DATE: September 17, 2018

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
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

c/o

Grace Knakowski, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Via Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Via Email: consultation-en-cours@lautorite.qc.ca

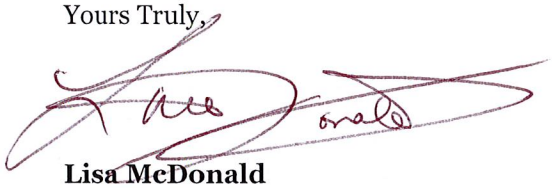
Dear Sirs/Mesdames:
Re: CSA Notice and Request for Comment – Proposed National Instrument 93-101 *Derivatives: Business Conduct*, Proposed Companion Policy 93-101CP *Derivatives: Business Conduct*, Proposed National Instrument 93-102 *Derivatives: Registration*, and Proposed Companion Policy 93-102CP *Derivatives: Registration*

We are writing in response to the request for comments on Proposed National Instrument 93-101 *Derivatives: Business Conduct*, ("**NI 93-101**") Proposed Companion Policy 93-101CP *Derivatives: Business Conduct*, ("**CP 93-101**"), Proposed National Instrument 93-102 *Derivatives: Registration*, ("**NI 93-102**") and Proposed Companion Policy 93-102CP *Derivatives: Registration* ("**CP 93-102**"). In our comments below, we have referred to NI 93-101 and CP 93-101 collectively as the "**Business Conduct Rule**" and to NI 93-102 and CP 93-102 collectively as the "**Registration Rule**".

ATB Financial is a full service, deposit-taking financial institution located in the Province of Alberta. We are a crown corporation, owned by the Province of Alberta. Pursuant to the *ATB Financial Act* (Alberta) we are also an agent of the Province of Alberta for all purposes. With assets of more than $51.9 billion, we are the largest Alberta-based financial institution. Our operations include a full-service financial markets group focused on foreign exchange, interest rates, and commodity transactions and this has informed our perspective. We appreciate the opportunity to comment on the proposed instruments and are supportive of the regulatory steps to harmonize derivative practices.

We consent to the disclosure of our submission in whole as part of a non-attributed summary of comments that requires that our identity and any personal identifiers be removed prior to publication.

Yours Truly,



Lisa McDonald
Chief Risk Officer
Risk Management

Office 780-408-7248 | **Mobile** 780-499-3283
ATB Place, 2100-10020 100 St NW, Edmonton, AB T5J 0N3
lmcdonald@atb.com

Part A: Business Conduct Rule

In your request for comment on the Business Conduct Rule, you have asked commenters for feedback on specific questions, in addition to providing general comments. We will begin with our comments on the specific questions listed in the request for comment:

1) Definition of "affiliated entity".

We do not have a strong preference between defining affiliated entities based on control versus consolidation of accounts. However, we believe that the harmonization of these definitions across related rules will provide clarity to the industry, as having similar (or identical) terms with different definitions, in related rules is likely to lead to confusion among industry participants.

2) Definition of "eligible derivatives party"

We believe that the definition of this term should be aligned with the definition of "qualified party" contained in the various blanket orders issued by securities regulators (for example, Alberta Securities Commission Blanket Order 91-507). Our rationale is that the latter definition has proven to be well understood by market participants and has been effective in ensuring derivative parties are receiving appropriate protection.

Therefore, we suggest that the reference to '$25,000,000 in net assets' in sub-section (m) be amended to refer to 'total assets' (instead of net assets) and that the reference to '$5,000,000' in sub-section (o)(ii) simply refer to 'net assets'.

While we believe the various requirements in (m)(i), (n)(i), and (o)(i) are reasonable, we would also suggest it be clarified that a derivatives party can also meet those requirements by obtaining external advice, should they not have the required expertise 'in-house'.

3) Anonymous transactions executed on a derivatives trading facility

We would support an expansion of the exemption in section 41 of NI 93-101 to cover all situations where a derivatives firm is expected to provide documentation to a derivatives party. For example, section 28 obligates a derivatives firm to provide quarterly statements to a derivatives party. However, in the case of a transaction that has been accepted for clearing by a qualified clearing agency, the derivatives firm is no longer the derivative party's counterparty for the transaction, and therefore we do not believe it is appropriate to have the section 28 requirements continue to apply. As such, we would support the expansion of these exemptions to all cases where derivatives are submitted for clearing to a regulated clearing agency.

4) Handling complaints

We do not believe the obligations in section 16 should be expanded towards all derivative parties. We believe that eligible derivative parties are sophisticated enough to be able to resolve complaints with derivative firms without needing regulatory intervention.
Furthermore, we also note that, on its face, section 16 is not limited to complaints about the derivative firm's derivative operations. In the case of derivative firms that have significant other operations (such as financial institutions) the effect of this rule appears to be to regulate those other operations as well. Therefore, we suggest this section be amended to specifically refer to complaints about the firm's derivative operations only.

5) Derivatives Party Assets

We do not believe the requirements in sections 25 and 26 of NI 93-101, which deal with the appropriate model for protecting customer assets of derivatives parties, should apply to all derivative parties. We do not believe these protections are required by eligible derivative parties. We also note that other regulations may impose restrictions on collateral, and we would discourage the practice of having the same topic dealt with in multiple, potentially overlapping, regulations.

6) Policies, procedures and controls

Our only comments on section 30(1)(c)(iii) of NI 93-101 are that we would expect most derivative firms to rely primarily on a company-wide code of conduct or similar document requiring all employees to act with integrity. It may be helpful to clarify in CP 93-101 that such a document may be relied upon, at least in part, to provide the reasonable assurance required by section 30. We also note that section 30(1)(c)(iii) is not expressly limited to acting with integrity with respect to the firms derivative activities. While an employee's actions, that are unrelated to the firm's derivative activity, may be of concern to the firm, as employer, we do not believe regulatory intervention would be appropriate in such a case, provided that such actions do not impact the firm's derivative operations.

General Comments on the Business Conduct Rule:

In addition to the above, we have the following comments on the Business Conduct Rule:

1. The definition of "Canadian financial institution" includes, among other things, a 'treasury branch'. ATB Financial was formerly known as Alberta Treasury Branches prior to our name change in December 2017. We believe the reference to a 'treasury branch' in the definition of Canadian financial institution operates to include ATB Financial.

   While we believe that interpretation is still accurate, given our name change, and for the sake of clarity, we would request that the definition of Canadian financial institution be amended to include a reference to 'financial institutions'. This will help to clarify that ATB Financial continues to be included in that term.

2. We believe that certain requirements applicable to trades with non-eligible derivative parties may have an unintended consequence of reducing the willingness of derivative firms to transact with

non-eligible derivative parties, rather than providing those non-eligible derivative parties with the intended increased protection.

For example, the suitability requirement in section 12 requires, in part, that a derivatives firm take reasonable steps to ensure that a derivative and a transaction are suitable for a derivatives party before the firm accepts instructions to transact in the derivative. However, current practice is for derivative firms to expressly obtain representations from their counterparties that the counterparty is capable of making, and has made, its own suitability assessment. We believe this practice reflects the fact that, in the derivatives area, the derivatives firm and its counterparty take the opposite sides of a transaction.

We also note the tied selling obligation listed in section 18 of NI 93-101, which prohibits a derivatives firm from requiring a person obtain a product or service from the derivatives firm as a condition of obtaining another product or service. CP N3-101 makes clear that the intent of this rule is that a derivatives firm, that is also a lender to a person, cannot require that the person hedge their exposure under the loan with the derivatives firm. The obligation to engage in derivatives may be required in borrower-specific circumstances as a risk mitigation tool and as a matter of practice, firms will typically engage in those derivatives with the lending financial institution as a means to manage fees and administration associated with the borrowing arrangement. Even where it is not explicitly stated, a borrower may practically find it difficult to enter into a hedge with another entity, at least without incurring additional costs, given that the borrower has likely already granted the lender with security as part of the lending relationship.

We refer to our comment above about aligning the definition of eligible derivatives party with the definition of a qualified party currently used in various blanket orders. However, an alternative suggestion would be to permit non-eligible derivative parties to qualify as eligible derivative parties by obtaining the services of a registered derivatives advisor. Through regulations applicable to the derivatives advisor, regulators could ensure that these parties are receiving any protection that is required, including being provided with necessary disclosures, while avoiding the potential issues outlined above.

3. As a practical consideration, on occasion, derivative parties will request to enter into a transaction with a derivative firm before a 'master agreement' has been executed between the parties. Typically, the practice is that pricing and other trade-specific terms are discussed between the parties, but more general terms, such as events of default, are not. Those more general terms are typically contained in the trade confirmation exchanged between the parties (often by way of the parties being deemed to have entered into a 'master agreement' pending the actual execution of one), as required by section 27(1).

   However, it is unclear whether such a practice would violate section 33. We suggest this be clarified by specifying that the requirements in section 33 can be met by way of the confirmation required to be delivered under section 27(1).

4. We note that section 45(3)(b) provides an exception for pre-existing transactions, so long as the derivative firm has taken reasonable steps to determine that their counterparty meets one of the listed definitions. We suggest that the threshold for 'reasonable steps' be clarified to include

receiving a written representation, and having no reason to question the accuracy of that representation.

Finally, we understand that Appendix C, which will list any requirements that do not apply to a Canadian Financial Institution, is scheduled to be released at some future point. As such, our comments are subject to further review of that document.

Part B: Registration Rule

We note that Section 5(c) of the Registration Rule exempts crown corporations or agencies, if their accounts are 'consolidated for accounting purposes' with those of the federal or a provincial government.

As noted in our opening comments, ATB Financial is a crown corporation, owned by the Province of Alberta, as well as an agent of the Province. As ATB Financial's overall financial results (including, but not limited to, results from our derivative trading activity) are consolidated in the Alberta provincial government's annual financial reporting, we therefore believe ATB Financial would be included in the exemption under Section 5(c). As a result, we have refrained from providing comments on the Registration Rule.