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March 19, 2014

Re: CSA Staff Notice 91-304 Model Provincial Rule – Derivatives: Customer Clearing and Protection of Customer Collateral and Positions (the "Rule")[1]

INTRODUCTION

The Canadian Market Infrastructure Committee ("CMIC") welcomes the opportunity to comment on the Canadian Securities Administrators' ("CSA") Derivatives Committee (the "Committee") Proposed Model Provincial Rule - Derivatives: Customer Clearing and Protection of Customer Collateral and Positions dated January 16, 2014.

CMIC was established in 2010, in response to a request from public authorities, to represent the consolidated views of certain Canadian market participants on proposed regulatory changes. The membership of CMIC consists of the following: Bank of America Merrill Lynch, Bank of Montreal, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Canadian Imperial Bank of Commerce, Deutsche Bank A.G., Canada Branch, Healthcare of Ontario Pension Plan, HSBC Bank Canada, JPMorgan Chase Bank, N.A., Toronto Branch, Manulife Financial Corporation, National Bank of Canada, OMERS Administration Corporation, Ontario Teachers' Pension Plan Board, Royal Bank of Canada, The Bank of Nova Scotia, The Fédération des Caisses Desjardins du Québec, and The Toronto-Dominion Bank.

CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian OTC derivatives market. The membership of CMIC has been intentionally designed to

[1] Canadian Securities Administrators, CSA Staff Notice 91-304 Model Provincial Rule – Derivatives: Customer Clearing and Protection of Customer Collateral and Positions (January 16, 2014). Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20140116_91-304_derivatives-clearing-protection.pdf

present the views of both the 'buy' side and the 'sell' side of the Canadian OTC derivatives market, including both domestic and foreign owned banks operating in Canada. As it has in all of its submissions, this letter will reflect the consensus of views within CMIC's membership about the proper Canadian regulatory regime for the OTC derivatives market. However, individual CMIC members (or groups of them) may be submitting separate submissions with respect to their additional individual comments and concerns with the Rule.

OTC derivatives are an important product class used by both financial intermediaries and commercial end-users to manage risk and exposure. Systemic risk oversight of the OTC derivatives markets is an essential component of the long term financial stability and growth of Canadian financial markets and their participants.

CMIC appreciates the consultative approach being taken by the CSA in considering the proposed regime for the protection of customer collateral and positions. CMIC believes that this approach will lay the foundation for the development of a Canadian regulatory structure[2] that will satisfy Canada's G20 commitments by addressing systemic risk concerns in OTC derivatives markets.

OVERVIEW

As mentioned in our prior CSA consultation papers[3], CMIC has endorsed harmonization of Canadian OTC derivatives rules with global rules and has encouraged the CSA to continue to work closely with its global counterparts and other international bodies towards the common goal of meeting the G20 commitments. Having a Canadian regime that is not aligned with global standards would place Canadian participants at a severe competitive disadvantage. For example, rules relating to the protection of client collateral are already in force in the US. To the extent the Canadian rules are more restrictive than the US rules, it may not be feasible or economical for clearing members, clearing intermediaries or derivatives clearing agencies ("central clearing counterparties" or "CCPs") to offer clearing services to market participants subject to the Canadian rule. Further, we continue to emphasize the need for coordination and cooperation between federal and provincial and territorial

[2] References to "regulation" or "regulators" within this document will be considered to include market, prudential and systemic risk regulators.

[3] Response of CMIC dated September 9, 2011 to the consultation paper relating to OTC derivatives trade repositories. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20110909_91-402_cmic.pdf;
Response of CMIC dated January 25, 2012 to the consultation paper on surveillance and enforcement. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20120125_91-403_cmic.pdf;
Response of CMIC dated April 10, 2012 to the consultation paper on segregation and portability in OTC derivatives clearing. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20120410_91-404_cmic.pdf;
Response of CMIC dated June 15, 2012 to the consultation paper on end user exemptions from certain regulatory requirements. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20120615_91-405_cmic.pdf;
Response of CMIC dated September 21, 2012 to the consultation paper on central clearing counterparties (the "CCP Response Letter"). Available at http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20120921_91-406_cmic.pdf;
Response of CMIC dated February 4, 2013 to the model rules (the "Initial Model Rules") on product determination (the "Initial Model Scope Rule") and trade repositories and data reporting (the "Initial Model TR Rule"). Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20130204_91-301_cmic.pdf;
Response of CMIC dated June 17, 2013 to the consultation paper relating to registration of derivatives market participants. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20130617_91-407_cmic_en.pdf.

regulators to allow each level of government to discharge effectively its respective jurisdictional responsibilities in relation to OTC derivatives in a harmonized manner.

In our CCP Response Letter,[4] CMIC supported the segregation of customer collateral at each level of central clearing, that is, at the CCP level, the clearing member level and clearing intermediary level, as an essential feature of OTC derivatives clearing. We are pleased that the Rule supports this degree of segregation. However, comprehensive segregation rules without appropriate legislative infrastructure will not necessarily result in an effective framework for centrally clearing OTC derivative transactions entered into by Canadian market participants. As noted in our response letter to CSA Staff Notice 91-303[5] (submitted today concurrently with this response letter) (the "Mandatory Clearing Response Letter"), CMIC recommends that certain legislative amendments are needed in order to accommodate effective central clearing of OTC derivatives, including with respect to client clearing.

MODEL RULE – DISCUSSION

Definition of Initial Margin

The definition of "initial margin" in the Rule only includes collateral required by a CCP to cover potential future exposure over an appropriate close-out period in the event of default. However, the definition does not include any additional margin required under the CCPs rules to manage credit exposures to its participants (other than exposures resulting from changes in market prices which is covered under the definition of "variation margin"), such as liquidity multipliers. CMIC recommends that the definition of "initial margin" be amended accordingly.

Use of Customer Collateral

The Rule prohibits a clearing intermediary, a clearing member or a CCP from using customer collateral of a customer, other than in connection with (i) margining, guaranteeing, securing, settling or adjusting cleared derivatives of such customer, or (ii) securing or extending the credit of such customer.

Further, the Rule prohibits a clearing intermediary, a clearing member or a CCP from imposing a lien on a customer's positions or customer collateral, other than a lien resulting from a cleared derivative in the customer account in favour of such customer or in favour of the clearing member, clearing intermediary or CCP responsible for clearing the cleared derivatives of the customer.

These prohibitions limit the ability of a clearing intermediary or clearing member to (i) rehypothecate any excess margin held by such clearing intermediary or clearing member, and (ii) offer collateral transformation services to customers. In CMIC's view, the Rule and the explanatory guidance should expressly allow the rehypothecation of excess margin (to the extent excess margin is held by a clearing member or clearing intermediary) as agreed between such clearing member or clearing intermediary and the customer. While CMIC generally agrees that the customer may, in certain circumstances be in a somewhat better position if excess margin were held by a CCP (see our response below to the Committee's first question), it is CMIC's view that, as a matter of contract between a customer and the clearing intermediary or between the customer and clearing member, market participants should have the right to deal with excess collateral as they deem appropriate without restriction.

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[4] *Ibid.*

[5] Canadian Securities Administrators, CSA Staff Notice 91-303 Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives (December 19, 2013). Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20131219_91-303_mandatory-counterparty-clearing-derivatives.pdf.

Further, the Rule and explanatory guidance should expressly allow a clearing intermediary or a clearing member to offer collateral transformation services to the customer. The ability to transform or convert one type of collateral into a form of collateral acceptable to CCPs is crucial for Canadian market participants. For a smaller market like Canada, the need to maintain flexibility by way of collateral transformation is of particular importance. For example, global CCPs may not accept Canadian dollar-denominated securities in which Canadian market participants typically invest, such as debt obligations of provincial governments or NHA-MBS securities. Collateral transformation will allow Canadian market participants to meet the collateral requirements of CCPs without having to liquidate assets. However, based on the definition of "customer collateral" under the Rule, both the original collateral delivered by a customer to a clearing member as well as the transformed collateral delivered by the clearing member to the CCP would be "customer collateral" under the Rule. This means that the clearing member would be required to segregate such collateral and would not be able to reuse it. This result would be uneconomical to the clearing member (and ultimately the customer). Instead of using its clearing member to perform transformation services, a customer could enter into a repurchase agreement with a third party in order to transform ineligible collateral for cash and then deliver that cash to the clearing member. Such repurchase transaction would not be subject to the Rule. In CMIC's view, imposing such a distinction is inappropriate. In this area, CMIC supports freedom of contract between a clearing member (or clearing intermediary, as applicable) and a customer as opposed to regulating a limiting result. A clearing member should be able to perform the transformation service on the same basis as third parties and have the ability, if agreed to between the clearing member and the relevant customer, to re-use the collateral delivered to it by the customer.

Holding of Customer Collateral

The Rule provides that a clearing intermediary, clearing member or CCP must "hold" customer collateral either directly or through one or more customer accounts at a permitted depository. Permitted depository is defined in the Rule to mean (a) a bank, (b) a federal trust company, (c) a provincial loan or trust corporation, (d) a financial services cooperative, (e) a recognized or exempt clearing agency and (f) a foreign entity that carries on business similar to the entities listed in (a), (b) or (c), provided the foreign entity is regulated in the foreign entity's home jurisdiction in a similar manner to such entities.

CMIC submits that it is critical that the "permitted depository" definition capture all entities through whom collateral is currently held by global CCPs such as the Chicago Mercantile Exchange Inc. (CME) or LCH.Clearnet Limited (LCH), in addition to Canadian CCPs, such as Canadian Derivatives Clearing Corporation (CDCC). In addition, this definition should also be broad enough to cover all potential securities intermediaries within the indirect holding system[6] applicable to such collateral. Accordingly, CMIC has the following comments:

(i) the definition of "permitted depository" does not include investment dealers which are subsidiaries of banks, and should be revised to include such entities; and

(ii) the definition of "permitted depository" does not cover certain securities intermediaries for common types of customer collateral, for example, it does not include a

[6] An indirect holding system is one in which securities are held through a securities intermediary. For example, a participant in Canadian Depository for Securities Limited (CDS) has an indirect holding in book based securities and their securities intermediary is CDS. Brokers with accounts with a participant have an indirect holding through the participant as securities intermediary, and the asset the brokers are holding is an interest that the participant has against CDS. Compare this to a direct holding system where the holder of a security is the person with rights against the issuer of the securities. For example, CDS is a direct holder of a certificated security deposited with it, or of an uncertificated security registered in its name with the issuer (or its transfer agent). Similarly, a shareholder who holds physical share certificates of a private company is a direct holder, or a share certificate registered in the name of a shareholder is a direct holding of such shareholder.

fixed income clearing agency such as Euroclear (in other words, a clearing agency similar to CDS that is not acting in the capacity as a derivatives clearing agency). The definition should be revised to include such entities, otherwise the types of collateral which a Canadian customer can pledge will be further restricted.

In addition, the Rule provides in section 4(3)(c) that a clearing intermediary, clearing member or CCP holding customer collateral at a permitted depository must "ensure that the permitted depository treats all property in the customer account as customer collateral". Section 4(3)(b) already provides that the clearing intermediary, clearing member or CCP must ensure that the customer account clearly identifies the name of each customer or otherwise shows that the customer account is segregated for and on behalf of one or more customers. Therefore, it is not clear what is meant by "ensuring that the permitted depository treats all property in the customer account as customer collateral" as this assumes that it means more than holding the collateral in segregated accounts identified as a customer account. The meaning of this additional requirement should be clarified in the explanatory guidance or section 4(3)(c) should be deleted from the Rule.

Finally, as mentioned in our CCP Response Letter and our Mandatory Clearing Rule Response Letter, under Canadian law, parties are unable to perfect a security interest granted by a Canadian market participant in cash collateral by way of control. As a result, it has become market standard for parties to rely on the absolute transfer and right of set-off mechanic in order to have priority with respect to cash collateral. When using that mechanic, in order to avoid recharacterization, it is recommended that the "secured party" treat the cash as property of the "secured party" and not as property of the "pledgor". Best practices dictate that the account in which such cash is held should not be in the name of the "pledgor" or refer to the cash as belonging to the "pledgor". Accordingly, the requirement under the Rule that all customer collateral be held in a segregated account that clearly identifies the name of each customer or otherwise indicates that the property in the account is customer collateral may jeopardize the absolute transfer characterization of cash in such circumstances. CMIC is not suggesting that cash collateral be excluded from the requirements under section 4 of the Rule. We are merely re-iterating how crucial it is that the proposed amendments to the personal property security legislation be made as described in our CCP Response Letter. Without these amendments, some clearing brokers may be reticent to accept Canadian counterparties as customers or may require that such customers grant a security interest/hypothec over their assets which will cause substantial operational issues.

Clearing Member Maintenance of Customer Account Balance

Section 6 of the Rule requires clearing members to, "at all times", maintain property in customer accounts at CCPs in an amount that is at least equal to the total amount of collateral required by the CCP for the cleared derivatives of each clearing member's customer(s). The corresponding section of the explanatory guidance states that a clearing member may deposit its own funds into the customer's account pursuant to section 7 of the Rule to prevent a margin deficit. We understand that, to cover any such margin deficit, the current market practice is that each derivatives clearing agency will issue a direct debit upon its clearing members for any shortfall in customer collateral value at the start of each day and assets will be posted to cover the client shortfalls. Accordingly, it may be the case that intraday there will be a margin deficit in a customer's account. Therefore, section 6 and the explanatory guidance should be revised to clarify that a CCP's margin calls may take place once each day and that clearing members would not be required to cover margin deficits more frequently than once each day.

Eligible Collateral

As mentioned above, global CCPs may not always accept Canadian dollar-denominated securities in which Canadian market participants typically invest, such as debt obligations of provincial governments or NHA-MBS securities. Or, it may be the case that such collateral is accepted but there are relatively low concentration limits placed on each clearing member in respect of such collateral. If CCPs do not accept certain Canadian dollar denominated assets as eligible collateral, it may become disproportionately expensive for Canadian market participants to clear their OTC derivative transactions. Canadian market participants will need to resort more often than their peers in other jurisdictions to expensive transformation services offered by clearing members or be faced with liquidating assets which may have been purchased for medium or long term investment. This has the effect of restricting Canadian market participants from accessing clearing services or, due to increased costs, changing the way in which Canadian end-users manage risk.

In addition, global CCPs currently calculate initial margin requirements on a portfolio basis with the resulting initial margin requirement typically being denominated in US dollars, British Pounds, or Euros. In such cases, even a portfolio consisting only of Canadian dollar-denominated trades could give rise to an initial margin requirement in a currency other than Canadian dollars. This will expose Canadian market participants to foreign exchange risk which would not otherwise be the case if the derivatives transactions were not being centrally cleared. CMIC submits that this should not be the case. The purpose of central clearing OTC derivative transactions is to reduce systemic risk and increase transparency, and not to increase risks to counterparties. Accordingly, CMIC believes that Canadian market participants should be given a choice to have initial margin requirements calculated in Canadian dollars.

The CSA will be responsible for considering applications from CCPs for recognition under applicable provincial law (or exemption from such recognition). This is an important responsibility. CMIC strongly encourages the CSA to work with CCPs to ensure that: (i) acceptable types of collateral are expanded by the CCP to include highly-rated Canadian assets in which Canadian market participants typically invest, such as Canadian dollar cash, provincial bonds, Canadian federal and provincial nominal bonds, and Canadian real return bonds, (ii) any concentration limits imposed by the CCP on such assets are not unduly restrictive, (iii) Canadian market participants are given the choice of having initial margin requirements assessed and managed in Canadian dollars, and (iv) Canadian market participants are given the choice of delivering Canadian denominated assets to collateralize Canadian dollar obligations under cleared derivative transactions. Prior to including any such requirements in the Rule, the CSA should ensure that CCPs are able to comply with such requirements.

Reporting and Disclosure

<u>Harmonization</u>

CMIC applauds the approach taken by the Committee for the protection of customer collateral and positions. We note that the approach taken is generally consistent with Dodd-Frank, which satisfies our goal of global harmonization. If there are any inconsistencies with Dodd-Frank, in particular with respect to reporting requirements by a clearing agency, CMIC recommends that the Committee work with global CCPs in removing such inconsistencies unless there are compelling reasons why a different approach should be adopted. Further, we understand that there are ongoing discussions between ESMA and the CFTC on the different collateral segregation requirements under EMIR (i.e., offering clients a choice between omnibus and individual account segregation) and Dodd-Frank (LSOC segregation) and that changes may be made in the near future order harmonize the collateral segregation requirements under both regimes. CMIC therefore suggests that the CSA may wish to consider not finalizing the Canadian client collateral segregation rules until such changes are made. This approach is necessary to ensure that Canadian standards are aligned with global regulatory

requirements and thereby avoids making clearing services for Canadian market participants significantly more expensive, more complicated and even inaccessible.

CMIC believes that one area in which Canadian standards should differ from Dodd-Frank is the type of information provided by clearing members and clearing intermediaries to customers in order to allow customers to properly assess and manage risk. Section 28(5) sets out the content of the daily report to be provided to customers. It is not clear whether the reporting requirement applies in respect of (a) each individual derivatives transaction or an aggregate net exposure for all derivatives transactions for a customer, and (b) each individual type of customer collateral or collateral on an aggregate basis regardless of collateral type. CMIC submits that this needs to be clarified in the Rule. Further, CMIC submits each customer should be entitled to receive a report which sets out which assets, and the amount of such assets, that were received by a CCP as collateral for such customer's trade. As mentioned above, a clearing member can perform transformation services and therefore, the type and value of collateral delivered by a customer to a clearing member to satisfy margin requirements may take a different form than the type and value of collateral delivered by a clearing member to a CCP in respect of such customer. Unless the customer receives a report setting out the specific types (including tenors), and related amounts, of collateral delivered to a CCP for such customer, the customer cannot properly model its risk exposure in respect of its cleared derivatives transactions.

Similar to the requirements under EMIR[7], CMIC therefore submits that paragraph 28(5)(d) of the Rule should be revised to include asset type and quantity (in addition to the market value) of customer collateral that is posted by a clearing member to a CCP on behalf of a customer.

Drafting

We note the following drafting comments under Part 4 of the Rule:

- Section 25(1) refers to the "following prior written disclosure", but does not indicate what the word "prior" refers to – is it prior to clearing the first transaction for such clearing member? Or prior to a company becoming a clearing member?

- Section 27(2) provides that a CCP must confirm that the information it receives from a clearing member is complete and received in a timely manner. However, the Rule does not indicate when the CCP must provide this confirmation nor the method of confirmation.

- Section 29(3) provides that a CCP, clearing member and clearing intermediary must provide a quarterly report to the applicable securities regulator if it invests customer collateral. However, the Rule does not state when such quarterly report is due.

Form F1A: Customer Collateral Report: Clearing Member

CMIC requires clarification as to how the average market value is to be calculated. For example, please explain if the average value is to be calculated by dividing the total value as at the end of the reporting period (i.e. calendar month) by the actual business days in a calendar month, or if clearing members must use weighted collateral market value as at the end of Friday for purposes of Saturday and Sunday and then divide the total value as at the end of the reporting period by actual number of calendar days in the month.

Responses to Questions Posed by the Committee

[7] Article 39 of EU Regulation No. 648/2012 (July 4, 2012). Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF. See also the answer to 8(d) on page 37 of European Securities and Markets Authority, "Questions and Answers – Implementation of the Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR), ESMA/2014/164. Available at: http://www.esma.europa.eu/system/files/2014-164_qa_vi_on_emir_implementation_-_11_february_14.pdf.

1. Should excess customer collateral be permitted to be held by clearing members and clearing intermediaries? Some jurisdictions believe that all collateral including excess collateral should flow directly to and be held at a derivatives clearing agency.

> It is CMIC's understanding that, from a credit perspective and as a matter of Canadian law, there may be some advantages to the customer if excess collateral were to be held at the CCP. There is some uncertainty as to how customer collateral held in the name of a clearing member or a clearing intermediary may be treated on the insolvency of a clearing member or clearing intermediary, even if such customer collateral is segregated as required under the Rule. This is particularly the case if the clearing member transfers collateral to the customer account on behalf of the customer (as contemplated in section 7(1) of the Rule) but becomes bankrupt before such collateral is transferred to the CCP. If that were the case, the customer account could be holding customer collateral in the name of the insolvent clearing member as well as property in which such clearing member has a residual interest. Although property transferred to the customer account pursuant to section 7(1) is deemed to be customer collateral by virtue of section 7(2), such deeming provisions will not necessarily be respected under federal insolvency legislation. Similarly, if a clearing member or clearing intermediary withdraws customer collateral (as contemplated in section 7(3) of Rule) but becomes bankrupt before such collateral is transferred to the CCP, the withdrawn collateral may be considered property of the estate of the insolvent clearing member or clearing intermediary.
>
> Note that this slight risk must be analyzed by reference to the bankruptcy laws that would be applicable upon the insolvency of a particular clearing member. Therefore, it may be the case that if the clearing member were not a Canadian entity and excess collateral is pushed to the CCP, the applicable bankruptcy laws may not recognize segregation of excess collateral using the LSOC approach.
>
> In CMIC's view, notwithstanding the above risks, the treatment of excess collateral should be a matter of contract between the customer and the clearing intermediary or between the customer and clearing member. There needs to be flexibility with respect to the treatment of excess collateral, including the ability for the clearing member or clearing intermediary, as applicable, to rehypothecate such excess collateral if agreed to by the customer.

Drafting: The definition of "excess margin" defines it as customer collateral *required by* [emphasis added] a clearing member in excess of the amount required by the CCP for a customer. However, it may be the case that the actual value of property *delivered to* a clearing member is less than what is required by a clearing member. It is CMIC's view that this defined term should be restated as follows:

> "excess margin" means the customer collateral delivered to a clearing member or clearing intermediary by a customer in excess of the amount required by the derivatives clearing agency for the cleared derivatives of such customer.

Further, the definition of "excess margin" and the explanatory guidance should be amended to clarify that any collateral delivered by a customer to a clearing member or clearing intermediary which is transformed should not be considered "excess margin". Rather, it is the transformed collateral (i.e. collateral delivered to the CCP by the clearing member) that is to be considered "excess margin" under the Rule and thus become subject to the segregation and portability requirements of the Rule.

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?

> In CMIC's view, additional requirements for the holding of excess customer collateral at the CCP are not required. The key point is that such collateral is segregated from the property of the clearing member and the property of the CCP, treated in a manner consistent with other

customer collateral held at the CCP and reported separately to clearing members, clearing intermediaries and customers.

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?

CMIC anticipates that investment dealer affiliates of swap dealers or prime brokers offering clearing services through investment dealer affiliates may be "clearing intermediaries" under the Rule. It is also possible that, for operational and practical reasons, a central credit union might act as a clearing intermediary on behalf of its individual member credit unions. In CMIC's view, the obligations placed on clearing intermediaries are appropriate.

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?

We note that such commingling is not currently market standard as bankruptcy laws and CCP rules do not support such an approach in many jurisdictions. However, we are cognizant that the global regulatory landscape in this area may be changing and therefore, it is CMIC's view that the CSA should maintain flexibility in the Rules and permit, but not require, such commingling.

CONCLUSION

CMIC believes that continued engagement with the CSA is fundamental to the development of a regulatory framework that meets the G20 commitments and achieves the intended public policy purposes. Thoughtful inclusion by regulators of the points raised throughout this letter will meaningfully contribute to the success of the development of the final rules relating to the protection of customer collateral and positions in the context of clearing OTC derivatives.

As we have noted in our prior submissions, each subject relating to OTC derivatives regulation is interrelated with all other aspects. As such, CMIC reserves the right to make supplementary submissions relating to the Rule following publication of further consultation papers and model and draft rules.

CMIC hopes that its comments are useful in the development of rules relating to the protection of customer collateral and positions in the context of OTC derivatives clearing and that the CSA takes into account the practical implications for all market participants who will be subject to such rules. CMIC welcomes the opportunity to discuss this response with representatives from the CSA. The views expressed in this letter are the views of the following members of CMIC:

Bank of America Merrill Lynch
Bank of Montreal
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Deutsche Bank A.G., Canada Branch
Healthcare of Ontario Pension Plan
HSBC Bank Canada
JPMorgan Chase Bank, N.A., Toronto Branch
Manulife Financial Corporation
National Bank of Canada
OMERS Administration Corporation

Ontario Teachers' Pension Plan Board
Royal Bank of Canada
The Bank of Nova Scotia
The Fédération des Caisses Desjardins du Québec
The Toronto-Dominion Bank