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March 18, 2014

Alberta Securities Commission
Autorité des marches financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West,
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Anne-Marie Beaudoin,
Corporate Secretary
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800, square Victoria, 22e étage
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Montréal, QC H4Z 1G3
Consultation-en-cours@lautorite.qc.ca

Dear Sir/Madam:

Re: CSA Staff Notice 91-304, Model Provincial Rule – Derivatives: Customer Clearing and Protection of Customer Collateral and Positions

This submission is made by New Brunswick Investment Management Corporation ("NBIMC") in reply to the request for comments published on January 16, 2014 by the Canadian Securities Administrators ("CSA") on CSA Staff Notice 91-304, Model Provincial Rule – Derivatives: Customer Clearing and Protection of Customer Collateral and Positions.

Located in Fredericton, New Brunswick, NBIMC is the largest institutional investment manager in Atlantic Canada with assets under management of over $10.1 billion. In managing these assets on behalf of our pension and other public sector fund clients, our primary mission is to increase the long-term value of these funds with the least amount of risk. Our clients benefit from a globally diversified selection of 25 separate investment strategies covering fixed income, equities, inflation-linked securities and alternative investment asset classes.

We believe that securities regulation relating to the introduction of centralized clearing of derivatives should seek to encourage an efficient investment process at the lowest cost possible. We believe inclusive participation will be important to achieving these objectives.

General Comments

NBIMC has a strong focus on minimizing risks affecting our clients' investments. For this reason, we support the framework for open and transparent conduct that is evident from these proposed rules. We are particularly pleased to see disclosure and record-keeping requirements imposed on each of parties involved - the derivatives clearing agency ("DCA"), clearing member ("CM") and any applicable clearing intermediary ("CI") involved in the cleared derivatives transaction that will assist in the regulation of the clearing process. As well, we believe that the customer reporting requirements will assist investors to monitor and maintain a continuous counterparty due diligence process that will be helpful for overall credit risk management.

We did not see any explanation or guidance in the draft material that helps the reader understand how this proposed rule will operate in the event of bankruptcy or insolvency of the DCA, CM or CI or that any necessary legislative changes to the applicable insolvency regimes are being contemplated. Accordingly, our comments are unable to be as precise as we would have liked. This is an important issue however and deserves some additional explanation and exposure prior to adoption of centralized clearing rules.

Part 2 Section 4(2) requires that any DCA, CM or CI that is holding customer collateral directly must ensure it provides reasonable protection of the customer collateral. Reasonable protection is not defined in the Rule. We suggest that it would be helpful to define reasonable protection so that customers are fully aware of any risks associated with providing collateral before undertaking a derivative transaction.

We also note that customer collateral may be held by a DCA, CM or CI at a "permitted depository", which includes foreign banks, loan companies or trust companies provided they are regulated in a similar manner as would be applicable to such entities if they were located in Canada. This may introduce a risk of misunderstood local laws and regulation on the part of the assessor in determining acceptable permitted depositories. We also suggest that this introduces potential repatriation risk, and again raises concern as to the legal nature of the collateral holding.

Part 2 Section 9(1) provides the DCA, CM and CI with the ability to invest customer collateral in "permitted investments", with any investment loss borne solely by the DCA, CM and CI. We believe that such activity should be expressly provided for under the terms of the customers' clearing services agreement to ensure full transparency. Also, as all losses are borne solely by the DCA, CM and CI, we suggest that that there should be a customer reporting requirement for all investment income or gains to ensure customers are able to account for all changes in their customer collateral accounts.

We applaud the requirement for customers to acknowledge that they have received the disclosure of information relating to investment guidelines and policies, risks, rules and procedures for segregation and use of customer collateral in the event of a DAC default as well as the treatment of excess margin in the event of a default by the CM and CI. We believe that active acknowledgement by customers will assist in the appropriate attention being paid to the risks of central clearing.

Part 5 Section 30 provides the recommended process for the transfer of collateral and positions. The explanatory guidance suggests that the DCA obtain customer consent to acceptable alternative transferee clearing members. We agree that this is best obtained at the outset of a clearing relationship but suggest that this should also be periodically re-confirmed, such as annually. For customers such as ourselves who undertake rigorous and continuous counterparty risk monitoring processes, this would facilitate a periodic update.

Specific Comments

1. Should excess customer collateral be permitted to be held by clearing members and clearing intermediaries?

Provided that all DCAs, CMs and CIs are subjected to similar effective regulatory oversight, and provided that the collateral is protected in an insolvency or bankruptcy, we see no reason to not allow excess customer collateral to be held by a CM or a CI. We believe that each investor should be responsible for optimizing their process of provision and recall of excess collateral.

2. If all customer collateral was required to be held at a derivatives clearing agency should additional requirements for the holding of excess customer collateral be applied to derivatives clearing agencies?

We believe that the requirements associated with holding excess collateral at a CM or CI should also be applicable to a DCA if held by the DCA.

3. What specific role is it anticipated that a clearing intermediary will play in the context of clearing OTC derivatives and are the obligations on clearing intermediaries appropriate?

Most institutional investors focus on efficiency of transaction costs. As a CI is likely to add an extra layer of cost to a central clearing transaction, it is unlikely that a CI relationship would be used to a significant extent by institutional investors. This may mean that additional obligations on CIs to protect less sophisticated investors may be desirable.

4. Should a customer's cleared derivatives collateral held at the clearing member or clearing intermediary level be permitted to be commingled with other collateral of that customer such as collateral for futures transactions?

Without further clarification as to how this Rule will operate in the event of a DCA's, CM's or CI's bankruptcy, we do not believe that commingling of collateral for different purposes should be permitted. .

We appreciate the opportunity to comment on this proposed model rule. Please do not hesitate to contact me if you wish to discuss any aspect of this letter in further detail.

Sincerely,

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