

September 12, 2011

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

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Dear Sirs/Madams:

Re: CSA Consultation Paper 91:402 *Derivatives: Trade Repositories*

The Canadian Bankers Association (“CBA”) works on behalf of 52 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 267,000 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 customers against financial crime and promote fraud awareness.

We appreciate the opportunity to participate in the stakeholder consultation regarding the Canadian Securities Administrators (“CSA”) Derivatives Committee (the “Committee”) Consultation Paper 91-402 *Derivatives: Trade Repositories* (the “Consultation Paper”). We wish to express our general support for the positions advocated by the Canadian Market Infrastructure Committee (“CMIC”) in the CMIC’s comment letter on the Consultation Paper. We highlight below for your consideration several select areas of particular concern to the banking industry.

The G-20 Pittsburgh statement made in September 2009 provides that over-the-counter (“OTC”) derivatives contracts should be reported to trade repositories (“TRs”). By centralizing the collection, storage and dissemination of information in a consistent manner, TRs could play a significant role in increasing transparency for regulatory authorities, thus allowing them to address vulnerabilities in the financial system and develop well-informed regulatory, supervisory and other policies that promote financial stability and reduce systemic risks.¹ However, we ask the CSA and other regulators to carefully consider the manner in which OTC derivatives trade reporting should be implemented in Canada. In particular, we believe it is important to appropriately balance the goal of reducing systemic risk with the goal of fostering market efficiency. Also, given the expected impact of the creation of this new reporting system on the industry, we urge the regulators to engage in a timely consultation with the industry on matters such as the proposed timeline for the implementation of the final rules, the approval of TRs, the scope and timeliness of the reportable data, the block trade thresholds and publication delays and any other matters which may impact market participants.

Harmonization

As noted in the Consultation Paper, the Canadian OTC derivatives market comprises a relatively small portion of the global market, with the majority of transactions involving Canadian market participants being entered into with foreign counterparties. We agree with the Committee that it is crucial that trade reporting rules developed for the Canadian market accord with international practices in order to ensure that Canadian market participants have full access to international markets and are regulated in accordance with international principles. In addition, we believe that a harmonized approach across Canada on OTC derivatives trade reporting is of utmost importance in order to ensure a level playing field across Canada and minimize regulatory burden arising from differing and/or conflicting rules. As a preliminary matter, we believe that the definitions of key terms, such as an “OTC derivative” and a “trade” in an OTC derivative, should be consistent across Canada in order to ensure consistent reporting. Given the need for harmonization at both the international and domestic level, and bearing in mind the ultimate goals of improved financial stability and systemic risk reduction, we recommend that the federal government in Canada regulate OTC derivatives reporting. That said, we recognize that, under the current system of securities regulation in Canada, market conduct of participants in the OTC derivatives market falls under the jurisdiction of provincial securities regulators. Subject to the foregoing, please find below for your consideration our views with respect to several aspects of the proposal.

International vs. Canadian Solution

The protection of reported data and access to it by local regulators is of key importance. However, given the international dimension of a vast majority of OTC derivatives transactions involving Canadian market participants, we are concerned that a solely Canadian solution could result in overlapping and duplicative reporting, a fragmentation of reported data and potential inconsistencies. Accordingly, having carefully considered this issue, we believe that an international solution would be preferable as long as the key concerns, including the protection of reported data and access by Canadian regulators to it, are addressed in an adequate manner. If a Canadian TR is established (presumably, as an integral part of a global OTC derivatives trade reporting network), we believe that the appropriate regulator for such TR should be at the federal level, given that the largest and most active participants in the derivatives market are federally regulated, and that the regulator’s specific powers over the TR should be determined through further consultation with the banking industry and other stakeholders. However, if the regulator is established at the provincial and territorial levels, we urge the CSA to ensure that the regulations are fully harmonized across Canada and that market participants are able to deal with a principal

¹ See Financial Stability Board Report on Implementing OTC Derivatives Market Reforms issued on October 25, 2010 http://www.financialstabilityboard.org/publications/r_101025.pdf.

regulator. If the use of a Canadian TR were to be mandated, our view is that it should be operated on a not-for-profit basis. Regardless of the ownership, we think that a for-profit model could potentially give rise to additional unnecessary costs as well as decisions that are not motivated by regulatory concerns.

Public Disclosure

The Committee suggests that a TR should make available to the public aggregate data, including information on positions, transaction volumes and average prices. Anonymous post-trade transaction level data is also proposed to be made public, provided that it would not be detrimental to market liquidity or function. We believe that the purpose of TRs is to provide information to the authorities to allow them to form an accurate view of the distribution risks across market participants. While TRs could potentially also play a useful role distributing the reported data to the public, we believe that the extent of any such disclosure should be guided by a legitimate interest of the public in what may be sensitive information. We ask the regulators to carefully consider the risks of any public disclosure of TR data, especially given the relatively small size of the Canadian market, where transactions can be reverse-engineered with relative ease. Our concern is that it may in fact be impossible to make the reported data publicly available without compromising the parties' positions.

Timeline

The implementation of mandatory reporting of OTC derivatives is a complex, multi-dimensional process which will require market participants to make significant operational changes and adjustments. For instance, the Committee proposes to require reporting of pre-existing OTC derivatives transactions within 180 days from the effective date of the final rules. We believe that this time frame is impracticable and that it is generally too early to prescribe timelines. If the authorities wish to prescribe a timeline for back-loading at this point, our view is that 180 days from the registration of the TR with a further phased-in approach based on ease of product integration is the minimum transition period that would be required for our members to comply with the proposed requirements. To avoid the situation where aggressive deadlines result in delays and market uncertainty, we suggest that the authorities consult with the industry on the appropriate timeline once the rules have been finalized. This would ensure that all parties affected by the creation of this entirely new reporting system have sufficient time to adequately prepare for the implementation of the final rules.

Reportable Data

The CSA proposes that all OTC derivatives transactions, however transacted (including newly executed derivatives and post-execution events such as full or partial novations or unwinds, as well as certain transactions existing when the reporting requirement comes into effect), would be required to be reported to a TR. We are concerned about the scope of the reportable information and believe that this matter requires further study. For instance, one of the proposed requirements is to submit to a TR executed legal documentation in addition to the principal economic terms of the transaction. We believe that the proposed requirement to submit to a TR executed legal documentation is too onerous without providing regulators with any useful information. In line with the argument that reported data should only be disclosed in accordance with respective information needs, we believe that the amount of reported data should be carefully measured, such that it directly correlates to the respective information needs. If, based on the reported data, regulators come to the conclusion that they require further information, we assume that such information can easily be requested and obtained directly from the relevant market participants.

Ownership of Reported Data

The Committee notes in the Consultation Paper that derivatives participants reporting data to a TR will not have proprietary rights, including any intellectual property rights, in relation to data maintained by the TR. However, the TR will be subject to the confidentiality restrictions and will be required to provide them access to such data without unreasonable restrictions. We are concerned about the suggested approach of denying the relevant derivatives participants the ownership rights to the reported data and request that the CSA reconsider this proposal. The denial of property rights on data that is not made publicly available is inconsistent with the treatment of such data by other regulators internationally which have publicly stated that data that has not been publicly released remains the property of the data provider.

Block Trades

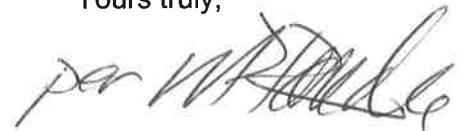
In response to the request for comment regarding the block trade thresholds and publication delays, we believe that further study and consultations are required in order to determine the appropriate block trade thresholds and publication delays. We also believe that any collection and analysis of additional data for this purpose need to be done in the context of the Canadian OTC derivatives market, recognizing its unique characteristics, while maintaining the larger goal of regulatory harmonization.

Role of Chief Compliance Officer

The Committee recommends that all TRs be required to appoint a Chief Compliance Officer with responsibilities including reviewing compliance with applicable legislation or rules, identifying and resolving conflicts of interest and completing and certifying an annual compliance report. However, we believe that *resolving* conflicts of interest is not the role of a Chief Compliance Officer, but is a role of management and the board of directors of the TR, with the assistance of the Chief Compliance Officer.² In the financial services industry model of compliance, the role of a Chief Compliance Officer is to monitor and report to management on the results of monitoring and to identify and escalate conflicts of interests and instances of non-compliance, as appropriate. We ask the Committee to reconsider its proposal in this regard and seek further commentary from industry on the roles and responsibilities of the Chief Compliance Officer and on the identification and resolution of conflicts of interest.

We appreciate the opportunity to comment on the CSA's recommendations for the regulation of derivatives TRs. We would be pleased to discuss our comments with you in further detail.

Yours truly,

A handwritten signature in black ink, appearing to read "per M. R. ...", is written over the typed name "M. R. ...".

² See for instance Investment Dealers Association Member Regulation Notice MR0435 – Joint Regulatory Notice - The Role of Compliance and Supervision (November 30, 2006)
<http://iiroc.knotia.ca/Knowledge/Browse/BrowseToc.cfm?kType=445&nc=12084720899220110912>.