not taken by regulators to prevent conflicting requirements and duplicative reporting obligations. Our focus is on the jurisdiction of provincial and territorial securities regulators, under the umbrella of the CSA, to impose regulatory obligations on non-Canadian entities. That said, we note generally the importance of ensuring that domestic legal requirements are coordinated and harmonized with requirements set by regulators in other jurisdictions.

The Model Rule on Derivatives Data Reporting requires a *local counterparty* to report to a CSA-designated trade repository each transaction to which it is a counterparty.

Local counterparty is defined to include a party to a derivative transaction which, at the time of the transaction, is a subsidiary of a Canadian entity. The term also includes the party that negotiates, executes, settles, writes or clears any part of the transaction in a Canadian province.

This definition suggests that any subsidiary of a Canadian bank, as well as the parent bank of a foreign branch in Canada, would qualify as a *local counterparty*. If we are correct in this interpretation, those entities would then be required to report all of their derivatives transactions to a CSA-designated trade repository, regardless of whether such transactions have any connection to Canada.

We do not believe that provincial and territorial securities regulators have jurisdiction to require reporting of either off-shore derivatives transactions entered into by foreign subsidiaries of Canadian banks, or derivatives transactions entered into by foreign banks outside Canada that have branches in Canada. This is consistent with general legal principles applicable to a provincial regulator’s jurisdiction that limit the regulator’s rule-making authority and oversight beyond provincial boundaries.

We also do not believe that provincial and territorial securities regulators have the jurisdiction to regulate systemic risk in Canada through oversight of the banks’ derivatives activities beyond the

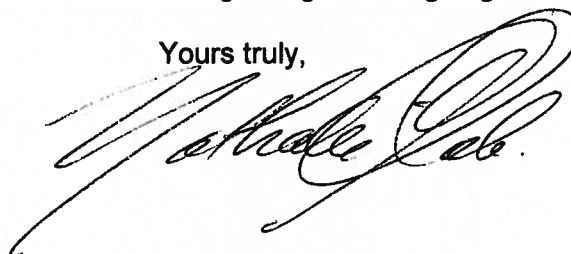
¹ Please note that the comments set out herein do not represent the views of the National Bank of Canada.

provincial and territorial capital markets. This is consistent with the Supreme Court of Canada's decision in *Reference re Securities Act*, [2011] 3 S.C.R. 66, ¶¶121, 123, 128, which confirmed the federal Parliament's exclusive jurisdiction to regulate systemic risk in Canada, including systemic risk as it relates to derivatives regulation (¶103). In accordance with the decision of the Supreme Court, matters relating to the regulation and monitoring of systemic risk fall under exclusive federal jurisdiction.

We recognize that the G20 commitment requires reporting of over-the-counter derivatives contracts to trade repositories, and we support trade reporting in Canada to improve transparency and help regulators to manage systemic risk. We do not believe, however, that Canada's G20 commitment confers jurisdiction on provincial and territorial securities regulators to require reporting of, or have access to, data relating to derivatives transactions occurring between non-Canadian entities, beyond the Canadian capital markets. The imposition of such obligations on the subsidiaries of Canadian banks sits properly within the mandate of OSFI, by virtue of OSFI's authority to supervise federally regulated financial institutions on a consolidated basis. In the case of foreign banks with branches in Canada, the authority to collect and access data relating to trades by the foreign parent bank lies with the applicable foreign regulator. The applicable foreign regulator may also have the authority to collect and access trade reporting data regarding transactions entered into by foreign subsidiaries of Canadian banks, and other counterparties located in those jurisdictions, depending on how regulators globally coordinate and harmonize their requirements in this respect.

We recognize that there are aspects of trade reporting that properly fall within the jurisdiction of the provincial and territorial securities regulators insofar as access to the related data is relevant to their oversight of capital markets activities in accordance with their mandate. We would appreciate the opportunity to discuss our concerns further with the CSA members and believe it would be helpful to have such discussions jointly with OSFI and the other relevant federal regulators. Thank you for the opportunity to provide our views on this important issue, and please do not hesitate to contact us with any questions or comments regarding the foregoing.

Yours truly,

A handwritten signature in black ink, appearing to read "Michael Lee", is written over the "Yours truly," text.