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September 6, 2016

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

Robert Blair, Secretary
Ontario Securities Commission
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Me Anne-Marie Beaudoin, Corporate Secretary
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Dear Sirs/Mesdames:

The Canadian Bankers Association (**CBA**)¹ appreciates the opportunity to comment on the Canadian Securities Administrators' (**CSA**) Consultation Paper 95-401 – *Margin and Collateral Requirements for Non-centrally Cleared Derivatives* (the **Paper**) published by the CSA Derivatives Committee (the **Committee**) on July 7, 2016. In September 2009, Canada and other members of the G20 nations committed to reforming over-the-counter derivatives markets, including specific measures to improve transparency and mitigate systemic risk. While the banking industry continues to be supportive of Canada's initiatives to implement the G20

¹ The CBA works on behalf of 59 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 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. www.cba.ca

commitments, we have concerns with certain aspects of the Paper, which are outlined below. Our key issue is that the Paper does not provide an unconditional exemption for federally regulated financial institutions (**FRFIs**).

Unconditional Exemption for FRFIs

The Paper proposes that FRFIs subject to and complying with the Office of the Superintendent of Financial Institutions' (**OSFI**) Guideline E-22 – *Margin requirements for non-centrally cleared derivatives* (the **OSFI Guideline**) would be relieved from the requirement to comply with the proposals in the Paper. However, we are concerned that the Paper does not provide an outright exemption for FRFIs from the proposed requirements in the Paper. Rather, the Paper provides a conditional exemption: it includes FRFIs in the definition of “covered entity” but exempts them from the proposed requirements if they are subject to and comply with the OSFI Guideline. Given OSFI’s role as the prudential regulator of FRFIs and the fact that FRFIs are subject to the margin requirements in the OSFI Guideline, we believe that FRFIs should be made categorically exempt from the proposals in the Paper by expressly excluding FRFIs from the definition of “covered entity”.

Absent an unconditional exemption for FRFIs from the application of the CSA margin rules, Canada will be the only jurisdiction where two sets of margin rules apply to the same counterparty. The CBA and its members are concerned that subjecting FRFIs to two sets of margin rules (notwithstanding substituted compliance) will create confusion in the market. In self-disclosure to their counterparties on the application of margin rules, FRFIs will have to disclose to foreign market participants that they are subject to two different margin regimes in Canada. There is a concern that this confusion could disadvantage FRFIs vis-à-vis other market participants as foreign market participants may be unwilling to invest in understanding two sets of margin rules in Canada. Finally, FRFIs anticipate operational challenges in educating foreign market participants how a substituted compliance framework would work in the context of FRFIs and the CSA margin rules.

Having noted this key issue, the remainder of the letter highlights other aspects of the Paper that are of concern absent an unconditional exemption for FRFIs.

Substituted Compliance

The section of the Paper that addresses substituted compliance states that because the Committee believes that the requirements in the OSFI Guideline are equivalent to the recommendations in the Paper, the Committee proposes to provide covered entities that are subject to and comply with the OSFI Guideline with relief from the obligation to comply with the margin requirements in the Paper. We appreciate the Committee’s intention to grant substituted compliance with respect to OSFI’s margin requirements. In the absence of an unconditional exemption for FRFIs, we believe that a FRFI subject to the OSFI Guideline should be granted full substituted compliance with respect to the CSA’s margin requirements and should not be captured in any manner under the CSA’s margin rules. As an example, we understand that the Committee has indicated that where a FRFI is trading with an entity that is not a “covered entity” under the OSFI Guideline but is a “covered entity” under the Paper, the margin requirements proposed in the Paper would apply to the trade between the covered entity and the FRFI. Given that FRFIs are bound by the margin requirements in the OSFI Guideline, we believe it is appropriate to exempt from the proposed requirements in the Paper any trade where a FRFI is a counterparty.

Compliance and Enforcement

As the prudential regulator of FRFIs, OSFI should be responsible for monitoring compliance with and enforcing margin requirements on FRFIs. It is not clear from the Paper what types of assurances the CSA would require regarding a FRFI's compliance with the OSFI Guideline or what type of information the CSA would expect OSFI, or affected FRFIs, to share with them. OSFI and the CSA have different standards with respect to the disclosure of information: OSFI can share certain types of information with other regulators but the Superintendent must be satisfied that the information will be kept confidential, whereas provincial securities regulators can disclose information publicly under their mandate. The Paper does not address how these differing standards would be reconciled.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan M. MacEachern", followed by a thin horizontal line and a small arrow pointing to the right.