

June 17, 2013

Delivered via email

Alberta Securities Commission
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/Mesdames:

Re: Proposed Derivatives Registration Regime for Federally-Regulated Banks

The Canadian Bankers Association (CBA) works on behalf of 55 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 275,000 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 comment on the Canadian Securities Administrators' (CSA) Consultation Paper 91-407 *Derivatives: Registration* (the Paper) which sets out a proposal for the regulation of key derivatives market participants through the implementation of a registration

regime.¹ This comment letter is focused on our significant concerns regarding the jurisdictional issue raised by the proposed registration requirement for banks set out in the Paper (the Proposal).

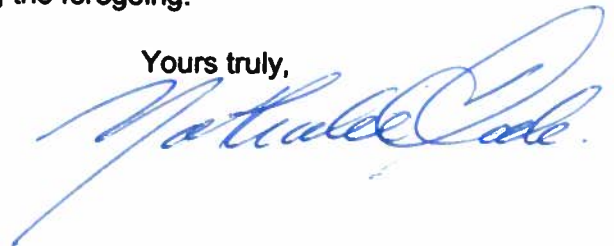
In September 2009, Canada and other members of the G20 group of nations committed to reforming OTC derivatives markets, including specific commitments to improve transparency and mitigate systemic risk. The banking industry continues to be supportive of Canada's initiatives to implement the G20 commitments. We strongly feel, however, that the ultimate Canadian derivatives regulatory regime that is implemented must be aligned with the constitutional division of powers in Canada. For this reason, we were disappointed to see that the Proposal is not recommending an outright exemption for banks participating in the Canadian derivatives market from the requirement to register with the provincial and territorial securities regulators. Rather, the Proposal suggests that the banks should be exempted from redundant registration requirements when conducting certain derivatives activities or upon reaching a specified derivatives exposure threshold. Further, the Proposal suggests that such exemption would only be granted by the provincial and territorial regulators if they are satisfied that the federal regulations are "equivalent" to the requirements imposed by the securities regulators.

As banks are federally-regulated entities, we do not believe that the CSA have the authority to require the banks to register with the provincial and territorial securities regulators. In the context of the securities market, financial institutions are granted a specific exemption from the requirement to register under Ontario's *Securities Act*². We believe that this exemption should equally apply in the derivatives context, not only in Ontario, but in all other Canadian jurisdictions. The activities of the banks in the derivatives markets are regulated by the Office of the Superintendent of Financial Institutions.

We were also concerned to see a comment in the Paper stating that the intent of the proposed registration requirements is, among other things, to reduce risks, including systemic risks, resulting from the derivatives activities of key market participants. In *Reference re Securities Act*³, the Supreme Court of Canada confirmed the federal government's exclusive jurisdiction to regulate systemic risk in Canada, including systemic risk as it relates to OTC derivatives transactions.⁴ In accordance with the decision of the Supreme Court, matters relating to the regulation and monitoring of systemic risk fall under exclusive federal jurisdiction.

Thank you for the opportunity to provide our views on this important issue. Please do not hesitate to contact us with any questions or comments regarding the foregoing.

Yours truly,



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

² See s. 35.1(1) of *Securities Act* (Ontario).

³ [2011] 3 S.C.R. 66

⁴ In particular, please refer to the following statements by the Court in *Reference re Securities Act*: "... The provinces, acting in concert, lack the constitutional capacity to sustain a viable national scheme aimed at genuine national goals such as management of systemic risk ..." [paragraph 121]; "... the following provisions of the proposed Act would appear to address or authorize the adoption of regulation directed at systemic risk: ss. 89 and 90 relating derivatives ..." [paragraph 103].