



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-73
No-Action
May 30, 2014
Division of Swap Dealer and Intermediary Oversight

Nathalie Clark
General Counsel & Corporate Secretary
Canadian Bankers Association
Box 348, Commerce Court West
199 Bay Street, 30th Floor
Toronto, Ontario, Canada M5L 1G2

Re: Time-limited no-action relief from compliance with the quarterly risk reporting requirement under § 23.600(c)(2) for any fiscal quarters ending on or before July 31, 2014

Dear Ms. Clark:

This letter is in response to the request of the Canadian Bankers Association (“CBA”) to the Division of Swap Dealer and Intermediary Oversight (“DSIO” or the “Division”) of the Commodity Futures Trading Commission (“Commission”) on behalf of each of the five Canadian banks that are registered as swap dealers (“SDs”) in the United States under the Commodity Exchange Act (“CEA” or “the Act”)¹ and Commission Regulations (“Regulations”),² namely, the Bank of Montreal, the Bank of Nova Scotia, the Canadian Imperial Bank of Commerce, the Royal Bank of Canada, and the Toronto Dominion Bank (collectively, “the Canadian Banks”). Specifically, the CBA requests that DSIO grant time-limited no-action relief from compliance with the quarterly risk reporting requirement set out in Regulation 23.600(c)(2),³ as supplemented by the Commission’s *Comparability Determination for Canada: Certain Entity-Level Requirements* (“*Comparability Determination*”),⁴ for any fiscal quarter ending on or before July 31, 2014.

¹ 7 U.S.C. §§ 1 *et seq.*

² 17 C.F.R. §§ 1.1 *et seq.*

³ 17 C.F.R. § 23.600(c)(2).

⁴ 78 Fed. Reg. 78,839 (Dec. 27, 2013).

I. Background

In its *Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations*,⁵ the Commission set forth a general framework for permitting compliance by foreign SDs with the comparable regulatory requirements of foreign jurisdictions to substitute for compliance with the requirements of the CEA. In May 2013, the Canadian Banks, the CBA, and the Office of the Superintendent of Financial Institutions (“OSFI”), the Canadian Banks’ primary regulator, jointly submitted to the Commission an application for determination of regulatory comparability in connection with the entity-level requirements. In the *Comparability Determination*, the Commission found that the Canadian requirements pertaining to risk management programs were equivalent to those set out by the Commission in Regulation 23.600, except as to Regulation 23.600(c)(2), which requires SDs to file quarterly risk exposure reports.⁶

On April 23, 2014, representatives of OSFI and the Commission met to discuss the quarterly risk reporting requirements. Those discussions are ongoing as to the level of detail and sufficiency of information required to be delivered in respect of quarterly risk exposure reports and the method of delivery of such information to ensure meaningful disclosure as required by Regulation 23.600(c)(2). Your letter states that, given that it appears likely that these discussions may take several months to conclude, and given that the Canadian Banks would then need time to build processes and systems to meet the requirements in accordance with the specifications ultimately determined by any OSFI and Commission agreement that is reached, the Canadian Banks believe that they will need at least two fiscal quarters to comply with Regulation 23.600(c)(2). Accordingly, on behalf of the Canadian Banks, the CBA is requesting time-limited no-action relief for the two coming fiscal quarters (that is, for any fiscal quarter ending on or before July 31, 2014) to comply with the quarterly risk reporting requirement of Regulation 23.600(c)(2). Your letter proposed that the Canadian Banks would provide the Commission with their first quarterly risk report for the fiscal quarter ending on October 31, 2014.

II. Conclusion

Based on the fact that OSFI and the Commission are engaged in ongoing discussions concerning specific issues related to how the Canadian Banks shall comply with Regulation 23.600(c)(2), the Division believes that granting your request for time-limited no-action relief is appropriate. Accordingly, the Division will not recommend that the Commission bring an enforcement action against the Canadian Banks if they do not file quarterly risk reports for any fiscal quarter ending on or before July 31, 2014, which means that the Canadian Banks would

⁵ 78 Fed. Reg. 45,292 (July 26, 2013).

⁶ 17 C.F.R. § 23.600(c)(2) (stating, *inter alia*, that “[t]he risk management unit of each [SD] . . . shall provide to senior management and to its governing body quarterly written reports setting forth the market, credit, liquidity, foreign currency, legal, operational, settlement, and any other applicable risk exposures of the [SD] . . . [and] shall furnish copies of its Risk Exposure Reports to the Commission within five (5) business days of providing such reports to its senior management”).

provide their first quarterly risk reports to the Commission for the fiscal quarter ending on October 31, 2014.

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse the Canadian Banks from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void.

Should you have any questions, please do not hesitate to contact me at (202) 418-5977, or Gregory Scopino, an attorney on my staff, at (202) 418-5175.

Very truly yours,

Gary Barnett

cc: Regina Thoele, Compliance
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