ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

Box 348, Commerce Court West
199 Bay Street, 30th Floor
Toronto, Ontario, Canada M5L 1G2
www.cba.ca

Nathalie Clark
General Counsel & Corporate Secretary
Tel: (416) 362-6093 Ext. 214
nclark@cba.ca

December 8, 2014

To the Minister of Finance Canada
And the provincial Ministers responsible for securities regulation in each of:
British Columbia
Ontario
Saskatchewan
New Brunswick
Prince Edward Island

Dear Sirs/Mesdames:

The Canadian Bankers Association (**CBA**) works on behalf of 60 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy.

On September 8th, 2014, the Minister of Finance Canada and the provincial Ministers responsible for securities regulation in British Columbia, Ontario, Saskatchewan and New Brunswick (together with Prince Edward Island, the **Participating Jurisdictions**) issued consultation drafts of a Provincial Capital Markets Act (the **Proposed Provincial Act**) and a federal Capital Markets Stability Act (the **Proposed Federal Act**) which, together, create the legislative framework (the **Framework**) that underpins the Cooperative Capital Markets Regulatory System (**CCMRS**) and creates the Capital Markets Regulatory Authority (the **Authority**).

The banking industry has always been supportive of initiatives intended to harmonize capital markets regulation across Canada. Following the 2011 decision by the Supreme Court of Canada in the *Securities Reference* case, the federal government and certain provinces decided to rely upon a cooperative model in order to put in place harmonized regulation. The CCMRS initiative represents a substantial step forward towards this objective. Our members continue to support all efforts to achieve a unified and rationalized approach to capital markets regulation in Canada.

Given the potentially large consequential impact the initiative may have on all market participants, it will be important to ensure that the responsibilities and authority of the CCMRS

are coordinated with those of existing regulatory bodies (such as the Bank of Canada, the Office of the Superintendent of Financial Institutions (**OSFI**) and the federal Financial Consumer Agency. We also emphasize that this new initiative should avoid altering the substantive provisions of existing securities laws, except as is required to implement the Framework.

In responding to this public consultation, we note the difficulty in assessing the Framework in the absence of (a) governance and constituting instruments for the Authority, (b) detailed regulations, (c) guidance on how the Authority's broad discretion will be exercised, (d) clarification on how the CCMRS will operate in and interact with non-Participating Jurisdictions; and (e) an understanding of the relationship and coordination amongst regulators at all levels of government, including the Bank of Canada, the Office of the Superintendent of Financial Institutions (**OSFI**) and the federal Financial Consumer Agency, at the federal level. The CBA may provide additional comments on the Framework once the entire regime has been proposed.

We appreciate the opportunity to provide comments on this consultation and would invite the Authority and the Participating Jurisdictions to engage with the CBA and its member banks (and their subsidiaries, where applicable) in discussions throughout the process. The CBA would be pleased to arrange such meetings.

Below we set out some of our members' specific concerns.

OPERATION OF CCMRS

In order to provide meaningful commentary on the Framework, we would need more information on how the CCMRS will operate. We understand that regulations under the Proposed Provincial Act and the Proposed Federal Act will be released for public comment shortly. However, in addition to the regulations, we believe it is imperative that more information on certain aspects of the CCMRS be issued for public consultation before the CCMRS becomes operational. Given the ambitious timelines around the establishment of the CCMRS, it is crucial that these core issues be addressed as early as possible in the process.

In particular, we would need more information and dialogue about the following:

- The precise structure of the Authority, including the composition of the expert board of directors (the **Board**);
- How the knowledge and expertise of staff at the federal agencies that currently oversee the responsibilities outlined in the Proposed Federal Act will be replicated at the Authority;
- The process for determining when and how to delegate legislative and regulatory authority from the federal government to the Authority;
- The substance and standard of the due process for market participants and products that are designated as systemically important;
- How the exemptions and other enforcement-related actions prior to the Authority coming into effect will be transitioned;
- The nature of the dialogue, interaction and collaboration between the Authority and OSFI, as well as other key federal agencies;
- The nature of the dialogue, interaction and collaboration between the Authority and the provinces and territories that are not Participating Jurisdictions;

The absence of these details is resulting in considerable uncertainty for market participants. Our members are concerned about possible market disruption as the target timeline for the Authority to become operational quickly approaches. It is therefore imperative to the stability of the Canadian capital markets, and the Canadian financial markets more broadly, that the Board be established as soon as possible. The Board should then engage directly with relevant market participants to resolve any uncertainties.

OSFI'S REGULATION OF BANKS' ACTIVITIES

Our members are particularly concerned about the interaction and collaboration between the Authority and OSFI. OSFI is the banks' principal regulator and is the repository for specialized expertise on banks. This expertise includes a vast amount of information about banks and their global operations, as well as OSFI's relationships with bank supervisors in foreign jurisdictions which enable OSFI to coordinate the oversight of banks' activities in those jurisdictions with those supervisors. The Proposed Federal Act gives the federal Minister of Finance the ability to assign to the Authority the administration of any provision of the *Bank Act* or its regulations. If the federal Minister assigns to the Authority areas of bank regulation and oversight in respect of which OSFI has had the historical expertise and institutional knowledge, we are concerned that there would be a loss of that expertise and knowledge, supervisory capability and a potential disruption or shift in focus in those relationships.

For example, OSFI has extensive knowledge of the integral role that over-the-counter (OTC) derivatives transactions play in the risk management and intermediation activities of banks. In OSFI Guideline B-7 *Derivatives Sound Practices*, which was recently updated to reflect the commitments made by the G-20 leaders regarding derivatives regulation, OSFI sets out comprehensive expectations regarding a number of areas of derivatives regulation. This current framework has worked well for many years and there is a need to ensure that existing OSFI capabilities are maintained. Given the strengths of the existing system, it will be important for there to be extensive consultations with the industry if the federal Minister of Finance undertakes a review on whether to delegate aspects of OTC derivatives regulation to the Authority to avoid unintended consequences.

As another example, OSFI recently issued Guideline E-20 *CDOR Benchmark-Setting Submissions* which is intended to complement OSFI's *Supervisory Framework* and *Corporate Governance Guideline*. Guideline E-20 sets out OSFI's expectations regarding governance, internal controls, internal audit and supervisory assessments as they relate to the setting of the Canadian Dollar Offered Rate. There are important aspects of the regulation of benchmark-setting submissions where OSFI's expertise and knowledge should not be lost. For instance, Guideline E-20, along with OSFI's *Corporate Governance Guideline* and the corporate governance provisions in the *Bank Act*, form a comprehensive framework for regulating and monitoring governance and controls at banks, with an emphasis on how these measures improve risk management by banks.

Given the strength and stability of the Canadian banking system, which was maintained through the most recent financial crisis, we believe that there should be extensive consultation with

stakeholders before any changes to or delegations of OSFI's existing responsibilities are introduced.

ROLE OF OSFI AND THE BANK OF CANADA RE: SYSTEMIC RISK

Our members are also concerned about how OSFI's and the Bank of Canada's oversight of systemic risk would be altered under the Framework. The Proposed Federal Act confers upon the Authority certain powers associated with the oversight of systemic risk, namely the designation of systemically important entities and products. It is not clear to us how the Authority's powers in this area will intersect with OSFI and the Bank of Canada's current mandates relating to prudential and systemic risks. The current framework for systemic risk oversight in Canada has worked extremely well, both historically and, as we saw most recently, during and after the financial crisis.

We believe it would be helpful to assess which aspects of systemic risk regulation have worked especially well for the Canadian financial system, and preserve the current structures around those aspects. Where OSFI and the Bank of Canada have the historical expertise and the institutional knowledge in respect of a particular type of systemic risk, there is a need to ensure that the expertise and the knowledge is maintained so that there are no threats to the safety, soundness and stability of the Canadian financial system. To illustrate this point, we note that section 22 of the Proposed Federal Act requires the "concurrence" of the Bank of Canada with respect to the designation of clearing houses as systemically important entities, as well as other matters relating to clearing. Given the Bank of Canada's central role with respect to oversight of matters relating to payments settlement and clearing in Canada and internationally, we believe that the Bank should play an active and leading role in decision-making relating to clearing as it pertains to systemic risk. We also urge caution in considering the potential implications, if any, that this initiative could have in relation to the internationally coordinated efforts to establish an effective cross-border regime for resolution or rehabilitation of global financial institutions within a large and inter-connected corporate group, so as to ensure that prudential regulators are in a position to act quickly and decisively in the event of a financial crisis.

It may also be helpful to assess whether there are emerging systemic risks that have been identified, for example by international standard-setters such as the International Organization of Securities Commissions or the Financial Stability Board, which the Authority may be in the best position to regulate by virtue of it being a joint federal-provincial body.

We request that any modification to the existing regulation of systemic risks be undertaken after additional consultation with stakeholders.

INTERACTION BETWEEN THE AUTHORITY AND NON-PARTICIPATING JURISDICTIONS

It is unclear how the Authority will interact with the non-Participating Jurisdictions. As banks, and their subsidiaries, operate on a national basis, the ability to maintain efficient access to provincial markets is a key issue for our members. Banks have adopted their policies, practices and systems to serve their clients within the current regulatory regime. It will be very important to ensure that the CCMRS becoming operational does not undermine the smooth functioning of the capital markets and its participants, including investors, issuers and financial intermediaries. For example, the "principal regulator" model currently in place has been very effective, and it would

be helpful to have a similar model in place between the Authority and the non-Participating Jurisdictions. As the timeline approaches for the CCMRS becoming operational, every effort should be made to ensure a seamless transition from the current securities regulatory regime to the CCMRS regime, including with respect to the interaction with non-Participating Jurisdictions.

DEALER EXEMPTION FOR BANKS

The Proposed Provincial Act does not contain the exemption for banks currently found in section 35.1 of the Ontario Securities Act. This exemption provides that banks are exempted from the requirements to be registered as a dealer, underwriter, adviser or investment fund manager. Given the importance of this exemption, we would appreciate confirmation that it will be included within the Proposed Provincial Act.

ENFORCEMENT RELATED CONCERNS

The CBA supports robust and consistent enforcement of the rules and regulations applicable to capital markets in Canada. However, some of the provisions in the enforcement framework in both the Proposed Federal Act and the Proposed Provincial Act deviate in meaningful ways from the current securities enforcement framework. As we noted above, given the significance of the CCMRS undertaking, we strongly believe that substantive provisions of existing securities laws should not be altered, except as required to implement the Framework. We believe that it would be better to undertake a full assessment of the proposed enforcement provisions separately, once the Framework and supporting regulations have been finalized and the CCMRS has been fully operational for some time. There is a need for additional consultation in order to fully consider the implications of the expansion of current definitions, the lack of necessary defined terms, novel enforcement mechanisms, constitutional issues, and due process issues. We have included in Appendix A to this letter a preliminary and non-exhaustive list of the proposed provisions that are of concern to us.

****

In closing, we reiterate our support for harmonized capital markets regulation across Canada. However, we do have significant concerns with the lack of information on how the CCMRS will operate on a day-to-day basis. We also have significant concerns regarding the implications of the Proposed Federal Act for the mandates of OSFI and the Bank of Canada, and concerns about the interaction between the CCMRS and the non-Participating Jurisdictions. We would welcome the opportunity to further discuss these concerns with you and your staff responsible for the CCMRS initiative. Please do not hesitate to contact me with any questions regarding the foregoing.

Yours truly,

APPENDIX A

Provincial Capital Markets Act
Insider trading **66.** (1) A person must not purchase or trade a security of a reporting issuer or of an issuer whose securities are publicly traded, or enter into a transaction involving a related financial instrument, if the person is in a special relationship with the issuer and knows of a material change with respect to the issuer, or a material fact with respect to securities of the issuer, that has not been generally disclosed. … **Action for damages — insider trading, etc.** **129.** (1) A person who contravenes section 66 is liable for damages to a person who purchases or trades a security of the issuer referred to in that section — or enters into a transaction, within the meaning of section 69, involving a related financial instrument — during the period beginning at the time when the contravention occurred and ending at the time when the material change or material fact is generally disclosed. **Amount of damages** (2) The amount of damages payable to the plaintiff under this section is the lesser of (a) the loss incurred by the plaintiff as a result of the contravention; and (b) the amount equal to triple the profit made or the loss avoided by all persons as a result of the contravention. **Loss incurred by plaintiff** (3) In determining the loss incurred by the plaintiff, the court must not include an amount that the defendant proves is attributable to a change in the market price of the security that is unrelated to the material change or material fact. **Other measure of damages** (4) Despite subsections (2) and (3), the court may consider any other measure of damages that may be appropriate in the circumstances.
Orders of Tribunal — general **89.** (1) If the Tribunal considers that it is in the public interest to do so, the Tribunal may make one or more of the following orders after a hearing: … (l) that a person is prohibited from acting in a management or consultative capacity in connection with activities in the securities or derivatives market; …
Order without delay **89.** (4) The Chief Regulator may make an order described in subsection (1), other than an order described in paragraph (1) (*e*), (*g*), (*n*), (*p*) or (*q*), without giving an opportunity to make representations, if the Chief Regulator considers that a delay in the making of an order under subsection (1) could be prejudicial to the public interest
Compensation or restitution **90.** (2) If the Tribunal determines, after a hearing, that a person has contravened capital markets law and if the Tribunal considers the order to be in the public interest, the Tribunal may order the person to compensate or make restitution to one or more persons.
Authority to enter, etc. **103.** (4) A person designated under subsection (1) may, in conducting a review under subsection (2) , enter the business premises of any market participant and (a) examine anything in the place; (b) use any means of communication in the place or cause it to be used; (c) use or cause to be used any electronic device or other system in the place in order to examine data contained in, or available to, the electronic device or system; (d) prepare a record, or cause one to be prepared, based on the data; (e) use, or cause to be used, any copying equipment at the place to make copies of any

record; and
(f) remove any record or thing from the place for examination or copying.

Duty to assist

105. The person who is subject to a review under section 103 or an investigation under section 104, the person's employees, agents, directors, officers, control persons and the owner or person who is in charge of a place that is entered under subsection 103 (4), 104 (7) or 104 (8) and every person who is in the place, must give all assistance that is reasonably required to enable the designated person to conduct the review or the authorized person to conduct the investigation, as the case may be.

Order for production of information, etc.

111. (1) On an application without notice by a peace officer or a person investigating an offence under capital markets law, a judge or justice, as defined in section 2 of the *Criminal Code* (Canada), may order a dealer that is not an individual, a party to a derivative that is not an individual or an issuer whose securities are publicly traded to do one or more of the following within a specified period and at a specified place:
(a) produce to the peace officer or the authorized person a copy of a record certified by affidavit to be a true copy that is specified in the order;
(b) prepare and produce to the peace officer or the authorized person a written statement setting out in detail the information that is required by the order; and
(c) prepare and produce to the peace officer or the authorized person a record containing the information that is required by the order.

Disclosure of compelled evidence

196. Before the Chief Regulator discloses evidence given under paragraph 104(4) (*b*), he or she must provide the person who gives the evidence with notice that it may be disclosed and for what purpose, and must give the person an opportunity to make representations, unless
(a) the disclosure is made in a proceeding commenced or proposed to be commenced under this Act or in an examination of a witness; or
(b) the Tribunal authorizes the disclosure, on an application made without notice by the Chief Regulator, if the Tribunal considers it to be in the public interest.

Capital Markets Stability Act

17. Before the Chief Regulator discloses evidence given under paragraph 38(3)(*b*), he or she must provide the person who gave the evidence with notice that it may be disclosed and for what purpose, and with an opportunity to make representations, unless
(*a*) the disclosure is made in a proceeding commenced or proposed to be commenced under Part 3 or in an examination of a witness; or
(*b*) the Tribunal authorizes the disclosure on *ex parte* application by the Chief Regulator.

25. (1) The Authority may, after consultation with the Chief Regulator, make an order designating a benchmark as systemically important if, in the Authority's opinion, impairment to the benchmark's reliability or a loss of public confidence in its integrity or credibility could pose a systemic risk related to capital markets.
(2) In making the order, the Authority must consider the following factors:
(*a*) whether the benchmark is used in respect of securities or derivatives;
(*b*) the value of securities or derivatives that are referenced to the benchmark;
(*c*) the markets whose securities or derivatives are referenced to the benchmark;
(*d*) the number and type of persons that rely on the benchmark;
(*e*) the availability of substitutes for the benchmark;
(*f*) the process by which the benchmark is determined; and
(*g*) any other risk-related factors that the Authority considers appropriate.

26. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions respecting systemically important

benchmarks, including in relation to
(*a*) submissions of information for the purpose of determining them;
(*b*) their design, determination and dissemination;
(*c*) plans for continuity, recovery and cessation;
(*d*) governance, compliance and accountability; and
(*e*) any other aspects of benchmark administration.

27. (1) The Authority may, after consultation with the Chief Regulator, make an order designating a capital markets intermediary, other than a Canadian financial institution or an agent of Her Majesty in right of Canada or a province, as systemically important if, in the Authority's opinion, the activities or material financial distress of the capital markets intermediary could pose a systemic risk related to capital markets.
(2) In making the order, the Authority must consider the following factors:
(*a*) the capital markets intermediary's vulnerability to material financial distress or insolvency resulting from, among other things, its leverage, liquidity, off-balance-sheet exposure or reliance on
short-term funding;
(*b*) the capital markets intermediary's size and the volume and value of trading by it;
(*c*) the importance of the capital markets intermediary with respect to particular market activities;
(*d*) the availability of substitutes for the capital markets intermediary's products and services;
(*e*) the nature and extent of the capital markets intermediary's interdependencies, relationships and other interactions;
(*f*) the nature, interconnectedness and mix of the capital markets intermediary's activities;
(*g*) the complexity of the capital markets intermediary's business, structure or operations; and
(*h*) any other risk-related factors that the Authority considers appropriate.
(3) Before making the order, the Authority must notify the Council of Ministers of its intention to make the order and give the capital markets intermediary an opportunity to make representations.

28. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions for systemically important capital markets intermediaries, including in relation to
(*a*) policies and procedures for risk management and internal controls;
(*b*) disclosure to the public of information whose disclosure is not otherwise required;
(*c*) aspects of governance and organizational and ownership structure related to risk management;
(*d*) capital, leverage and financial resources;
(*e*) liquidity;
(*f*) plans for business continuity, recovery and winding up; and
(*g*) activities that pose a systemic risk related to capital markets.

…

30. (1) The regulations may prescribe a class of securities or derivatives to be systemically important if, in the Authority's opinion, the trading in, the holding of positions in or the direct or indirect dealing with securities or derivatives within the class could pose a systemic risk related to capital markets.
(2) In making a regulation referred to in subsection (1), the Authority must consider the following factors:
(*a*) the characteristics of the securities or derivatives within the class, their terms, their degree of standardization and the structure under which they are created or issued;
(*b*) the complexity of the securities or derivatives within the class;
(*c*) the value of the securities or derivatives within the class and the volume and value of trading in them;

(*d*) the number and type of persons that trade in, hold positions in or deal with the securities or derivatives within the class;
(*e*) the purposes for which the securities or derivatives within the class are used and the availability of substitutes for those securities or derivatives;
(*f*) the interconnectedness between securities or derivatives within the class and other components of the capital markets or financial system;
(*g*) the extent to which the trading in, holding of positions in or dealing with securities or derivatives within the class could transmit risks through the capital markets or financial system; and
(*h*) any other risk-related factors that the Authority considers appropriate.

31. The regulations may, in order to address a systemic risk related to capital markets, prescribe requirements, prohibitions and restrictions respecting systemically important securities and derivatives, including in relation to
(*a*) trading on a trading facility;
(*b*) clearing and settlement;
(*c*) disclosure to the public of information whose disclosure is not otherwise required;
(*d*) the transparency of trades;
(*e*) the method or process used to price or value the securities or derivatives;
(*f*) rates, indices or other underlying interests of a derivative;
(*g*) capital, leverage and financial resources;
(*h*) liquidity;
(*i*) margin, collateral, credit protection and position limits;
(*j*) policies and procedures for risk management; and
(*k*) the retention of credit or investment risk.

32. (1) The regulations may prescribe a practice to be systemically risky if, in the Authority's opinion, the practice could pose a systemic risk related to capital markets.
(2) In making a regulation referred to in subsection (1), the Authority must consider the following factors:
(*a*) the financial effect or consequences of engaging in the practice;
(*b*) the manner in which the practice makes use of maturity transformation, liquidity transformation, credit risk transfer or leverage;
(*c*) the extent to which the practice is engaged in;
(*d*) the extent to which the practice could transmit risks through the capital markets or financial system;
(*e*) the type of persons that are engaging in the practice and the extent to which they are regulated as systemically important capital markets intermediaries or otherwise regulated under capital markets or financial legislation in Canada or elsewhere;
(*f*) the extent to which the practice can be otherwise regulated under this Act; and
(*g*) any other risk-related factors that the Authority considers appropriate.

38. (1) The Chief Regulator may, by order, authorize a person to exercise, for the purpose of inquiring into any matter relating to compliance with this Act or with a foreign jurisdiction's capital
markets legislation, any of the powers set out in this section if the Chief Regulator is satisfied that the exercise of the powers is appropriate in the circumstances.
(2) The Chief Regulator must set out in the order the scope of the inquiry and the powers that the authorized person may exercise.
(3) If specified in the order, the authorized person may, for the purpose of the inquiry, do one or more of the following:
(*a*) summon the attendance, before the authorized person, of any person;
(*b*) compel any person to give evidence on oath or otherwise;
(*c*) compel any person to produce records or other things or classes of records or things.
(4) The authorized person may make, or cause to be made, copies of any records or other things produced under paragraph (3)(*c*).

(5) The failure or refusal of a person to attend, give evidence or produce records or other things under subsection (3) makes that person, on application to the Federal Court or a court by the authorized person, liable to be found in contempt by that court in the same manner as if that person were in breach of an order or judgment of that court.
(6) A person giving evidence under subsection (3) may be represented by counsel.
(7) If specified in the order, the authorized person may, for the purpose of the inquiry, enter a place that they have reasonable grounds to believe contains any thing that is relevant to the inquiry and
(*a*) examine any thing in the place;
(*b*) use any means of communication in the place or cause it to be used;
(*c*) use, or cause to be used, any electronic device or other system in the place in order to examine data contained in, or available to, the device or system;
(*d*) prepare a record, or cause one to be prepared, based on the data;
(*e*) use, or cause to be used, any copying equipment at the place and make copies of any record; and
(*f*) remove any thing from the place for examination or copying.
(8) For greater certainty, the authorized person may enter the place only during normal business hours.
(9) The authorized person must, if so requested, produce their authorization order to the occupant or person in charge of the place.

39. The person who is subject to a review under section 37 or an inquiry under section 38 and their directors, officers, employees, agents and mandataries, and the owner or person who is in charge of a place that is entered under subsection 37(3) or 38(7) and every person who is in the place, must give all assistance that is reasonably required to enable the designated person to verify compliance as set out in subsection 37(1) or the authorized person to inquire into a matter as set out in subsection 38(1), as the case may be.

44. (1) The Chief Regulator may issue a notice of violation and cause it to be served on a person if the Chief Regulator has reasonable grounds to believe that the person has committed a violation.
(2) The notice of violation must set out
(*a*) the name of the person believed to have committed the violation;
(*b*) every act or omission for which the notice is served and every provision at issue;
(*c*) the administrative monetary penalty that the person is liable to pay and the time and manner of payment;
(*d*) the right of the person, within 30 days after the day on which the notice is served or within any longer period that the Chief Regulator specifies, to pay the penalty or to make representations to the Chief Regulator with respect to the violation and the proposed penalty, and the manner for doing so; and
(*e*) the fact that, if the person does not pay the penalty or make representations in accordance with the notice, the person will be deemed to have committed the violation and the Chief Regulator will impose the penalty in respect of it.
45. (1) If the person that is served with a notice of violation pays the proposed penalty, the person is deemed to have committed the violation and proceedings in respect of it are ended.
(2) If the person makes representations in accordance with the notice, the Chief Regulator must decide, on a balance of probabilities, whether the person committed the violation and, if so, may impose the penalty proposed, a lesser penalty or no penalty.
(3) A person that neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Chief Regulator must impose the penalty proposed in the notice.
(4) The Chief Regulator must cause notice of any decision made under subsection (2) or the penalty imposed under subsection (3) to be issued and served on the person together with, in the case of a decision made under subsection (2), notice of the right to apply for review under subsection 103(1).

99. Despite sections 18 and 18.1 of the *Federal Courts Act*, a decision is not, to the extent that it may be reviewed under section 103, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.

…

102. The Tribunal may, on application by the Chief Regulator or a person directly affected by a decision of the Tribunal, revoke or vary the decision if the Tribunal considers that doing so would not be contrary to the purposes of this Act, whether or not the decision has been filed with the Federal Court or a court.