ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

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To the Minister of Finance Canada
And the provincial and territorial Ministers responsible for securities regulation in each of:

British Columbia
Ontario
Saskatchewan
New Brunswick
Prince Edward Island
Yukon

Dear Sirs/Mesdames:

On May 5, 2016, the Minister of Finance Canada and the provincial and territorial Ministers responsible for securities regulation in British Columbia, Ontario, Saskatchewan, New Brunswick, Prince Edward Island and the Yukon (together, the **Participating Jurisdictions**) issued a revised consultation draft of the federal *Capital Markets Stability Act* (the **CMSA**). The CMSA was initially published for comment in September 2014 along with the proposed provincial / territorial *Capital Markets Act* (the **CMA**), and the Canadian Bankers Association (**CBA**)[1] provided its comments in a letter dated December 8, 2014 (the **2014 CBA Comments**). The CMA was published for comment a second time in August 2015, along with draft initial regulations under the CMA. Together, the CMA and the CMSA create the legislative framework (the **Framework**) that underpins the Cooperative Capital Markets Regulatory System (**CCMRS**) and, along with implementing legislation in the Participating Jurisdictions, creates the Capital Markets Regulatory Authority (the **CMRA**).

The CBA appreciates the opportunity to provide comments on the CMSA. We have set out below and in the Appendix our comments, including a reiteration of those concerns set out in the 2014 CBA Comments that were not addressed in the CMSA or elsewhere.

[1] The CBA works on behalf of 59 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. The CBA also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness. www.cba.ca

GUIDING PRINCIPLES AND OBJECTIVES

The banking industry has always been supportive of initiatives intended to harmonize capital markets regulation across Canada. The support of members of the CBA for a harmonized approach is premised on the understanding that the result would be to attain a more efficient and effective regulatory framework for the capital markets in Canada. Our support for a harmonized regulatory framework is also based on an expectation that the CCMRS should maintain or improve the status quo. Consequently, the expertise of the banks' principal prudential regulator, the Office of the Superintendent of Financial Institutions (**OSFI**), should not be lost as a result of the CMRA being granted authority over key aspects of banks' businesses and operations that have been regulated by OSFI to date. Furthermore, compliance costs should not increase and the conditions under which market participants conduct business and serve their clients should not be less favourable than they are today. We also emphasize that this initiative should avoid altering the substantive provisions of existing securities laws, except as is required to implement the Framework.

Given the potentially large impacts that the CCMRS may have on all market participants, it is imperative to ensure that the responsibilities and authority of the CMRA are coordinated with those of existing federal regulatory bodies (such as OSFI, the Bank of Canada and the Financial Consumer Agency of Canada), as well as securities regulatory authorities in the non-Participating Jurisdictions, in order to minimize legal uncertainty and market disruption when the CMRA becomes operational.

OPERATION OF CCMRS

As noted in the 2014 CBA Comments and reiterated in our December 2015 comments on the revised CMA, we require more information on how the CCMRS would operate. We continue to believe it is imperative that more information on certain aspects of the CMRA be issued for public consultation before the CCMRS becomes operational.

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

- The precise structure of the CMRA, including the composition of the expert board of directors, as well as governance and constituting instruments for the CMRA more broadly;
- How the knowledge and expertise of staff at the federal agencies that currently oversee the responsibilities outlined in the CMSA would be replicated at the CMRA;
- Guidance on how the CMRA's broad discretion would be exercised;
- The substance and standard of due process for benchmarks and products that are designated as systemically important and for practices that are prescribed to be systemically risky;
- How the exemptions and other enforcement-related actions prior to the CMRA coming into effect would be transitioned (we appreciate that the Participating Jurisdictions published an overview of the proposed transition approach in December 2015, but the transitional provisions referred to in Part 16 of the CMA remain to be seen);

- The nature of the dialogue, interaction and collaboration between the CMRA and OSFI, as well as other key federal agencies;
- The nature of the dialogue, interaction and collaboration between the CMRA and non-Participating Jurisdictions;
- Regulations under the CMSA and implementation legislation of the Participating Jurisdictions.

SECTION 7 OF THE CMSA

Section 7 of the CMSA gives the Governor in Council, on the federal Minister of Finance's recommendation, the ability to assign to the CMRA the administration of any provision of the *Bank Act* or its regulations. The intention behind this provision is not clear to us, and its scope is very broad. Moreover, the provision does not indicate that the Minister's recommendation should take into account whether the activity in question may already be appropriately regulated by existing federal bank regulatory agencies such as OSFI. Absent additional guidance, the purpose and benefits of such a provision are unclear and we are concerned that there would be a number of significant risks if such a transfer of authority were to take place.

Prescriptive, fragmented regulatory regime

We are concerned that a transfer of authority under section 7 to the CMRA could lead to OSFI's unified, principles-based approach to bank regulation being replaced by a more prescriptive, fragmented regime that could threaten many aspects of the existing system. Canada has been recognized as having the strongest financial services sector in the world by the World Economic Forum for eight consecutive years. The strength of this regime is in no small part related to federal jurisdiction over bank activities under a single set of laws and enforcement authorities. As the primary regulator for banks, OSFI has developed a pragmatic and principles-based approach to regulation that has served Canada well. It is important to ensure that the CCMRS does not undermine the well-functioning federal framework for bank regulation and dilute prudential federal oversight of banks.

Concerns regarding fragmentation also arise when considering how a delegation of authority under section 7 would impact Participating Jurisdictions vis-à-vis non-Participating Jurisdictions. Whereas provisions of the *Bank Act* are applied consistently across all jurisdictions, a delegation of authority to the CMRA could lead to different approaches to regulation between Participating and non-Participating Jurisdictions. This would undermine a key strength of the effective national bank regulatory framework that is currently in place.

Loss of expertise

As noted above and in our 2014 CBA Comments, our members are particularly concerned about the interaction and collaboration between the CMRA 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.

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*, OSFI sets out comprehensive expectations for banks, consistent with Canada's G20 commitments in this area. This current framework has worked well for many years and there is a need to ensure that existing OSFI capabilities are maintained.

Another example is OSFI's 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.

If the Governor in Council assigns to the CMRA areas of bank regulation and oversight in respect of which OSFI has had the historical expertise, we are concerned that there would be a loss of institutional knowledge and supervisory capability of OSFI over the activity, including the risk of a potential disruption or shift in focus of the relationships that OSFI maintains with bank supervisors in other jurisdictions.

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

As noted in our 2014 CBA Comments, 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 CMSA confers upon the CMRA certain powers associated with the oversight of systemic risk, namely the designation of systemically important benchmarks and products and the prescription of systemically risky practices. It is not clear to us how the CMRA's powers in this area would intersect with OSFI and the Bank of Canada's current mandates relating to prudential oversight and systemic risk. The CMSA does not specify how the CMRA would work with other government agencies to address systemic risk. 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 knowledge are maintained so that there are no threats to the safety, soundness and stability of the Canadian financial system. For example, the CMSA gives the CMRA the authority to make urgent orders suspending, restricting or prohibiting trading in a

security or derivative, but the expertise necessary to make orders such as these, with potentially widespread effects on financial markets, rests with prudential regulators. 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 CMRA 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

We do not know at this time how the CMRA generally 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 CMRA and the non-Participating Jurisdictions. 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. Any guideline regarding the interface mechanism with non-Participating Jurisdictions should be subject to public comment.

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 the CMSA deviate in meaningful ways from the current securities enforcement framework and from the *Criminal Code*. For example, the insider trading prohibition in the CMSA extends beyond the current prohibition in the Ontario *Securities Act*. Given the significance of the CCMRS undertaking, we strongly believe that the CMSA should be consistent with existing securities laws and the *Criminal Code*, and the existing law 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, including potential constitutional and due process issues. We

have set out in the Appendix those proposed provisions and changes that are of primary concern to us.

EXTRATERRITORIALITY

We are concerned with the extraterritorial reach of certain provisions of the CMSA, particularly the information collection and disclosure provisions. When making a regulation regarding record keeping, the CMRA must consider whether the keeping of records is required by legislation elsewhere. Furthermore, a person may disclose information to the CMRA, and the CMRA may disclose information to regulatory bodies and various other entities in Canada or elsewhere, if the disclosure is for the purpose of assisting in the administration of capital markets or financial legislation in Canada or elsewhere. These provisions give the CMRA and other persons unduly broad powers to disclose information abroad based on their consideration of capital markets administration and legislation in other jurisdictions. In addition, the term "assisting" is vague and has a potentially wide scope, which could result in the disclosure of significant amounts of information to foreign bodies. We have set out in the Appendix in more detail those proposed provisions with an extraterritorial reach that are of concern to us.

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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 be operationalized. We also have significant concerns regarding the implications of the CMSA for the mandates of OSFI, the Bank of Canada and other federal agencies, the potential adverse implications if administration of any provision of the *Bank Act* or its regulations were to be delegated to the CMRA, and the interaction between the CCMRS and the non-Participating Jurisdictions. In light of the magnitude of the proposed changes, we believe that market participants would benefit from an additional comment period on the complete Framework once all its component pieces have been revised to reflect stakeholder feedback and the remaining parts of the regime, including governance guidelines and implementing legislation in the Participating Jurisdictions, have been proposed.

We would be pleased 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

List of Provisions and Changes of Concern to CBA Members

Provision / Change	Comment
Systemic risk related to capital markets **3.** In this Act, systemic risk related to capital markets means a threat to the stability of Canada's financial system that originates in, is transmitted through or impairs capital markets and that has the potential to have a material adverse effect on the Canadian economy.	Clarification should be provided as to the extraterritorial implications of this provision – i.e., whether the intention is to capture foreign capital market intermediaries. The scope of section 3 as it pertains to foreign domiciled entities should be clearly outlined.
Duty to keep and provide information **9. (1)** The regulations may prescribe requirements in relation to the keeping of records and information and the provision of records and information to the Authority or a designated trade repository for the purposes of (a) monitoring activity in capital markets or detecting, identifying or mitigating systemic risk related to capital markets; or (b) conducting policy analysis related to the Authority's mandate and the purposes of this Act. *Factors to consider* **(2)** In making a regulation referred to in subsection (1), the Authority must consider the following factors: (a) whether the keeping of records and information is already required by capital markets or financial legislation in Canada or elsewhere; and (b) the extent to which it is practicable to obtain the records and information from another source.	The CMSA confers broad powers to collect information. The regulations may prescribe requirements in relation to the keeping and provision of records and information. In light of the CMRA's various mandates, this provision should clarify that this information will be collected and used in connection with systemic risk issues rather than to regulate specific persons or products. Further, such information should only be collected for the administration of Canadian capital markets or for financial regulation in Canada.
Disclosure of personal information to Authority **12.** A person may disclose personal information to the Authority if the disclosure is for the purpose of the administration of this Act or assisting in the administration of capital markets or financial legislation in Canada or elsewhere. *Disclosure to certain persons, authorities or entities* **15. (1)** The Authority may disclose any information obtained under this Act to a financial regulatory authority, trading facility, clearing house, designated trade repository, self-regulatory organization, governmental authority or regulatory body, in Canada or elsewhere, if the disclosure is for the purpose of (a) promoting and protecting the stability of Canada's financial system through the management of systemic risk related to capital markets; or (b) assisting in the administration of capital markets or financial legislation in Canada or elsewhere. *Other disclosure* **(2)** The Authority may disclose any information obtained under this Act to any person, authority or entity that is not referred to in subsection (1) if the Authority considers that	Sections 12 and 15 allow for disclosure of information for certain purposes. These provisions are overly broad and should be amended to clearly delineate the circumstances in which such information may be disclosed. In addition, allowing such disclosure to assist in the administration of capital markets or financial legislation "elsewhere" is too far-reaching. Disclosure should be limited to circumstances that advance Canadian interests. In addition, the reference to "exceptional circumstances" in s.15(2) is vague and should be deleted.

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exceptional circumstances exist for doing so and that the disclosure is necessary for a purpose set out in that subsection.	
Disclosure outside Canada **16.** Before the Authority discloses information to a person, authority, entity or agency outside Canada, the Authority must enter into an agreement or arrangement with the person, authority, entity or agency regarding the terms of the disclosure.	In light of the potential impact of disclosure, this provision should outline the factors that should be considered when determining the terms of disclosure and the issues that should be addressed in the agreement or arrangement, such as privacy and confidentiality.
Disclosure of compelled evidence **17.** Before the Chief Regulator discloses evidence given under paragraph 28(3)(b), he or she must provide the person that gave the evidence with notice that it may be disclosed, and for what purpose, and with an opportunity to be heard, unless (a) the disclosure is made in a proceeding that is commenced or for the purposes of a proceeding that is 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.	There are constitutional issues surrounding the use of compelled evidence in a criminal proceeding against the person who gave the compelled evidence. With regard to s.17(b), disclosure should only be permitted after the hearing of an application made on notice to the affected parties.
Systemically important products **20(1)** *Systemically risky practices* **22(1)**	Sections 20 and 22 do not include an "opportunity to be heard" similar to section 18(3) when a benchmark is designated as systemically important. A similar right should be granted to persons who could be directly affected when products are designated as systemically important or a specific practice is designated as systemically risky. There should also be a mechanism by which affected persons can apply to have designations varied or revoked. Clarification is also required as to whether non-Participating Jurisdictions would have the ability to oppose the designation of products, practices and benchmarks.
Powers – entry **28.(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 anything that is relevant to the inquiry 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 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 anything from the place for examination or	The Chief Regulator should be required to obtain a court order before an authorized person is permitted to seize any records or things under s. 28(7). The right to inspect and seize should be limited to those items that relate to the matter(s) under investigation. As currently drafted, the powers of entry amount to a search warrant without judicial authorization and will engage constitutional validity questions. Further, the powers of entry are not limited to particular locations or business premises, nor is the scope of review limited to particular records.

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copying.	
Duty to assist **29.** The person that is subject to a review under section 27 or an inquiry under section 28 and their directors, officers, employees, agents and mandataries, and the owner or person that is in charge of a place that is entered under subsection 28(7) and every person that 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 27(1) or the authorized person to inquire into a matter as set out in subsection 28(1), as the case may be.	The duty to assist should only apply when staff of the regulator is exercising powers of compulsion contained in the CMSA. As presently drafted it is unclear if all of s.29 is limited to giving assistance when a place is entered under s.28(7) of the CMSA, or if that limitation only applies to the owner or person in charge of a place that is entered under the powers in that subsection. This section also imposes an imprecise and indefinite obligation to "give all assistance that is reasonably required."
Notice of violation **34. (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. *Content of notice* **(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 60 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, on notice to the Chief Regulator, to make representations to the Tribunal with respect to the violation and the proposed penalty, and the manner for doing so; (e) the right of the person to apply to the Tribunal for an extension of the period specified in the notice; and (f) 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. *Extension of period* **(3)** On application by the person, the Tribunal may extend the period specified in the notice.	A notice of violation and fine should not be issued without a full opportunity to be heard in advance.
Failure to pay or make representations **35.(4)** A person that neither pays the penalty nor makes representations in accordance with the notice or within the period extended under subsection 34(3) is deemed to have committed the violation and the Chief Regulator must impose the penalty proposed in the notice.	Where a person neither pays the penalty nor makes representations, the Chief Regulator should nonetheless be required to establish before an independent decision-making body that there has been a violation. This body should determine and impose any penalty.
Contravention by directors or officers **37. (1)** If a person other than an individual commits a violation, any of the person's directors or officers who authorized, permitted or acquiesced in the contravention	This provision should clarify that these individuals may be found liable only if they were served with the notice and given an opportunity to be heard by the Chief Regulator

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is a party to and liable for the violation whether or not the person that actually committed the violation is proceeded against. *Contravention by investment fund manager* **(2)** If an investment fund commits a violation, the investment fund manager is a party to and liable for the violation whether or not the investment fund that actually committed the violation is proceeded against.	and an independent decision-making body.
Freeze order **40.** The provision allowing a person directly affected by a freeze order to apply to the Tribunal for clarification or to have it varied or revoked (section 50(4) of the August 2014 version of the CMSA) has been deleted.	Former section 50(4) should be included in the CMSA. In addition, in accordance with s.126(5) of the Ontario *Securities Act* (**OSA**), there should be a requirement for freeze orders to be reviewed by a court and for any extension of such order to be subject to court approval.
Definition of capital markets intermediary **42.** "Capital markets intermediary" means a person that, as a significant part of its business, trades in securities or derivatives or provides services related to trading in or holding securities or derivatives. It does not include a trading facility or clearing house.	This definition should clarify whether capital markets intermediary includes entities that provide services, such as securities processing, clearing and investor communication, to market participants.
Due diligence **51.** No person is to be convicted of an offence under section 48, other than for a contravention of section 71 or 72, if the person establishes that they exercised due diligence to prevent the commission of the offence.	This section should clarify that a person may rely on the existence of reasonable policies and procedures designed to prevent the type of offence that allegedly occurred to establish the due diligence defence.
Special relationships **56.(6)** A person is in a special relationship with an issuer if (a) the person is an insider, affiliate or associate of any of the following: (i) the issuer, (ii) a person that is evaluating whether to make, or that proposes to make, a take-over bid for securities of the issuer, (iii) a person that is evaluating whether to become, or that proposes to become, a party to an amalgamation, merger, reorganization, arrangement or similar business combination with the issuer, (iv) a person that is evaluating whether to acquire, or that proposes to acquire, a substantial portion of the issuer's property; (b) the person has engaged, is engaging, is evaluating whether to engage, or proposes to engage, in any business or professional activity with or on behalf of the issuer or a person described in subparagraph (a)(ii), (iii) or (iv); (c) the person is a director, officer or employee of the issuer or a person described in subparagraph (a)(ii), (iii) or (iv) or paragraph (b); (d) the person learned of a material change with respect to the issuer or a material fact with respect to securities of the issuer while the person was a person described in	In regard to large issuers in particular, the inclusion of employees of the issuer and persons described in subparagraph (a)(ii), (iii) and (iv) and paragraph (b) (rather than just directors and officers) for the purposes of the insider trading and tipping prohibitions creates an unduly broad web of potential liability for various market participants, especially as it relates to the "chain of tippees" analysis. This is problematic when coupled with the significant penalties arising from the broad vicarious liability approach in section 38 of the CMSA. Extension of vicarious liability principles to the regulatory sphere exposes organizations to significant quasi-criminal liability and significant penalties for non-conduct failures (e.g., an inadvertent gap in a compliance program rather than separate problematic conduct by the organization) as a result of virtually automatic vicarious liability for employee conduct. An employer may implement and properly monitor appropriate procedures and controls intended to avoid employee misconduct. Seeking to hold an employer vicariously liable for the conduct of a rogue employee, even though

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paragraph (a), (b) or (c); or (e) the person learns of a material change with respect to the issuer, or a material fact with respect to securities of the issuer, from any other person described in this section, including a person described in this paragraph, and knows or ought reasonably to know that the other person is in a special relationship with the issuer.	appropriate procedures and controls are in place, is unduly harsh. We recommend that the CMSA adopt an approach consistent with the approach currently contained in the OSA. Section 175(3) of the OSA General Regulation allows a dealer or other financial services organization to rely on the existence of "reasonable policies and procedures", such as ethical walls designed to prevent contraventions of the insider trading rules, as a defence.
Insider trading **57. (1)** Every person that is in a special relationship with an issuer whose securities are publicly traded commits an offence if they use knowledge of a material change with respect to the issuer, or a material fact with respect to securities of the issuer, that they know has not been generally disclosed, to trade a security of the issuer or to enter into a transaction involving a related financial instrument.	Section 57 sets out the restrictions on insider trading and tipping. This prohibition is broader than section 76 of the OSA in that section 57 applies to a "trade" as compared to a "purchase or sale" of a security. The change in definition invites uncertainty in an area that has been defined through years of case law by the courts and the securities regulators. We recommend that the CMSA adopt the more restricted "purchase or sale" phrase as contained in section 76 of the OSA. The prohibition is also broader in that it applies to securities and "related financial instruments", a concept that includes not only derivatives but also agreements, arrangements, commitments or understandings that affect a person's economic interest in a security, namely the right to receive a benefit or exposure to risk. The expansive definition is vague and overly broad, which would result in uncertainty as to what properly falls within the definition. We recommend that the CMSA adopt a provision similar to the language contained in the OSA.
Tipping **57.(4)** Unless it is necessary in the course of their business, every issuer whose securities are publicly traded or person in a special relationship with such an issuer commits an offence if they inform another person of a material change with respect to the issuer, or a material fact with respect to securities of the issuer, that they know has not been generally disclosed when they know or ought reasonably to know that the other person might (a) use the information in a transaction related to the issuer; or (b) disclose the information to a third person that might use it in such a transaction.	This provision provides an exemption from the prohibition on tipping where it is "necessary in the course of their business." Currently, under Ontario securities law, "in the necessary course of business" is used in the tipping and other prohibitions. Courts and regulators across the country have interpreted this phrase. As such, we recommend that the CMSA use "in the necessary course of business" in this section and in section 57(5). Otherwise, the revised language could imply a change in the meaning, which we believe is not the intention.
Changes to proposal **83.(3)** If, after publication of the proposed policy statement and consideration of the comments, the Authority proposes to change the proposed policy statement in a way that it considers material, the Authority	Section 83(3)(c) should be amended to provide interested persons with at least 60 days to make written comments on material changes to a proposed policy statement. This amendment would be consistent with the 60 day period for

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must publish a notice of changes that includes the following: (a) the proposed policy statement with the proposed changes; (b) a description of the changes and the reasons for them; and (c) an invitation to interested persons to make written comments about the changes within a period of at least 30 days after the day on which the notice of changes is published.	comments on a proposed policy statement in s.83(2).
Exemptions by Governor in Council **84.** The Governor in Council may make an order exempting a specified Crown corporation from a provision of this Act or the regulations.	The Participating Jurisdictions should clarify why Crown corporations are subject to exemption from the CMSA, given that many of them are active in the capital markets and their activities could have systemic risk implications.
Right to apply for review **91. (1)** A person that is directly affected by a decision of the Chief Regulator may, on notice to the Chief Regulator, apply to the Tribunal for a review of the decision except in the case of a decision made under section 34.	The reference to section 34 has not been updated to reflect the amended numbering. Section 24 (urgent orders) should be referenced instead of section 34.
Former s.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 (now section 91), subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with other than under that section.	The CMSA is silent on the process for appealing or seeking judicial review of any Tribunal decision made pursuant to the CMSA. The process to appeal or seek judicial review of a Tribunal decision should be explicitly set out.