BLACKROCK®

July 6, 2016

Submitted via electronic filing: commentonlegislation@ccmr-ocrmc.ca

Re: Submissions concerning the proposed *Capital Markets Stability Act* (Canada) – Revised Consultation Draft ("Revised Act")

Dear Sirs/Mesdames:

BlackRock, Inc. (together with its affiliates, "**BlackRock**") strongly supports initiatives to strengthen the stability and integrity of Canada's financial system and remains highly supportive of appropriate measures to detect, prevent and manage systemic risks to capital markets. As such, we commend the Government of Canada ("**GoC**") on its ongoing efforts to identify and address any potential regulatory gaps and appreciate your willingness, particularly since the release of the previous draft of the legislation in 2014 ("**Original Draft**"), to extensively consult stakeholders on this important regulatory initiative. Indeed, we continue to believe that ongoing consultation with interested parties is the most effective way of ensuring that any regulatory reforms are appropriately calibrated to the public policy considerations sought to be addressed.

A. About BlackRock

BlackRock is one of the world's leading asset management firms. Our client base ranges from pension funds to sovereign wealth funds and official institutions to financial institutions, foundations, corporations, charities, and individuals around the world. BlackRock supports a regulatory regime that increases transparency, protects investors and facilitates responsible growth of capital markets, while preserving consumer choice and assessing benefits versus implementation costs.

BlackRock Asset Management Canada Limited is an indirect, wholly-owned subsidiary of BlackRock and is registered as a portfolio manager, investment fund manager and exempt market dealer in all jurisdictions of Canada and as a commodity trading manager in Ontario.

B. BlackRock's Responses

BlackRock welcomes many of the changes made to the Original Draft which are now reflected in the Revised Act. In particular, we agree with your assessment that "international best practices have shifted away from entity-based regulation towards assessing the systemic risk posed by entities' activities and the products they trade in"[1] and therefore strongly support, for the reasons

[1] Commentary on the *Capital Markets Stability Act*, January 2016 at p. 5.

set out in our response letter to the Original Draft[2], the move away from potentially designating "capital markets intermediaries" and other entities as systemically important and, instead, toward a focus on products and practices. We also support the addition of the materiality threshold in the definition of "systemic risk related to capital markets" as it is a helpful clarification which, as noted, is more in line with definitions espoused by other international regulatory organizations[3].

In addition, we are encouraged by the GoC's efforts to enhance regulatory coordination by introducing an explicit requirement for the Authority to consider whether and how the benchmark, product (as defined below) or practice subject to a systemic risk inquiry is already regulated[4]. We believe these amendments, now reflected in the Revised Act, are an important development which should help mitigate and, ideally, obviate the prospect of duplicative and unnecessarily onerous regulation, particularly vis-à-vis existing provincial securities laws.

We do, however, have a number of specific suggestions, set out below for consideration, as to how we believe the Revised Act can be improved still further.

1. Products vs. Practices

Sections 20(1) and 22(1) of the Revised Act empower the Capital Markets Regulatory Authority ("**Authority**") to designate classes of securities or derivatives (together, "**products**") and practices as "systemically important" or "systemically risky", respectively. For each of these two categories, the Revised Act further prescribes a unique set of both qualitative factors which the Authority must consider in making a "systemically important" or "systemically risky" designation[5], as well as the contents of regulations which may flow as a consequence of such a designation[6]. We believe, however, that the Revised Act could benefit from clarifying how a scenario would be evaluated by the Authority whereby a potential designee has elements of *both* a product and practice. For example, in the case of an investment fund which employs leverage, it is unclear to us whether the Authority would, for purposes of the Revised Act, assess it through the lens of a product (given its structure) or rather a practice (given its use of leverage). As the qualitative factors that must be considered and the potential regulations that may be imposed as a consequence are substantially different for each of these two categories, we believe it is important for the Revised Act to be further clarified in order to help reduce ambiguity as to its potential application.

2. Procedural Fairness and Ex Ante Stakeholder Consultation

BlackRock welcomes the changes in the Revised Act designed to bolster procedural fairness, particularly in respect of the enhancements made to certain of the urgent order provisions[7] as well as the substitution throughout of the "opportunity to make representations" protection in favour of the "opportunity to be heard". However, we are concerned that this latter, and

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[2] "Submission Concerning the proposed *Capital Markets Stability Act* (Canada) – Draft for Consultation", BlackRock, December 2014: http://www.blackrock.com/corporate/en-za/literature/publication/capital-markets-stability-act-canada-120814.pdf.

[3] Supra note 1 at p. 2.

[4] Sections 18(2)(g), 20(2)(h) and 22(2)(f) of the Revised Act, respectively.

[5] Sections 20(2) and 22(2) of the Revised Act, respectively.

[6] Sections 21 and 23 of the Revised Act, respectively.

[7] Sections 24(6), 24(7) and 24(8) of the Revised Act.

critically important, due process protection appears to be afforded to benchmarks subject to a potential "systemically important" designation[8] but not – crucially – to products or practices. While we acknowledge that any regulations promulgated are required to be accompanied by a public notice[9] which, among other things, must solicit written comments from interested parties within no fewer than 90 days[10], we strongly urge the GoC to also consider affording the right of an "opportunity to be heard" to the entity responsible for managing the product or engaging in the practice, as applicable, which is subject to systemic risk inquiry (e.g., the investment fund manager or capital markets participant). In addition, there may be other interested stakeholders with valid concerns or inputs who would take advantage of the opportunity to be heard.

We believe that failure to uniformly provide this important ex ante protection to categories of potential designees under the Revised Act – thereby resulting in certain impacted stakeholders not having the opportunity to furnish the Authority with critical data and/or analysis *before* a designation is made – could likely result in "systematically important" or "systemically risky" designations being assigned inappropriately or, at the very least, prematurely. Moreover, we struggle to identify a compelling policy rationale as to why products and practices should be distinguished, from a procedural perspective, from benchmarks. To the extent a product or practice is thought to be systemically important or systemically risky and remediation is required on an exigent basis, we believe that the urgent order provisions of the Revised Act – which are subject to a higher threshold standard and their own procedural protection regime – should appropriately address such a scenario.

3. Policy Statements and Interpretive Guidance

To the extent the Revised Act is ratified, BlackRock encourages the Authority to avail itself of the provision allowing for the issuance of policy statements and other materials "that it considers advisable to provide guidance on its interpretation of the [Revised] Act and the exercise of its powers"[11]. In light of the fact that ratification of the Revised Act (as may be amended) would represent the first foray into securities regulation by the federal government, we welcome as much interpretive guidance regarding its intended application as can be provided. Issuing policy statements – particularly after being first subject to a 60 day public comment to alleviate any concern of "legislating by notice"[12] – that, for example, provide guidance as to what the Authority views as possibly constituting "systemic risk related to capital markets", will assist stakeholders in proactively mitigating any such risks. Similarly, BlackRock encourages the Authority to extend the public comment period on material subsequent changes to a proposed policy statement from 30 to 60 days[13] in order to allow ample time for stakeholder consideration and comment.

While BlackRock acknowledges the difficulty in anticipating all scenarios – indeed, we understand that reality to have informed, at least in part, the rationale behind adopting a "platform approach" to the legislation – forward interpretive guidance in the form of policy

[8] Section 18(3) of the Revised Act.
[9] Section 75(1) of the Revised Act.
[10] Section 75(3) of the Revised Act.
[11] Section 83(1) of the Revised Act.
[12] Section 83(2) of the Revised Act.
[13] Section 83(3) of the Revised Act.

statements would help reduce uncertainty for capital markets participants who may potentially be impacted by regulatory action.

C. Conclusion

BlackRock is a vocal advocate of balanced reform and remains committed to working with regulators to find solutions that mitigate risk, protect investors and facilitate responsible growth of capital markets – all while preserving consumer choice and reducing regulatory uncertainty.

BlackRock sincerely appreciates the overtures the GoC has made to meaningfully engage stakeholders during the consultation period, and we would be pleased to continue the dialogue by making appropriate representatives available to discuss any of these comments with you at your convenience.

Yours very truly,

BlackRock Asset Management Canada Limited

Margaret Gunawan
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