

January 25, 2012

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

John Stevenson, Secretary  
Ontario Securities Commission  
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Suite 1900, Box 55  
Toronto, Ontario M5H 3S8  
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Me Anne-Marie Beaudoin  
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Dear Sirs/Madams:

**Re: Canadian Securities Administrators ("CSA") Consultation Paper 91-403  
Derivatives: Surveillance and Enforcement ("Consultation Paper")**

The Canadian Bankers Association ("**CBA**") works on behalf of 53 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.

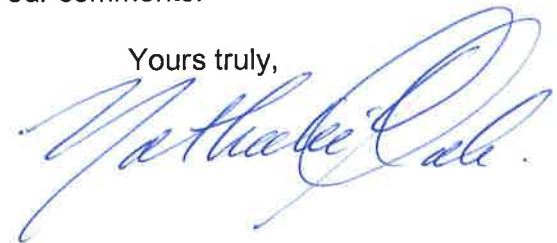
We appreciate the opportunity to participate in the stakeholder consultation regarding the surveillance and enforcement of the over-the-counter ("**OTC**") derivatives market. In this regard, we wish to express our support for the positions advocated by the Canadian Market Infrastructure Committee ("**CMIC**") in its comment letter responding to the Consultation Paper ("**CMIC Letter**"). We highlight below for your review several comments made in the CMIC Letter of particular importance from our perspective.

We agree with CMIC that federal regulators should play a central role in the systemic aspects of any surveillance and enforcement regime, and that provincial and territorial market regulators should participate in the market oversight aspects of any such regime within their respective jurisdictions and legislative mandates. As pointed out in the CMIC Letter, such approach is also consistent with the fact that a large proportion of the OTC derivatives transactions are carried out by the banks, which are federally-regulated in Canada. We also agree that such approach is aligned with the recent statement by the Supreme Court of Canada regarding the federal power with respect to systemic risk<sup>1</sup>. We therefore support CMIC's submission that federal regulators should play a key role with respect to systemically sensitive aspects of OTC derivatives trading in Canada, and that a harmonized approach between federal and provincial and territorial regulators, allowing each to discharge effectively its respective jurisdictional responsibilities, is required to minimize any inefficiencies or inconsistencies in the regulatory regime.

In addition, we support CMIC's position (and the CSA's own comment) that surveillance and enforcement of the OTC derivatives market requires more study, and support CMIC's recommendation that the CSA adopt a measured, product-specific, phased-in approach to the creation of the new surveillance and enforcement regime to accommodate such further study with the benefit of practical experience administering the new regime. We agree that any framework for the regulation of OTC derivatives transactions must recognize the distinctions between the categories of products that comprise the OTC derivatives market, and the distinctions between the OTC derivatives market and the retail securities market. We share CMIC's view that a simple adoption of the surveillance and enforcement regime that currently exists for the trading of public equities is unnecessary and could have unintended consequences for the OTC derivatives markets.

We appreciate the opportunity to participate in the stakeholder consultations regarding surveillance and enforcement of the OTC derivatives market as outlined in the Consultation Paper. We would be pleased to answer any questions regarding our comments.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Y. H. Cole', is written over the typed name 'Y. H. Cole'.

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<sup>1</sup> Reference re Securities Act, 2011 SCC 66 at para. 103: <http://scc.lexum.org/en/2011/2011scc66/2011scc66.html>.