



STATE STREET

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Alberta Securities Commission  
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British Columbia Securities Commission  
Manitoba Securities Commission  
New Brunswick Securities Commission  
Nova Scotia Securities Commission  
Ontario Securities Commission

21 September 2012

Dear Sir/Madam

Thank you for the opportunity to comment on CSA Consultation Paper 91-406 – Derivatives: OTC Central Counterparty Clearing.

State Street is a leading financial services provider serving some of the world's most sophisticated institutions such as pension funds, mutual funds, endowments and sovereign wealth funds. State Street offers a suite of services that spans the investment spectrum, including investment management, research and trading, and investment servicing. With USD 22.4 trillion in assets under custody and administration and USD 1.9 trillion in assets under management, State Street operates in 29 countries and in more than 100 markets worldwide.<sup>1</sup>

State Street is one of the largest processors of derivatives transactions, and as such, has been active in the policy discussions about central counterparty clearing of derivatives around the world. We support derivatives clearing and execution which we believe will reduce global systemic risk, and, properly implemented, will also benefit our institutional investor customer base. State Street is well positioned to provide our clients with full service clearing and other services that can help them realize the benefits of the new derivatives regime, including through enhanced transparency, more open execution platforms and central clearing.

State Street welcomes the CSA's efforts to strengthen OTC derivatives markets by introducing a clearing obligation and by creating a framework for determining the eligibility of contracts for which mandatory clearing would apply. However, we would like to highlight some concerns about certain aspects of central counterparty clearing, including regarding foreign exchange transactions and membership rules of CCPs.

### ***Foreign Exchange ("FX") Transactions***

State Street strongly believes that FX transactions should not be included within the intended framework. As noted by the U.S. Treasury in its proposed determination exempting certain FX transactions from U.S. rules applying to swaps, FX transactions have distinctive characteristics, which differentiate them from

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<sup>1</sup> As of June 30, 2012

other types of swaps. FX markets are highly liquid and transparent, and FX transactions have fixed payment obligations and are predominantly short-lived. The most significant risk posed by FX transactions is typically settlement risk, which is addressed through the Continuous Linked Settlement (“CLS”) system to address settlement risk, and there are long-established procedures for mitigating counterparty credit exposure. Furthermore, the current FX system has worked well throughout the recent financial crisis, with little evidence of the sort of dislocation encountered in certain segments of the OTC derivatives market and in wholesale funding markets generally. In our view, any potential systemic risk concerns in the FX market have therefore already been properly addressed.

In addition, State Street is concerned that incorporating FX transactions within the envisioned framework would unnecessarily disrupt the market, with important implications for overall efficiency, stability and costs. Indeed, any presumption in favor of standardization, central clearing, and exchange trading in the highly customized FX market, would greatly reduce its effectiveness as a source of funding and/or hedging for corporations, financial institutions, pension funds and registered funds.

Moreover, it would have an especially detrimental impact on funding markets, where FX swaps are a low cost, low risk instrument used extensively by banks, including central banks, for short-term funding needs, such as currency mismatches. Reducing the availability of customized FX swaps could result in greater reliance on short term placements and/or deposits, thereby creating increased credit risk.

State Street therefore strongly recommends the exclusion of FX transactions from the scope of the envisioned framework. If the CSA nonetheless concludes that it is important to structure legislation on the basis of an encompassing definition of OTC derivatives, broad discretion should be provided to the appropriate competent authorities to exempt certain categories of FX transactions and/or certain specific regulatory requirements, such as product standardization, margin, centralized clearing and exchange-based trading.

With respect to other asset classes considered for CCP clearing, the U.S. Commodity Futures Trading Commission (CFTC) checklist for determining whether an instrument type should be cleared is a reasonable one and is being widely adopted and considered in many other regions.

### ***Timing of Reporting***

State Street supports a confirmation deadline of T+1 U.S. time. We would have concerns with regards to a confirmation deadline at the end of the same business day as issues such as different time zones, etc., may make such a deadline difficult to meet. In addition, settlement sometimes does not occur until after the trade date.

### ***Membership Requirements***

We support membership requirements that permit fair and open access (as under Dodd-Frank), and we would oppose limiting membership in Canadian CCP(s) to solely local market participants. Open access will reduce systemic risk by avoiding concentration of clearing activity with a small number of existing dealer members, and benefit the buy-side by allowing netting across dealers on swaps that clear through the same clearinghouse.

Clearing members must be required to demonstrate the necessary financial and operational resources to execute their duties to customers and the clearinghouse. Strong capital rules are important, but should be risk-based rather than arbitrary dollar amounts. Capital requirements could be linked to other risk-based clearinghouse measures, such as a multiple of default fund contributions. Other arbitrary requirements linked to a dealer-specific business model, such as a minimum swap book, are not risk-based and will

prohibit membership by non-dealer firms. Outsourcing of certain functions should be allowed provided that the execution risk associated with such outsourcing rest with the member firm and not the clearinghouse.

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Thank you again for the opportunity to comment on the consultation paper. Feel free to contact us should you have any questions about the responses we have provided. We would like to stay engaged as Canada develops its approach to central counterparty clearing and offer the expertise we have gained in the derivatives market and through our participation in similar discussions, particularly in the U.S. and Europe.

Sincerely,

A handwritten signature in black ink, appearing to read "Stefan M. Gavell". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Stefan M. Gavell

cc: Peter Lindley, President and Head of Investments / Président et directeur du placement  
SSgA (Canada) Limited