



Mortgage-Backed Securities Issuer Association
Association des Émetteurs de Titres Hypothécaires

TO: 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

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RE: CSA CONSULTATION PAPER 91-407 (DERIVATIVES: REGISTRATION)

Ladies and Gentlemen,

We are writing on behalf of the NHA MBS issuing members of the Mortgage-Backed Securities Issuers Association (MBSIA) with respect to CSA Consultation Paper 91-407 (Derivatives: Registration).

The Canadian Securities Administrators Derivatives Committee (the "Committee") has recommended that Canadian federal, provincial and municipal governments should not be subject to an obligation to register or be subject to registration requirements for derivatives dealers, derivatives advisers and large derivative participants in any circumstances. Federal and provincial crown corporations, whose obligations are guaranteed by the federal or provincial government, on the other hand, will not be required to register or be subject to registration requirements only when dealing with qualified parties (i.e., registered securities or derivatives counterparties or other sophisticated participants with adequate resources to absorb losses from derivatives trades) and not intermediating any trades for clients.

Government-backed entities enter into interest rate, currency, credit default and total return swaps for hedging, portfolio management and funding purposes. The Committee appears to agree that such entities and their activities are not and should not be viewed as presenting material risk concerns to their counterparties, and certainly not risks that should cause them to be regulated the same way as other types of private sector entities. This would certainly be true in the case of Canada Mortgage and Housing Corporation (CMHC) and Canada Housing Trust (CHT), whose obligations are obligations of and by Canada or whose obligations are guaranteed by Canada. The long-term debt securities of Canada, CMHC and CHT are rated triple-A by each of Moody's Investors Service, Inc., and Standard & Poor's Financial Services LLC.

CMHC is a Canadian agent crown corporation. All acts of CMHC are acts of Canada and all obligations issued by CMHC are obligations of and by Canada. CMHC is Canada's leading provider of residential mortgage insurance. CMHC also administers a mortgage-backed securities guarantee program, funds assisted housing programs for lower-income Canadians and offers housing-related loans and investments. CMHC enters into interest-rate and cross-currency swap transactions with banks and other counterparties, including our members primarily to manage its assisted housing funding obligations.

CHT is a special purpose trust used to issue Canada Mortgage Bonds (CMBs). While it is not an affiliate of CMHC and does not fit within the definition of a Crown corporation or of a qualified party (as proposed by the Committee), CHT was created under a mandate approved by the Government of Canada through the Department of Finance and is consolidated on CMHC's balance sheet. CHT was created to help ensure competition in the residential mortgage market and to help ensure an adequate supply of mortgage funding to financial institutions. CHT invests in NHA mortgaged-backed securities issued by our members, which are guaranteed as to principal and interest by CMHC, as well as other obligations issued or guaranteed by Canada. CHT issues CMB bonds and notes that are also fully guaranteed as to principal and interest by CMHC and, as such, represent obligations guaranteed by Canada.

CMHC advises CHT on its derivative transactions. As the financial services advisor to CHT, CMHC specifies the swap collateral requirements and rating thresholds for eligible swap counterparties. CHT uses swaps with counterparties, including our members to transform the sovereign-guaranteed mortgaged-backed securities' cash inflows into the required non-amortizing bond cash flows on the CMB notes, with fixed or floating interest payments and principal at maturity, through the use of customized interest rate swaps.

We understand that requiring CMHC and CHT to comply with all the requirements of a registrant under the contemplated derivatives regulatory regime would not be possible under CMHC's present authorities and the current CHT structure. For example, all credit support annexes that CMHC and CHT has entered into with our members that are Approved Swap Counterparties are one-way agreements under which CMHC and CHT accept collateral but do not post collateral. The one-way nature of the swap agreements was established by CMHC to reflect the sovereign nature of the transactions. As the swap counterparties in these OTC derivative transactions, our members are comfortable facing the Government of Canada exposure from a credit perspective. It should be further noted, that because CHT is a trust, which by nature has negligible capital, any requirement by CHT to post collateral to our members would likely result in CHT sourcing collateral from our members, therefore grossing up exposures.

We, therefore, urge the Committee to expand the exemption for government and government backed entities and programs.

Having regulatory requirements for derivatives related activities by any party whose actions or obligations are guaranteed by an exempted government is not necessary to carry out the purposes of the proposed regulations, which are principally to protect other parties from risks related to derivative transactions. Excluding swap transactions for government guaranteed programs and entities from the regulatory requirements when they are to carry out legitimate governmental purposes is desirable to ensure the governmental mandates and programs involved can continue to be carried out effectively.

We are available to further discuss.

Thank you.

Sincerely,

Linda Jeffery
MBSIA Chair

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The Bank of Nova Scotia
Bridgewater Bank
Canadian Imperial Bank of Commerce
Central 1 Credit Union
CMLS Financial Ltd
The Equitable Trust Company
First National Financial LP
Home Trust Company
Laurentian Bank of Canada
Macquarie Financial Ltd
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Maple Bank GmbH – Toronto Branch
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