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**Via E-mail**

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April 9, 2012

**Re: CSA Consultation Paper 91-404 Derivatives: Segregation and Portability in OTC Derivative Clearing**

TD Asset Management Inc. ("TDAM") welcomes the opportunity to provide comments on *CSA Consultation Paper 91-404 Derivatives: Segregation and Portability in OTC Derivatives Clearing* published on February 10<sup>th</sup>, 2012. TDAM, a wholly owned subsidiary of The Toronto-Dominion Bank, is one of Canada's largest asset managers. We are responding in our capacity as an investment adviser.

Overall, TDAM is in agreement with the recommendations presented for segregation and portability. Both aspects will ensure that the clearing function will be done in a manner that will protect customer positions and collateral, as well as to reduce the probability of a clearing member's default.

**Question 1: Are there any differences between the Principal and Agency Models the Committee should be aware of in formulating the policies and rules for segregation and portability?**

It is our view that from an end users' perspective, the two models do not seem that much different. How an end user pledges collateral would not be different depending on the model as assets are delivered to the applicable clearing member either way.

For the end user, the difference between the two models concerns exposure. Under the Agency Model, the end user is exposed to the risk of default by the CCP. Under the Principal Model, it is to default by the clearing member. Enhanced segregation and portability mechanisms, aimed at protecting customer collateral against clearing member default, would therefore make the Principal Model more attractive.

**Question 2: Should variation margin be required to be provided to a CCP on a gross basis?**

Initial and variation margin should be allowed on a net basis, particularly for like products cleared through the same CCP. Submissions by the direct member should be allowed on a net basis by the client, but not on a commingled basis with other clients or with the house account. The gross margining requirements would be a very capital intensive process. Like products should be on a net basis in terms of the margining requirement. End users would submit on a net basis, client by client. Clearing members should have to report on a net basis, client by client, and by product, so as to support segregation, similar to the futures clearing model.

**Question 3: Do you agree with the Committee's recommendation that CCPs adopt the Complete Legal Segregation Model?**

We agree with this recommendation to adopt the Complete Legal Segregation Model as there are potential benefits to this model structure. As noted by the CSA, this model would not be as expensive and administratively intensive as the Full Physical Segregation model, but comes with greater exposure to loss as all customers' collateral is held in an omnibus, commingled account. We agree with the CSA that there is still protection under this structure such as: (i) the requirement of the clearing member to on a daily basis report to the CCP the rights and obligations attributable to each customer; (ii) the protection provided to non-defaulting customers against fellow customer risk; and (iii) the enhanced portability provided in case of insolvency or default.

**Question 4: Are there any benefits to the Full Physical Segregation Model that would make it preferable to the Complete Legal Segregation Model?**

We are comfortable with the provisions detailed in the Complete Legal Segregation Model and do not see major benefits from the Full Physical Segregation Model.

**Question 5: Should there be specific permitted investment criteria for customer collateral?**

Yes, there should be specific criteria.

**Question 6: If yes, what types of investments are suitable for customer collateral held in connection with indirectly cleared OTC derivatives transactions?**

Suitable investments should be in line with the expanded definition of cash cover found in National Instrument 81-102 (cash or cash equivalents, securities of money market funds, certain floating rate notes, etc.).

**Question 7: Is re-hypothecation of customer collateral consistent with the goals of the Complete Legal Segregation model and should it be permitted?**

We do not feel that re-hypothecation of customer collateral is consistent with the goals of the Complete Legal Segregation model.

**Question 8: Should clearing members be required to offer collateral holding arrangements with a third party custodian for customer collateral held in connection with an indirectly cleared OTC derivatives transaction?**

Yes, this should definitely be offered. Any collateral holding arrangements should be held free and clear of the clearing member and their usage.

**Question 9: What would be the costs and benefits of a requirement that all Canadian customer collateral be governed by Canadian laws?**

It may be challenging to obtain this right in international contracts. However, we can see the benefits of having Canadian customer collateral governed by Canadian laws.

**Question 10: Are there any risks that portability arrangements may have on clearing members who accept customer positions in the event of a clearing member default?**

As mentioned, the portability arrangement provides an important advantage to the end client by allowing the client to transfer their collateral to another clearing member.

**Question 11: Do you agree with the Committee's recommendation that OTC derivatives CCP's should be required to facilitate portability for customers at their discretion?**

Yes, we are in agreement with this recommendation as it allows the end user the flexibility they may require in order to respond to ever changing market developments.

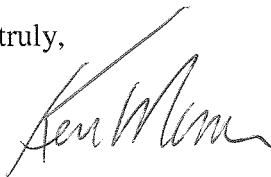
**Question 12: Should OTC derivatives dealers be required to offer arrangements for collateral to be held with a third party custodian for uncleared transactions?**

We support this requirement in order for the end client to be able to negotiate their own level of segregation. This presents them with the opportunity to protect their collateral to the fullest extent possible by having it held with a third party custodian.

### **Conclusion**

As stated above, TDAM supports the suggested recommendations concerning segregation and portability. We would be pleased to provide any further explanations or submissions with respect to matters discussed above and would make ourselves available at any time for further discussion.

Yours truly,

A handwritten signature in black ink, appearing to read "Ken Miner". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Ken Miner, CFA

Vice Chair, Fixed Income

TD Asset Management