

June 14, 2012

SUBMITTED ELECTRONICALLY

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

c/o John Stevenson, Secretary
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**Re: Canadian Securities Administrators (“CSA”) Consultation Paper 91-405 on
Derivatives: End-User Exemption (the “Consultation Paper”)**

Dear Mr. Stevenson and Me Beaudoin:

Canadian Western Bank (“CWB”) appreciates the opportunity to comment on the Consultation Paper published by the CSA Derivatives Committee (the “Committee”) on April 13, 2012 relating to the end-user exemption. The Consultation Paper states that:

“The end-user exemption is intended to apply to market participants who are not required to be registered as a result of:

- a. The fact that they are not in the business of trading derivatives; and
- b. The fact they are not systemically important to the market.”

In describing the regulatory objectives considered by the Committee in relation to the end-user exemption status, the Committee noted that:

“This category of end-user enters into OTC derivatives contracts in order to protect itself against a risk arising from its own business activities. The terms of these contracts are negotiated between parties and are tailored to the needs of the end-user. The limited activity of the end-user in relation to the overall market and the total exposure resulting from the contracts entered into by a single end-user does not represent a substantial risk to our markets or the wider economy. In addition, the end-user is not in the business of trading OTC derivatives contracts for speculative purposes.”

It is with these policy objectives in mind that CWB would like to provide commentary on Question 2: Are the end-user eligibility criteria proposed by the Committee appropriate? and Question 3: Should alternate or additional criteria be considered?

Question 2: Are the end-user eligibility criteria proposed by the Committee appropriate?

The proposed end-user eligibility criteria set out in the Consultation Paper are:

1. The entity must trade for its own account, not be a registrant (i.e. be in the business of trading for or advising others in the trading of OTC derivatives) or be an affiliate of such a registrant.
2. The entity must not be a financial institution.
3. The entity must conduct trading in OTC derivatives contracts for the purpose of mitigating commercial risks related to the operation of the business.
4. The entity must not be a Large Derivatives Participant (the definition for which will be set out in the registration consultation paper).

Each of criteria 1, 3 and 4 are in alignment with the stated policy objectives of the end-user exemption. We respectively submit that criteria 2 is inconsistent with the stated principles. If an entity trades OTC derivatives only for its own account, does not trade or advise others in the trading of OTC derivatives, conducts trading in OTC derivatives for the purpose of mitigating risks related to the operation of its business and is not a Large Derivatives Participant, then the fact that the entity is a financial institution should not be determinative as to whether the entity may rely on the end-user exemption. We would therefore request that the Committee reconsider its rationale for proposing a blanket prohibition against one type of entity without regard to its stated policy considerations.

Based on the website of the Office of the Superintendent of Financial Institutions (“OSFI”), OSFI regulates 151 deposit taking institutions and 269 insurance companies in Canada. There are also numerous financial institutions which are regulated provincially. As part of their overall risk management strategy, many financial institutions enter into OTC derivatives in order to hedge against interest rate and foreign exchange risks associated with their businesses. We believe that a significant number of these financial institutions are not in the business of trading for or advising others in the trading of OTC derivatives and that the volume of trading by any single one of these institutions does not pose a substantial risk to the market. The terms of these contracts are negotiated between the smaller financial institution and a financial institution that trades and advises in the trading of OTC derivatives and the terms are tailored to the needs of the smaller financial institution. We would therefore request that the Committee reconsider the proposed ineligibility of all financial institutions to qualify under the end-user exemption or that an alternate criteria for financial institutions, as set out below, be considered.

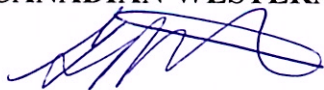
Question 3: Should alternate or additional criteria be considered?

If an entity qualifies for the end-user exemption except for the fact that it is a financial institution, we believe that it should be permitted to qualify under the end-user exemption if the financial institution is not systemically important to the market. Although the Committee indicated that it had concluded that a prescribed threshold based on volume or notional dollar value of trades was not appropriate to include in the end-user exemption at this time, we submit that if it is proposed that financial institutions, as a class, will be unable to qualify for the end user exemption based on the principle of substantial market risk, there needs to be a level of market activity to support the conclusion that such institution poses a substantial risk to the market. We would therefore encourage the Committee to consider alternate criteria for financial institutions based on the level of their market activity. Without such alternate criteria many smaller financial institutions will not be able to qualify under the end-user exemption notwithstanding that their OTC derivatives activities are limited to the end-user exemption policy objectives and their volume of OTC derivatives trading does not pose a substantial risk to the market or the wider economy.

Thank you for the opportunity to comment on the Consultation Paper. We would be pleased to discuss with you any of our comments.

Yours truly,

CANADIAN WESTERN BANK



Gail Harding, Q.C.
Senior Vice President, General Counsel
and Corporate Secretary