



STATE STREET®

State Street Bank and Trust Company –  
Canada Branch

State Street Global Advisors, Ltd

State Street Trust Company Canada

State Street Financial Centre  
30 Adelaide Street East  
Suite 1100  
Toronto, Ontario  
M5C 3G6

770 Sherbrooke Street West  
Suite 1100  
Montreal, Quebec  
H3A 1G1

Telephone +1 416 362 1100

Telephone +1 514 282 2400

***Via email: [commentonlegislation@ccmr-ocrmc.ca](mailto:commentonlegislation@ccmr-ocrmc.ca)***

December 8, 2014

Cooperative Capital Markets Regulatory System  
c/o Minister of Finance, Canada  
and the provincial ministers responsible for securities regulation in each of:  
British Columbia  
Ontario  
Saskatchewan  
New Brunswick  
Prince Edward Island

Subject: Capital Markets Stability Act – Draft for Consultation (August 2014) and Provincial  
Capital Markets Act – Draft for Consultation (August 2014)

Dear Sir or Madam:

State Street Corporation (“State Street”) welcomes the opportunity to comment on the Cooperative Capital Markets Regulatory System’s (“CCMRS”) consultation draft of the Capital Markets Stability Act (“CMSA”) which empowers the Capital Markets Regulatory Authority (“the Authority”) to collect data and manage systemic risk related to capital markets on a national basis and modernize Canada’s capital markets-related criminal offenses and the corresponding consultation draft of the Provincial Capital Markets Act (“PCMA”) that seeks to modernize existing provincial securities legislation and harmonize the regulatory approaches taken by the provincial securities laws of British Columbia, Ontario, New Brunswick, Saskatchewan, and Prince Edward Island (“Participating Jurisdictions”). In responding to these consultations, State Street reserves the right to provide additional comments on the CCMRS, the Authority, the CMSA and the PCMA once the entire system has been proposed and further detailed regulations providing guidance on how the Authority’s broad discretion will be exercised and coordinated with other federal, provincial, and foreign financial authorities.

Headquartered in Boston, Massachusetts, State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With \$28.4 trillion in assets under custody and administration and \$2.48 trillion in assets under management, State Street operates in 29 countries and in more than 100 geographic markets worldwide<sup>1</sup>.

While State Street supports the creation of the CCMRS, the Authority, and its objectives to create enhanced oversight and protection of Canada’s capital markets by leveraging resources across

---

<sup>1</sup> As of June 30, 2014

participating jurisdictions to achieve consistent, cohesive and timely regulation, we are concerned with the Authority's approach to managing capital markets systemic risk, the treatment of existing provincial and federal laws covering custodians, trust companies and foreign bank branches already in place, and the role of the Authority and its interaction with other federal, provincial and foreign financial authorities under the CMSA.

The first section of this letter provides comments from the perspective of a leading asset manager in Canada, State Street Global Advisors, Ltd. ("SSgA Ltd."). SSgA Ltd.'s comments focus on the proposed provisions whereby the Authority could designate asset managers or investment funds as systemically important. The second section of this letter provides commentary from the perspective of a custody and investment service provider by State Street Bank and Trust Company – Canada Branch ("SSBTC") and State Street Trust Company Canada ("SSTCC") and offers recommendations to clarify certain definitions for consistency and appropriate consideration of pre-existing provincial and federal legislation.

### **Section 1: Asset Managers and Systemic Importance**

Established in Canada in 1991, with offices in Montreal and Toronto, SSgA Ltd. is a wholly owned subsidiary of State Street. SSgA Ltd. is a recognized leader and ranks as the fifth largest manager of pension assets in Canada<sup>2</sup>. Our clients are located across the country and include corporations, public funds, foundations, endowments, life insurance companies and government agencies.

From the perspective of a leading asset manager, we are concerned that Paragraphs 27 through 29 of the CMSA enable the Authority to designate a capital markets intermediary, such as an asset manager or investment fund, as systemically important.

The proposed focus on designating individual investment funds or asset managers as systemically important may not in fact address the systemic risks that may arise in connection with asset managers and the activities they conduct on behalf of their clients, and would in fact be counterproductive to the CCMRS systemic risk reduction goals. For the reasons discussed below, we urge the CCMRS to reconsider this approach, and instead continue to focus on coordinated regulatory attention on market-wide practices and activities that could contribute to systemic risk, as outlined in Paragraphs 30 – 33 of the CMSA.

First, it is a critical distinction that asset managers operate on an agency, not principal, basis, managing assets owned by their clients in investment funds or separate accounts. This makes investment funds and asset management firms fundamentally different from banks, insurance companies and other financial institutions. Unlike bank depositors who own the risk of loss if the bank defaults, risk of market loss is owned by fund investors, who invest funds with the specific goal of capturing market returns associated with specific investment strategies or indexes.

Andrew Haldane, of the Bank of England, noted the differences between banks and asset managers in a recent speech, where he notes,

---

<sup>2</sup> Source: Benefits Canada, November 2014

*“...on the face of it, then, the structure of banking and asset management is not too dissimilar. But the risks to these balance sheets are also quite different. As an agency function, asset managers do not bear credit, market and liquidity risk on their portfolios... Fluctuations in asset values do not threaten the insolvency of an asset manager as they would a bank. Asset managers are, to a large extent, insolvency-remote.”<sup>3</sup>*

We agree with this assessment and believe it argues strongly against designation of individual funds or asset managers as systemically important.

In addition, large investments funds that are within scope for possible designation under the CMSA are already subject to extensive regulation, as are their service providers and counterparties. Existing and emerging regulations in Canada already address many of the concerns identified in the CMSA. For example, the Canadian Securities Administrators (“CSA”) have introduced substantial new regulation to the OTC derivatives markets, where the G20 commitment to higher transparency and movement to central clearing for most swaps is intended to reduce counterparty risk.

Moreover, we believe it is highly unlikely that a single investment fund, regardless of size and degree of leverage, could create sufficient contagion in today’s regulatory environment to prompt a systemic failure. We do not dismiss, however, the possibility that correlated practices or exposures across the industry, or undue concentration of exposures with limited counterparties, could create risk of a systemic event. Data from a single investment fund, family of funds or a particular asset manager is insufficient to evaluate the potential or emerging systemic risks.

There are potential systemic risks in investment markets that should be monitored by regulators, and there will be instances where regulators act to address activities that create systemic risk. We disagree, however, that these risks can be properly addressed by designating investment funds or managers as systemically important.

Systemic risk associated with asset management needs considerable further review before designating firms or investment funds as systemically important. Designation of individual investment funds or asset managers may, in fact, exacerbate systemic risk by focusing regulatory attention on a few and losing sight of broader market trends or practices that may warrant regulatory review.

## **Section 2: Consideration of Pre-existing Provincial and Federal Legislation and Regulation**

As a member of the Canadian Bankers Association (“CBA”), we have participated in drafting their response and support the views expressed in their comment letter to these proposals. Responding on behalf of 60 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees, the CBA notes the difficulty in assessing the CMSA and the PCMA and provides meaningful comments 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

---

<sup>3</sup> <http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech723.pdf>

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.

Trust companies and banks, including Schedule III foreign banks are already governed and regulated by existing provincial and federal legislation (e.g., the *Trust and Loan Companies Act*, the *Bank Act*, etc.). The role of the Authority, as outlined in Paragraph 6 of the CMSA, requires further clarification as to the interaction of the Authority with other foreign, provincial, and federal authorities and laws already in place. For example, the uncertainty on how the Authority will operate and interact with non-Participating Jurisdictions and with other regulators, including the Bank of Canada and the Office of the Superintendent of Financial Services, requires a comprehensive approach and thoughtful coordination to ensure the potential impact of this initiative does not impede or prohibit the policies, practices and systems banks and other federally regulated financial institutions have adopted to service their clients within the current regulatory regime.

Additionally, definitions contained in both the CMSA and the PCMA defining “Canadian financial institution”, “Capital markets intermediary”, “Clearing agency”, “Investment fund manager”, “Trade facility”, and “Trade repository” are broadly worded and inconsistent with existing provincial and federal descriptions and should be clarified:

“Canadian financial institution” should include in its definition “an authorized foreign bank listed in Schedule III to the *Bank Act*”, to be consistent with the definition of “clearing house”, and subsequently exempt Schedule III foreign banks already under certain restrictions in accordance with the *Bank Act* and OSFI from designation as a systemically important capital markets intermediary under Paragraph 27 of the CMSA;

“Capital markets intermediary” should specify that “Canadian financial institutions” acting as trustee of a pension fund or investment fund be exempt. As a trustee is the legal embodiment of a trust fund, the definition as worded could for example, capture a “Canadian financial institution” under the definition of pension fund when it acts as trustee;

“Clearing agency” should also specify that “Canadian financial institutions” acting as a custodian or a trustee of a pension fund or investment fund be exempt. As currently drafted the definition is broadly worded and would capture such institutions acting in the capacity of custodian or trustee;

“Investment fund manager”, “Trade facility”, and “Trade repository” should all explicitly exempt “Canadian financial institutions” from these definitions as there are provincial and federal laws already in place.

Finally, there are several discrepancies included in the PCMA that do not coincide with provisions included in the Ontario Securities Act. For example, the PCMA does not contain the exemption for banks currently found in section 35.1 of the Ontario Securities Act that exempts banks from the requirements to be registered as a dealer, underwriter, adviser or investment fund manager. We strongly urge the CCMRS to include this important exemption in the PCMA for consistency. Additionally, the definition of “market participant” in the PCMA includes both a custodian and a trustee, while the corresponding definition in the Ontario Securities Act does not include the term “trustee” as a market participant. The intention of including both a custodian and a trustee in the PCMA is unclear.

\* \* \*

Once again, thank you for the opportunity to comment on the Cooperative Capital Markets Regulatory System's consultation drafts of the Capital Markets Stability Act and the corresponding Provincial Capital Markets Act. As a committed member of the Canadian financial industry, State Street is pleased to file the enclosed comments and would be happy to discuss these matters in further detail should you have any questions regarding this submission.

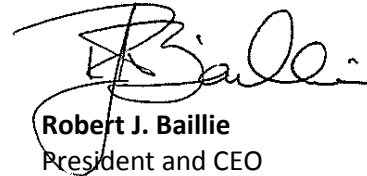
Respectfully,



**Peter Lindley**  
President  
State Street Global Advisors, Ltd.



**Kent Patterson**  
Principal Officer  
State Street Bank and Trust  
Company – Canada Branch



**Robert J. Baillie**  
President and CEO  
State Street Trust Company  
Canada