Pension Investment Association of Canada
Association canadienne des gestionnaires de caisses de retraite

June 16, 2013

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

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
Via E-mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec
H4Z 1G3
Via E-mail: consultation-en-cours@lautorite.qc.ca

Dear Mr. Stevenson and Me Beaudoin,

Re: CSA Consultation Paper 91-407, Derivatives: Registration

This submission is made by the Pension Investment Association of Canada (PIAC) in reply to the request for comments by the Canadian Securities Administrators Derivatives Committee (the "Committee") regarding CSA Consultation Paper 91-407, Derivatives: Registration (the "Consultation Paper").

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over $1 trillion in assets on behalf of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

PIAC welcomes the opportunity to comment on the Consultation Paper. As most of the questions raised in the Consultation Paper are related to derivative dealers and advisers, it is not our intention to provide comments on every point raised. Rather, our comments will be more general and centered on the notion of establishing registration requirements for larger players in the derivatives markets – i.e. the proposed Large Derivative Participants (LDP) threshold. Finally, it is PIAC's understanding that some of its individual pension plan members intend to separately provide comments targeting their specific needs.

Over the last few years, PIAC and other global pension fund organizations have provided comments to regulators as part of multiple consultation processes on the topic of the regulation of over-the-counter (OTC) derivatives markets and centralized counterparties. As a reference, it is our pleasure to provide you with the most recent filings provided by the Global Pension Coalition to the Basel Committee on Banking Supervision and International Organization of Securities Commissions in regards to non-centrally cleared derivatives (attached). In these submissions, you will note the perspective of the pension industry on the role that its members play and the value that pension plans bring to OTC derivatives markets.

PIAC's main recommendation is that the CSA exclude pension plans from the registration requirements proposed under the Consultation Paper, including from the definition of Large Derivative Participant ("LDP"). There are three main reasons for our recommendation – (i) pension plans (even the largest ones) do not present systemic risks to the Canadian financial system, (ii) pension plans are already subject to comprehensive regulation by the federal and provincial governments, and (iii) the United States appears to be moving to a regime for OTC derivatives whereby pension plans are exempt from registration requirements. We address each of these points below.

In terms of systemic risk, it is important to understand that pension plans, whether large or small, mainly use derivatives for hedging purposes. This means that aggregate derivatives exposure will overstate the risk from derivatives positions as it will only capture one side of the investment strategy. This basic defensive orientation, combined with the pension industry's very high implicit credit ratings and long term investment horizon, allows pension plans to assume the risks of derivatives exposures that might be more difficult for other derivatives market participants to support during periods of market stress. Pension plans, even the largest ones, are neither highly levered nor heavily reliant on short-term financing, which are key characteristics of market participants most likely to pose systemic risks. It is PIAC's opinion that the use of derivatives by pension plans is more likely to reduce systematic risk and increase liquidity for the overall market as pension plan counterparties allow derivatives dealers to offset some of their risk with high quality, low credit risk entities. Capturing pension plans under the registration requirements may discourage participation in OTC derivatives markets, which could undermine investment and risk management objectives as well as be detrimental to overall market robustness.

On the second point, PIAC notes that Canadian pension plans are subject to comprehensive regulation by federal and provincial governments, in terms of solvency, governance and risk management. This regulatory regime is long-standing and has been the subject of considerable review in recent years by both levels of government in Canada. Capturing pension plans under the derivatives registration requirements would undoubtedly subject them to duplicative regulatory requirements, something which the Committee states within the Consultation Paper that it expressly wishes to avoid.

In terms of the international context, the Committee notes in the Consultation Paper that the U.S. Commodity Futures Trading Commission has exempted employee benefit plans from the definition of “major swap participant”, which appears to be an analogous concept to the LDP. PIAC also notes there is no registration requirement created by comparable rules within Europe. We would note further that the U.S. test surrounding the definition of major swap participant relies somewhat upon an entities uncollateralized exposure. We would encourage the CSA to harmonize with the international approach on this issue so as not to impose additional regulatory obligations for Canadian pension plans.

As a final point regarding the LDP threshold, PIAC supports the Committee’s view to not make any decisions regarding the threshold until it is able to sufficiently analyze trade repository data to better understand overall flows, exposures and the extent of collateralization in the OTC derivatives market. Moreover, PIAC recommends that such data and analysis be made public for analysis by all market participants. An incremental approach to derivatives regulation which starts with the obvious core set of systemically important financial institutions in terms of size, leverage and interconnectedness and then proceeds from there to other market participants based on the analysis of actual market data and activity will best serve the Canadian financial market in this important area.

We appreciate the opportunity to comment on the Consultation Paper. Please do not hesitate to contact Kevin Fahey, Chair of the Investment Practices Committee (416-673-9006; kfahey@caatpension.on.ca) if you wish to discuss any aspect of this letter in further detail.

Yours sincerely,

BMcInnes

Brenda McInnes
Chair