Canadian Market
Infrastructure Committee

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
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May 13, 2015

Dear Sirs/Mesdames:

Re: Proposed NI 94-101 (the "Proposed National Instrument") and Proposed Companion Policy 94-101CP (the "Proposed Companion Policy") *Mandatory Central Counterparty Clearing of Derivatives*

INTRODUCTION

The Canadian Market Infrastructure Committee ("**CMIC**")[1] welcomes the opportunity to comment on the Proposed National Instrument and the Proposed Companion Policy.[2]

[1] 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 members of CMIC who are responsible for this letter are: Bank of America Merrill Lynch, Bank of Montreal, Bank of Tokyo-Mitsubishi UFJ (Canada), Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Canadian Imperial Bank of Commerce, Deutsche Bank A.G., Canada

General Comments

CMIC supports the efforts of the CSA to implement Canada's G20 commitment in relation to the central clearing of OTC derivatives. However, given the relatively small size of the Canadian market, we strongly believe that a more principles-based approach, rather than the pure rules-based approach set out in the Proposed National Instrument, would be more effective. CMIC submits that a more broadly based approach that is focused on large financial entities that are local counterparties is appropriate in Canada and would be consistent with Canada's G20 commitment. Australia is another comparable smaller jurisdiction that has taken a more broadly-based approach to its clearing regime.[3]

CMIC urges Canadian regulators to re-evaluate their approach to mandatory clearing in the Canadian OTC derivatives market. The Proposed National Instrument appears to be predicated on the assumption that mandatory clearing for all but the smallest non-financial end-users of OTC derivatives will create maximum systemic risk benefits. CMIC disagrees with such an approach. The Proposed National Instrument extends mandatory clearing to small financial institutions (such as pension plans, insurance companies etc.) the vast majority of which are effectively end-users of OTC derivatives. In the current environment, such an approach would create serious concerns relating to access to clearing at a reasonable cost, legal complexity, increased costs and operational limitations. It is noteworthy that many Futures Commission Merchants ("**FCMs**") have very recently exited the market[4]. As a result of the current market realities of low interest rates and increased regulatory burdens, many FCMs, in particular smaller ones, are being challenged by falling fees and high operating costs, including costs of regulatory compliance.[5] This means that it is becoming increasingly difficult for non-clearing members to access clearing services.

The case for excluding Other Market Participants from the application of the clearing regime is not simply a function of the regulatory burden.[6] Taking an approach that is focused on large financial entities that are local counterparties is supported by the very recent and growing withdrawal of access to clearing at a reasonable cost. This trend is not only seen in formal withdrawals from the market,

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Branch, Fédération des Caisses Desjardins du Québec, 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, Public Sector Pension Investment Board, Royal Bank of Canada, Sun Life Financial, The Bank of Nova Scotia, and The Toronto-Dominion Bank. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian over-the-counter ("**OTC**") derivatives market. The membership of CMIC has been intentionally designed to 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 reflects the consensus of views within CMIC's membership about the proper Canadian regulatory regime for the OTC derivatives market.

[2] Available at: https://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20150212_92-101_roc-derivatives.pdf.

[3] Australian Government Proposals Paper, "Implementation of Australia's G-20 over-the-counter derivatives commitments: AUD-IRD central clearing mandate." July 2014. Available at: http://www.treasury.gov.au/~/media/Treasury/Consultations%20and%20Reviews/Consultations/2014/Central%20clearing%20of%20OTC%20AUD/Key%20Documents/PDF/Proposals-Paper-20140707.ashx.

[4] (i) MarketsMedia. "FCMs to Exit Market." 11 June 2014.. Available at: http://marketsmedia.com/fcms-exit-market/ (ii) Rennison, Joe. Risk.net. "Nomura reviews viability of swaps clearing business." 24 April 2015. Available at: http://www.risk.net/risk-magazine/news/2405748/nomura-reviews-viability-of-swaps-clearing-business.

[5] Commissioner J. Christopher Giancarlo's testimony before the U.S. House Committee on Agriculture, Subcommittee on Commodity Exchange, Energy, and Credit, April 4, 2015, pg 26. Available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlos-5.

[6] By "Other Market Participants" we are referring to counterparties that are end users or effectively end users and includes smaller financial institutions, pension plans and other non-systemically important financial entities that are using derivatives purely for operating risk mitigation purposes and are not acting in a market making function.

but also by pricing that in effect makes it uneconomic for smaller market participants to hedge. If Other Market Participants are forced to clear, they may not be able to access clearing at a reasonable cost and therefore may not be able to hedge their operating risks. This increases, not decreases, overall risks in the OTC derivatives market. By excluding Other Market Participants from the clearing regime, CMIC submits that Other Market Participants will have a greater likelihood of being able to continue to be able to hedge their risks.

Of even greater importance in analyzing the advantages of a clearing regime that focuses on the large financial entities is the benefit of reinforcing the underlying purpose of establishing a clearing regime, namely, systemic risk mitigation. The goal of implementing a mandatory clearing regime is to mitigate systemic risk in derivatives markets. CMIC submits that goal is achievable by limiting the regime to large financial entities. Other Market Participants, especially the smaller ones, by definition, do not pose systemic risk. This point is particularly important given the evolving nature of the derivatives market both in Canada and globally, especially the recent and accelerating trend towards various banks choosing to withdraw from the market. The derivatives market is increasingly being characterized and challenged by ongoing access to clearing at a reasonable cost and by increasing concentration of clearing services to a smaller number of large clearing banks. Regulatory reform should be designed in a manner that achieves maximum mitigation of systemic risk but does so with regard to market realities. CMIC submits that it would be counter-productive to the key systemic risk mitigation goal of clearing by creating a regime that encourages increasing concentration and discourages Other Market Participants from having clearing access at a reasonable cost. CMIC submits that Other Market Participants need to be able to continue to be properly hedged against their operating risks. This very point has been recognized by Australian authorities and is one of the prime reasons Australian authorities decided to adopt a more broadly-based clearing regime focused on large financial entities. Page 47 of the Australian Council of Financial Regulators report states:

> "the Regulators are not convinced of the public policy case for introducing mandatory central clearing of OTC derivatives for non-dealers . . . . With few exceptions, non-dealers' activity in OTC derivatives is relatively limited and motivated primarily by hedging of underlying cash flows and exposures. Accordingly, even though there may be some systemic risk reduction benefit from central clearing by non-dealers, it is likely to be limited. Indeed, where small financial institutions and especially non-financial entities have restricted access to liquid assets to meet CCPs' initial and variation margin obligations, new sources of risk could emerge."[7]

CMIC's view is that the appropriate approach to mandatory clearing in Canada should be more principles-based and gradual. At the very least, CMIC submits that, initially, the regime should only require large Canadian financial institutions who are dealers in OTC derivatives to clear where practicable, allowing time for clearing incentives to take-hold and for a broader range of clearing solutions to develop.[8] It would be more effective and less complex to take the time to study at least three years' worth of data and then mandate only systemically important counterparties to centrally clear mandated transactions, as opposed to requiring effectively all market participants to clear and

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[7] Council of Financial Regulators (Comprised of the Reserve Bank of Australia, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, and The Treasury. "Report on the Australian OTC Derivatives Market". April 2014, pg. 3. Available at: http://www.cfr.gov.au/publications/cfr-publications/2014/report-on-the-australian-otc-derivatives-market-april/index.html.

[8] This is different from the phase-in approach for NI 94-101 suggested by the CSA. The proposed CMIC approach only mandates clearing, where practicable, for large financial institutions who are dealers and therefore no exemptions would be required.

then rely on exemptions to exclude end-users. Studying three years of trade data will also allow regulators to study market changes and assess the merit of our serious concerns about smaller market participants. CMIC submits that once the three years of trade data are available, the CSA should assess those data in light of the disadvantages of imposing mandatory clearing on Other Market Participants (especially smaller market participants) having regard to the various concerns noted above, namely, access to clearing at a reasonable cost, other clearing solutions that have appeared in the market by that time, the absence of material systemic risks being posed by such market participants, the regulatory burden that would be imposed on such participants, and the enhancement of systemic risk mitigation by ensuring that such market participants are not discouraged from continuing to hedge their operating risks. These potential disadvantages of a universal clearing regime need to be measured against what we submit are very marginal and immaterial advantages of requiring Other Market Participants to be subject to mandatory clearing. Alternatively, CMIC believes that it would be appropriate to adopt an approach similar to the Australian approach,[9] which is to mandate central clearing only for certain derivatives denominated in certain currencies for major domestic and foreign banks. In addition to Australia, we would also note that a more limited clearing regime focused on large financial entities is also being adopted in Japan.[10]

Another reason for advocating a more principles-based approach is that the current proposed rules-based approach will inevitably conflict with the mandatory clearing regime in the US or in Europe, given that those two regimes are different. Mandating clearing for Canadian local counterparties under the Proposed National Instrument will therefore bifurcate the Canadian and global OTC derivatives markets. Moreover, as Canadian market liquidity is heavily dependent on outside participants, a Canadian clearing mandate that extends to either products or participants, which are not subject to clearing in other jurisdictions, risks further withdrawal by outside participants from the Canadian market, thereby harming liquidity and increasing concentration. It is CMIC's view that, if a more principles-based approach is adopted, such as the one suggested above, OTC derivatives trades cleared under such approach would provide significant systemic risk management benefits.

CMIC is also of the view that mandatory clearing requirements should not come into effect in Canada until after such requirements (including which products are designated for mandatory clearing) are fully in force in major jurisdictions such as the U.S. and Europe. The smaller Canadian market reform cannot, practically, be at the forefront of developing rules relating to mandatory clearing. Canadian rules should instead "plug-in" to global market rules, including under Dodd-Frank and EMIR. There is a potential for market bifurcation and fragmentation between Canadian and global markets if Canadian rules cannot fully align with, or defer to, foreign regimes. Such fragmentation could drive global capital away from the Canadian market.

A final reason why the Canadian mandatory clearing rules should not become effective until the mandatory clearing rules in other major jurisdictions become effective is that additional time will allow for an effective Canadian substitute compliance regime to be developed. This suggestion, for example, anticipates that clearing rules in Europe will be a permitted jurisdiction for substitute compliance under section 5(5) of the Proposed National Instrument. Again, for example, if Canadian rules come into force before the EMIR rules, local counterparties in Canada that are preparing to mandatorily clear under EMIR would then need to clear pursuant to the Canadian rules and may not have sufficient resources or technological ability to do so.

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[9] *Supra,* note 3.

[10] Clifford Chance, "Recent developments in OTC derivatives regulations in Japan". October 2014. Available at: http://www.cliffordchance.com/briefings/2014/10/recent_developmentsinotcderivative.html.

Specific Comments on National Instrument

If Canadian regulators decide not to adopt a more principles-based approach as CMIC suggests above, and instead decide to adopt a rules-based approach and proceed with the Proposed National Instrument, we have the following comments thereon.

1. Harmonization

As mentioned in our prior response letters to other proposed rules relating to OTC derivatives, CMIC feels very strongly that these mandatory clearing rules should be harmonized across all provinces. Otherwise, if there are differences among provincial rules, those differences will create confusion and potentially conflicting rules. Accordingly, in this respect, CMIC fully supports the national instrument approach taken by the CSA.

In addition, CMIC is of the view that the OTC derivatives rules should be consistent within each Province's rules. For example, the definition of "affiliated entity" should be the same. We note, for example, that the definition of "affiliated entity" in the Proposed National Instrument is different than the definition in the recent proposed multilateral instrument on trade reporting.[11]

Finally, when determining whether a type of derivative should be a mandatorily clearable derivative, CMIC is of the view that a derivative should not be a mandatorily clearable deliverable unless it is a mandatorily clearable derivative in the US or in Europe. Having said that, however, CMIC submits that simply because a derivative is mandatorily clearable in the US or in Europe should not determine whether such derivative should be mandatorily clearable in Canada.

2. Personal Property Security Law Amendments

As we have mentioned previously,[12] any proposed OTC derivatives clearing regulatory regime in Canada is incomplete and inoperable unless Provincial personal property security law is amended to allow the perfection of security interests in cash collateral by way of control. The importance of this amendment cannot be over-emphasized. None of the models discussed in the Consultation Paper (i.e. the principal or agency central clearing model, or any of the four segregation models) is actually capable of functioning properly without these legislative changes. If these amendments are not made, clearing arrangements will not work effectively and will not achieve their intended purpose. Implementing these amendments will cause Canadian law to be harmonized with U.S. personal property security law in this respect. International clearing rules require this perfection to be achievable. If cash collateral is the only form of collateral required[13], the absence of a Canadian regime in relation to perfecting cash collateral by way of control will clearly reduce appreciably the ability of market participants to clear as foreign banks may not be prepared to take this risk, especially during moments of market distress. Furthermore, this legislative gap is not just relevant to the cleared market – it equally compromises the uncleared swap market.

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[11] Proposed Multilateral Instrument 91-101 "Derivatives: Product Determination" and Proposed Multilateral Instrument 96-101 "Trade Repositories and Derivatives Data Reporting". Available at: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy9/PDF/CSA_Multilateral_Notice_and_Request_for_Comment__January_21__2015/.

[12] CSA Consultation Paper 91-404 – "Derivatives: Segregation and Portability in OTC Derivatives Clearing". Available at: https://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20120210_91-404_segregation-portability.pdf.

[13] For example, see (i) LCH Clearnet SwapClear Service Rule Book, Section 1.7 (Variation Margin) (April 13, 2015) (Available at: http://www.lchclearnet.com/documents/731485/762691/procedure+2c-ot-misc_changes_13-04-15.pdf/cfdf27b9-a9b6-4bcc-97ea-66925044fcd2) and (ii) the Prudential Regulators re-proposed rules regarding margin requirements for uncleared swaps, Margin and Capital Requirements for Covered Swap Entities, 79 Fed. Reg. 57348 (Sept. 24, 2014) (Available at: http://www.occ.gov/news-issuances/federal-register/79fr57348.pdf).

As a business matter, we understand that the absence of such perfection and priority over cash collateral currently causes certain global banks and other financial institutions to impose higher pricing on trades involving Canadian counterparties to compensate for this Canadian risk. Since the relevant jurisdiction is the head office of the party posting collateral, ideally legislation in all Canadian jurisdictions should be similarly amended.

CMIC notes that the Quebec legislature has recently passed legislation[14] to address this issue and would urge the other provinces to follow suit.

3. Determination of Clearable Derivatives

The ultimate determination of derivatives that will be subject to mandatory clearing is arguably one of the most important aspects of derivative reform given the systemic risk implications. The process of making those determinations will need careful consideration and engagement with all Canadian regulatory authorities and all stakeholders.

As mentioned in the CSA Notice and Request for Comments[15] relating to the Proposed National Instrument, the CSA has indicated that, as part of the mandatory clearing determination process, it will publish for comment the derivatives proposed to be mandatorily clearable. The CSA further notes that "except for Quebec", the determination process is expected to follow the CSA's typical rule-making or regulation making process. There is no mention as to what this process will be in Quebec, other than the fact that the determination process will be made "by decision".

CMIC endorses the process of holding a commentary period for the public to comment on any derivative which is proposed to be subject to mandatory clearing. However, it is CMIC's view that there should be a minimum comment period of 60 days (for all provinces) and that this requirement should be expressly stated in the clearing rule. This will add an element of certainty to the mandatory clearing determination process and allow sufficient time for market participants to provide their input.

4. Definition of Hedging of Commercial Risk

Section 4 of the Rule sets out what is meant when a derivative is held for the purpose of hedging or mitigating commercial risk. One of the conditions that must be satisfied is that the derivative establishes a position which is intended to reduce risks relating to the commercial activity or treasury financing activity of the counterparty or of an affiliate and meets any of the tests set out in subparagraphs (i) and (ii). Subparagraph (ii) provides that the derivative covers the risk arising from the indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in subparagraph (i), resulting from fluctuation of "interest rates, inflation rates, foreign exchange rates or credit risk". The list of items at the end of subparagraph (ii) does not appear to cover all the risks which might impact the value of such assets, services, inputs, products, commodities or liabilities. For example, changes in commodity prices and equity prices are not referenced and may not otherwise be covered by the other factors listed in subparagraph (ii). Accordingly, CMIC recommends that section 4(a)(ii) of the Rule should be revised to read: "…resulting from fluctuation in interest rates, inflation rates, foreign exchange rates, credit risk, **commodity prices and equity prices**, and other similar rates, risks, levels and prices".

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[14] Bill No. 28, *An Act mainly to implement certain provisions of the Budget Speech of 4 June 2014 and return to a balanced budget in 2015-2016*. Effective January 1, 2016. Available at: http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-28-41-1.html.

[15] Proposed National Instrument, pg. 1391.

5. Expanding the End User Exemption

The primary purpose of mandating the clearing of standardized OTC derivatives is to mitigate systemic risk.[16] In CMIC's view, requiring Other Market Participants, especially smaller market participants, who are entering into transactions for hedging purposes, to clear such transactions is not efficient and does not significantly aid in the mitigation of systemic risk. As mentioned in our previous response letter, and as argued above in our "General Comments", small financial institutions enter into derivative transactions merely as a service to their commercial lending customers, and will then hedge that risk with a derivatives dealer. Those derivative transactions are therefore not speculative in nature and, overall, lower risk not only for the small financial institution itself but also systemically. Requiring small financial institutions to clear those transactions may cause such risks to be un-hedged, which benefits neither the financial institution, nor the Canadian financial system. Moreover, the transactions entered into with a small financial institution's commercial lending customers are often secured with non-liquid assets as part of the overall lending transaction. If such a hedging transaction between the small financial institution and a derivatives dealer is then required to be cleared, the small financial institution cannot simply pass along to its clearing agent the collateral received from its customer and, instead, must fund the collateral to be posted in other ways. This increases costs to the lending customer, potentially driving business away from smaller Canadian financial institutions.

Requiring all small financial entities to mandatorily clear their transactions creates market access issues. As noted above, due to various reasons including escalating costs and regulatory complexity, we understand that FCMs are withdrawing from the market or evolving to pricing models that make clearing access uneconomic for Other Market Participants. Such withdrawals and pricing models create a significant impediment to access clearing services, particularly for smaller financial entities.

We note that there is an exemption from mandatory clearing requirements for small financial entities under Dodd-Frank[17]. For the reasons outlined above, and in our introductory discussion in this letter under "General Comments", we think that such an exemption is appropriate in Canada for Other Market Participants, including small financial entities. CMIC submits that the precise form that this exemption takes should be data driven, based on a careful review by regulators of 3 years of trade reporting data relating to both cleared and uncleared trading activity. Also, as noted above, a study of those trade data in the context of the disadvantages enumerated above should be undertaken by the CSA. Subject to the outcome of that regulatory review of such trade data and the assessment of such disadvantages, as an initial proposal, CMIC's preliminary view is that, while an asset test is a possibility, the Other Market Participants exemption (especially for smaller financial entities) should be framed by reference to both cleared and uncleared trading volume, but excluding trading volumes relating to transactions that are not expected to be subject to mandatory clearing (for example, deliverable foreign exchange transactions). Only after a clear picture emerges of what the trade reporting data show can one make a reasonable assessment of the impact of the appropriate breadth of the Canadian mandatory clearing regime. As recommended in our comments above in the introductory discussion, CMIC's strong recommendation is to, at least initially, formulate a regime limited to large financial entities that are local counterparties. CMIC strongly recommends that Canadian regulators reconsider providing an exemption from mandatory clearing for Other Market Participants, especially smaller market participants.

6. Substitute Compliance

CMIC notes that the substitute compliance provision under Section 5(5) of the Proposed National Instrument is available only to guaranteed affiliates and not to any other entity organized under the

[16] CSA Notice and Request for Comment Proposed NI 94-101. Pg. 1390.

[17] See section 2(h)(7)(D)(i) of the *Commodity Exchange Act.*

laws of any other province covered by the Proposed National Instrument. Therefore, if a mandatorily clearable transaction is entered into between an Ontario local counterparty and a BC local counterparty, the transaction must be submitted for clearing to a clearing agency that is regulated by both BC and Ontario. However, it may not be the case that the clearing agency used is regulated by both jurisdictions. For example, clearing agencies may apply for registration only in provinces where their clearing members are located, rather than in all the provinces in which all clients of clearing members are located. Indeed, clearing agencies may not know where all such clients are located as they may only have relationships with their clearing members.

Further, if a mandatorily clearable transaction is entered into between a counterparty organized under the laws of a Canadian province (for example, Ontario) and a foreign dealer that is required to clear such transaction under foreign laws (for example, under Dodd-Frank), the substitute compliance provision under Section 5(5) is not available. Moreover, the clearing agency used to clear the transaction under Dodd-Frank may not be recognized under the laws of Ontario, for the same reason mentioned in the paragraph above (i.e. the clearing member for the Ontario counterparty may also be a foreign dealer and therefore the clearing agency would not seek recognition under the laws of Ontario). In such circumstance, the foreign dealer would be forced to find a clearing agency that is recognized under both jurisdiction and, apply to become a clearing member (or find a clearing member). This result would significantly increase transaction costs and complexity. In such circumstances, the foreign dealer may very well conclude that the costs and complexity do not justify the compliance required and decide to exit the Canadian market which, of course, would decrease liquidity in the Canadian market.

CMIC submits that substitute compliance should apply at least in the above two cases. In other words, Section 5(5) should also apply to a local counterparty that is a local counterparty under paragraph (a) of the definition of local counterparty and should also apply if the transaction is submitted for clearing in accordance with the laws of a jurisdiction covered under the Proposed National Instrument (i.e. under the laws of another province of Canada) or in accordance with the laws of a foreign jurisdiction referenced in Section 5(5)(a) and (b).

7. Phase-In Approach

CMIC supports the phase-in approach of the mandatory clearing rule that the CSA has adopted. The Proposed National Instrument has expressly asked for views on the threshold that should apply to delineate between financial entities in category 2 and category 3. In CMIC's view, determining a threshold amount is difficult as only regulators have access to this information. If it is decided that a dollar threshold amount will be used for such delineation, CMIC is of the view that Canadian regulators should establish such threshold amount only after a thoughtful review of trade data over a period of time, say, three years. However, CMIC would like to suggest that the CSA should consider a different approach to delineating such entities based on the sophistication of the parties. CMIC submits that parties that are dealers or deemed dealers are more sophisticated and will have the ability to access clearing services (in many cases, in fact, are already accessing clearing services). The precise scope of the category 2 entities should also be informed by the review by regulators of trade reporting data by studying who is already clearing and who is not, and calibrate thresholds based on the trade reporting data. In CMIC's view, the types of entities that should fall under category 2 should include dealers and deemed dealers together with those who should be included based on a study of the trade reporting data over an appreciable period. Lastly, and to reiterate the point made earlier, CMIC submits that the mandatory clearing regime should not apply to Other Market Participants.

8. Intragroup Exemption

The Proposed National Instrument requires a local counterparty to submit a Form F1 to the regulator and to prepare consolidated financial statements in order to qualify for the intragroup exemption. Submitting the form directly to the regulator, rather than to a trade repository as is the case under Dodd-Frank, is overly burdensome as this would require submission to multiple provincial regulators. CMIC recommends that Form F1 should be submitted to an approved trade repository.

In addition, the requirement to prepare consolidated financial statements may not be achievable among affiliated entities with different accounting requirements that may not require consolidation. The rule should therefore allow affiliated entities that do not consolidate financial statements as a result of differing accounting requirements to qualify for the intragroup exemption.

In our previous comment letter, we asked whether the information provided in Form F1 is intended to be confidential. The Proposed National Instrument is silent on this point. CMIC is of the view that the information provided in Form F1 is sensitive information in that it relates to the identity of the affiliated entities and the terms of the transaction. Accordingly, CMIC strongly submits that Form F1 should not be accessible to the public and this confidentiality should be incorporated into the Proposed National Instrument.

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CMIC welcomes the opportunity to discuss this response with you. The views expressed in this letter are the views of the following members of CMIC:

Bank of America Merrill Lynch
Bank of Montreal
Bank of Tokyo-Mitsubishi UFJ (Canada)
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Deutsche Bank A.G., Canada Branch
Fédération des Caisses Desjardins du Québec
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
Public Sector Pension Investment Board
Royal Bank of Canada
Sun Life Financial
The Bank of Nova Scotia
The Toronto-Dominion Bank