

December 8, 2014

SENT VIA E-MAIL (commentonlegislation@ccmr-ocrmc.ca)

Cooperative Capital Markets Regulatory System

Dear Sirs/Mesdames:

RE: Comment Letter on Draft Legislation: Provincial Capital Markets Act (PCMA) and Capital Markets Stability Act (CMSA)

This comment letter is in response to the consultation drafts of two pieces of proposed legislation published on September 8, 2014 in conjunction with the five governments¹ confirming their commitment to the cooperative capital markets regulatory system (the **Cooperative System**) by signing a Memorandum of Agreement, which is intended to be administered by the Capital Markets Regulatory Authority (**the Authority**). The proposed uniform provincial Capital Markets Act (**PCMA**), which will be proposed for enactment by each participating province and territory, is supposed to modernize existing provincial securities legislation and harmonize the regulatory approaches taken by the British Columbia, Ontario, New Brunswick and Saskatchewan securities acts. The complementary federal Capital Markets Stability Act (**CMSA**) is stated by the Cooperative System to empower the Authority to collect data and manage systemic risk related to capital markets on a national basis and modernize capital markets-related criminal offences.

We appreciate the opportunity to comment on the PCMA and the CMSA. We would also like to thank the Cooperative System for providing an extended opportunity to comment on the proposed PCMA and CMSA.

As counsel to counterparties ranging from energy producers and energy trading and marketing organizations to global financial institutions, financial market infrastructures and derivatives market intermediaries; Dentons Canada LLP (**Dentons Canada**) has had extensive involvement with all asset classes of global and intra-Canadian derivatives transactions from a legal and regulatory perspective. In this letter, we would like to simply highlight and request that the Cooperative System take into careful consideration some key challenges and experiences already being faced by Canadian and global derivatives market participants who trade with Canadian derivatives counterparties in how Canadian cross-border securities regulations and certain new derivatives rules are being implemented. This should include how Canadian (provincial and federal) national rules will apply to global financial markets and interact with foreign rules and international standards that are being implemented across the globe as a result of the global financial crisis of 2008 and the resulting G20 *Leadership Statement* from their September 2009 Pittsburgh Summit, where they agreed to improve, among other critical areas, the over-the-counter derivatives markets.

¹ Canada, Ontario, British Columbia, New Brunswick and Saskatchewan

This letter reflects the general comments of certain members of Dentons Canada Calgary energy transactions and derivatives practice groups and does not necessarily reflect the overall views of our firm or our clients.

From the news update you provided on December 5, 2014 that though the participating provinces have made significant progress toward preparing draft initial regulations to be proposed for adoption under the proposed PCMA, the regulations will not be ready for publication by the previously announced milestone date of December 19, 2014, and it is expected that the draft initial regulations would be published for comment in the early spring of 2015. As a result, we will limit this comment letter to only highlighting some key challenges that our clients and other stakeholders think Canadian regulators will face with the addition of the Authority as a capital markets regulator and as a result could impact their operations. We would provide a detailed comment letter on the PMCA and the CMSA after the draft regulations are published for comment.

Some of the challenges and issues our clients and stakeholders believe Canadian regulators will face echo similar challenges and issues raised in the consultation report of the IOSCO Task Force on Cross-Border Regulation².

1. Potential conflicts of interest and laws between the governments i.e. participating jurisdictions and the non-participating jurisdictions;
2. Resolving what Canadian National law is- As IOSCO stated in its consultation paper cited above, “national law, which binds the actions of regulators, predominantly **governs cross-border interaction**. Members **rely on their relationships with one another, including bilateral or multilateral non-legally binding arrangements between regulators, to facilitate cross-border activities**. **National policy, legislation and sovereignty** are important factors that affect how cross-border issues are addressed”. [Emphasis added];
3. Possible lack of consensus on the part of “Canadian Regulators” outside how the Canadian securities administrators have worked in the past in determining for example what a “similar outcome” would mean. As you know, assessments of foreign regulatory regimes are normally made on a bilateral basis. In this regard, how would different Canadian regulators agree on this concept as an example;
4. Potential issues stemming from reliance where there is a focus on the role of each regulator in a particular jurisdiction; and
5. Potential limitations on regulatory coordination among the Authority and the non-participating jurisdictions.

In addition, we would also like to highlight that you should look at how the United States’ new financial stability Oversight Council (**FSOC**), created by the Dodd-Frank Act with a clear statutory mandate that for the first time in the United States oversees collective accountability for identifying risks and responding to emerging threats to U.S. financial stability. FSOC leverages expertise of the U.S. federal financial

² <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD466.pdf>

regulators, an independent insurance expert appointed by the U.S. President, and state regulators to constrain excessive risk in the U.S. financial system. Canadian provincial securities regulators have expertise in their various jurisdictions in how their capital markets work and this expertise is invaluable and should be leveraged to benefit Canadian financial stability.

We thank you for the opportunity to comment and would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact the undersigned in Dentons Calgary Office.

Yours truly,
Dentons Canada LLP

Priscilla Bunke
Associate