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BY EMAIL

June 7, 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

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e etage
Montréal, Québec H4Z 1G3
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John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Subject: Canadian Securities Administrators CSA Consultation Paper 91-407 Derivatives: Registration

Dear Sirs / Mesdames:

CIBC Asset Management ("**CAM**") is CIBC's Canadian-based global investment management division comprised of CIBC Global Asset Management Inc. ("**CGAM**") and CIBC Asset Management Inc. ("**CAMI**"). As of April 30, 2013, CGAM manages more than $92 billion worth of assets and CAMI is responsible for the CIBC and Renaissance Investments families of mutual funds, Imperial Pools, Frontiers Pools and the CIBC family of managed portfolio solutions – Axiom Portfolios, CIBC Managed Portfolio Services and CIBC Personal Portfolio Services.

CAM appreciates the opportunity to provide the Canadian Securities Administrators ("**CSA**") with our comments on its Consultation Paper 91-407 Derivatives: Registration (the "**Proposal**"). In light of the commitment to reform the OTC derivatives market shown by Canada and other members of the G20 group of

nations', we recognize the need for a Canadian derivatives regulatory regime. That said we have some concerns about the Proposal, in particular the jurisdictional issue raised by the Proposal.

We agree that Canada should have a derivatives regulatory regime. However, we strongly feel that the regime should fall under the jurisdiction of the Federal government to ensure a single regime that manages systemic risk from coast to coast. The Supreme Court of Canada ("**SCC**") has clearly said that the Federal government has the constitutional jurisdiction to address matters of national importance and scope. The CSA acknowledges the national scope of derivatives regulations when it stated in the Proposal that "[i]t is therefore crucial that rules be developed for the Canadian market that ensure that Canadian market participants have access to international markets and are regulated in accordance with international principles."

The Proposal as well as the CSA's other related proposals on derivatives (collectively, the "**Papers**"), all deal with the management of systemic risk and therefore we believe fall under the authority of the Federal government. Some of these Papers (for example, CSA Consultation Paper: 91-301 – Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting) also concern the national collection of data which has also been deemed by the SCC as falling under federal jurisdiction.

Attached as Schedule A are CAM's responses to most of the CSA's questions found in the Proposal.

Thank you for the opportunity to provide our views on this important issue. Please do not hesitate to contact me with any questions or comments regarding the foregoing.

Sincerely,

/s/ André de Maurivez

André de Maurivez

Schedule A

Q1: Should investment funds be subject to the same registration triggers as other derivatives market participants? If not, what registration triggers should be applied to investment funds? No. Investment Funds hire portfolio advisors to manage the assets of the fund in accordance with its stated investment objectives in the prospectus or offering document, its investment policy guidelines and any applicable legislation such as NI 81-102. The investment fund is ultimately the client of the portfolio advisor, who should be sufficiently qualified and registered to trade in the derivatives market on behalf of their clients. While the derivatives contract will be in the name of the investment fund, the registerable activity is carried out by the portfolio advisor. Investment funds that are subject to NI 81-102 are subject to the restrictions laid out therein, and are limited to the use and exposure on a total portfolio basis to derivatives and counterparties. We don't believe requiring individual investment funds to register would add any value to the derivatives marketplace. Investment funds are separate legal entities that don't have any employees. Therefore it is the fund's manager or portfolio advisor that would be able to designate a UDP, a CCO and a CRO as well as staff, but not the fund. Rather, if the intent is to have a way to identify the fund as the counterparty, then a mechanism for this should be explored (such as the CICI number process in the U.S.). Based on the definition of a business trigger for trading or advising – investment funds would not fall into either category as they aren't "in the business" of trading derivatives or providing derivatives advice let alone securities. We suggest that all investment funds be exempt from derivatives registration yet be required to have a legal identification number which can be used to monitor a fund's derivatives trading.

Q2: What is the appropriate standard for determining whether a person is a qualified party? Should the standard be based on the financial resources or the proficiency of the client or counterparty? If the standard is based on financial resources should it be based on the net assets of the client or counterparty, gross annual revenues of the client or counterparty, or some other factor or factors? The various standards referred to in the Proposal seem adequate, especially the combination of proficiency and sufficient financial resources.

Q4: Are derivatives dealer, derivatives adviser and LDP the correct registration categories? Should the Committee consider recommending other or additional categories? Yes, they are the correct categories as long as the CSA's interpretation is that the LDP category would not capture a derivatives adviser who transacts as an agent on behalf of its clients. We believe that this is the correct interpretation because the derivatives are on the clients' books and not on the books of the derivatives adviser who transacts as an agent on behalf of its clients. Please also see our response to Q9 below.

Q7: Is the proposal to impose derivatives dealer registration requirements on parties providing clearing services appropriate? Should an entity providing these clearing services only to qualified parties be exempt from regulation as a derivatives dealer? We believe the intent of the clearing counterparty ("**CCP**") is for settlement purposes and essentially to monitor any potential default risk. The primary concern of the regulator should to make sure that the CCP is well capitalized. Therefore, the regulators may want to consider two categories of derivatives dealer to distinguish between those that simply act as a broker and those that also act as a CCP. The latter category would likely need to meet a higher capital threshold.

Q8: Are the factors listed above the appropriate factors to consider in determining whether a person is in the business of advising on derivatives? We are concerned with the concept of "indirectly soliciting", which includes advertising. This is a very broad category that could catch things that would not be considered to be advising in derivatives. For example, if a fund manager promotes a mutual fund, whose strategy is to invest in derivatives and promotes the investment strategy, would it be deemed to be advising in derivatives or is it simply promoting a fund that invests in derivatives to help the fund achieve its objectives? We request that the CSA provide more guidance in regards to this factor to ensure that the above scenario would not trigger registration.

Q9: Are the factors listed for determining whether an entity is a LDP appropriate? If not what factors should be considered? What factors should the Committee consider in determining whether an entity, as a result of its derivatives market exposures, could represent a serious adverse risk to the financial stability of Canada or a province or territory of Canada? In conjunction with our comment in Q4 above, it should be clear that only entities that actually have derivatives on their books will be considered to be an LDP. For example, a derivatives adviser who transacts as an agent on behalf of its clients and its assets should not be considered as an LDP. Another factor that we would suggest the CSA consider is that only OTC derivatives be taken into consideration in determining whether an entity is a LDP because exchanges already have rules preventing concentration by one investor. Lastly, it is difficult to confirm whether or not the CSA has listed all the factors for determining whether an entity is a LDP without knowing what the threshold will be.

Q11: Is it appropriate to impose category or class-specific proficiency requirements? Yes.

Q12: Is the proposed approach to establishing proficiency requirements appropriate? Yes, this principle based approach will provide flexibility for firms in deciding what the right proficiency is for people performing the roles within the firm.

Q13: Is the Committee's proposal to impose a requirement on registrants to "act honestly and in good faith" appropriate? Yes.

Q15: Should derivatives dealers dealing with qualified parties be subject to business conduct standards such as the ones described in part 7.2(b)(iii) above? If so, please explain what standards should apply. Yes – when the conduct standards are related to avoiding conflicts of interest and fair dealing. Even though an entity may be "qualified" it does not mean that they should be dealt differently in regards to conflicts of interest and fair dealing. In order for these standards not to apply, they would need to be a qualified party on the basis of proficiency alone and not the amount of financial resources at their disposal.

Q16: Do you have a preference between the two proposals relating to the regulation of a derivatives dealer trading with counterparties that are non-qualified parties? Is there another option to address the conflict of interest that the Committee should consider? Please explain your answer. Please see our response to Q15 above.

Q17: Are the recommended requirements appropriate for registrants that are derivatives dealers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives dealers? If investment funds are required to register as derivatives dealers, it would not be appropriate to impose these requirements on them. Often the investment decisions are outsourced to a sub-advisor and pre and post trade reports along with account statements would be impossible for the fund to produce.

Q18: Are the recommended requirements appropriate for registrants that are derivatives advisers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives advisers? Yes.

Q19: The Committee is recommending that foreign resident derivative dealers dealing with Canadian entities that are qualified parties be required to register but be exempt from a number of registration requirements. Is this

recommendation appropriate? Please explain. Likely reasonable, provided the substantially equivalent requirements are enforced in a similar fashion in the home jurisdictions.

Q20: Is the Committee's recommendation to exempt foreign resident derivatives dealers from Canadian registration requirements where equivalent requirements apply in their home jurisdictions appropriate? Please explain. We understand that the CSA recommends that foreign derivatives advisers and derivatives dealers be exempted from specific regulatory requirements in Canada. As a Canadian firm possibly dealing with non-resident foreign advisors, this recommendation would leave a potential gap in the regulatory oversight for the Canadian client. A Canadian resident would not normally be able to complain to the regulator in the foreign jurisdiction and obtain traction – we would be required to complain to our regulator for the marketplace. If the foreign firm isn't registered, the scope of authority by the local securities commission may be limited over the foreign firm, and could need the cooperation of the foreign regulator.

Q21: Should foreign derivatives dealers or advisers not registered in Canada be exempt from registration requirements where such requirements solely result from such entities trading with the Canadian federal government, provincial governments or with the Bank of Canada? No. Foreign derivatives dealers or advisers should not be exempt from all registration requirements simply because they are dealing with the Canadian federal government, provincial governments or with the Bank of Canada.

Q22: Is the proposal to exempt crown corporations whose obligations are fully guaranteed by the applicable government from registration as a LDP and, in the circumstances described, as a derivatives dealer appropriate? Should entities such as crown corporations whose obligations are not fully guaranteed, foreign governments or corporation owned or controlled by foreign governments benefit from comparable exemptions? Please provide an explanation for your answer. Government guarantees come from their ability to raise funds, which is generally done through taxation. In today's economic climate, the increase of taxes would be the subject of considerable debate. Most Canadians would not be favorable to exempting crown corporations simply because their actions are guaranteed by the government.

Q23: Are the proposed registration exemptions appropriate? Are there additional exemptions from the obligation to register or from registration requirements that should be considered but that have not been listed? We believe that transactions with affiliated entities where the affiliates are trading for their own accounts might be appropriate. If they are entering into a transaction with

an affiliated entity for the account of a client or an investment fund, then that should be considered to be in the business of dealing. Trading with an affiliate for clients would need to be considered in conjunction with conflict of interest considerations and would need to align to the interests of the client. By permitting trading with affiliates to be done without registration, it could exacerbate the incentive of firms to choose their affiliate over other firms to the detriment of achieving best execution on behalf of the client.