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VIA E-MAIL

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Re: Impact of Section VI of Announcement 2012-42 on Trades and Collateral in the Capital Markets

Dear Madam/Sirs:

The Investment Industry Association of Canada (IIAC) and the Canadian Bankers Association (CBA)[1] are writing this letter to follow up on issues relating to business units of our members involved in

[1] IIAC is Canada's equivalent to the Securities Industry and Financial Markets Association (SIFMA) in the United States, and represents approximately 95% of all investment dealers across Canada – 170+ bank-owned and independent firms in total. The CBA works on behalf of 54 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 274,000 employees.

investment banking, proprietary trading and funding, syndications, securitizations, derivatives, notional principal contracts, securities lending, sale/repurchase transactions, commodities trading and fixed income trading (collectively, the "capital markets" businesses). In particular we would like to address the impact of Section VI ("Clarification of the Scope of Grandfathered Obligations") of Announcement 2012-42 (the "Announcement") on trades and collateral in the capital markets.

Grandfathering Date

We appreciate the expansion of the term "grandfathered obligation" in the Announcement, however, we continue to have significant concerns that FIs and counterparties will need a substantial amount of time to understand the requirements of the final FATCA regulations (which have yet to be released) and the impact of intergovernmental agreements (IGAs) on existing capital markets agreements (including executed contracts and Master Agreements[2]).

As such, we recommend that Treasury exercise its general authority for rulemaking under Chapter 4 to release expedited guidance advising that the grandfathering date is extended until at least January 1, 2014 (or some later date, taking into account the timing of the release of final FATCA regulations and signed IGAs), to allow FIs a reasonable amount of time after the effective date of FFI agreements and/or IGAs implementing FATCA to assess their business and operational requirements, and to re-document their Master Agreements appropriately. The Announcement aligns the general implementation date for new accounts under FATCA for all FIs and withholding agents to January 1, 2014, and we believe that it makes sense to align the grandfathering date for outstanding obligations with this implementation date. It will be impossible to know by January 1, 2013 which counterparties will be FATCA compliant, which leaves FIs open to considerable risk, and may result in disruption to the execution of capital markets agreements and transactions.

If a full extension of grandfathering until the end of 2013 cannot be provided, it is crucial that additional relief be provided for transactions executed under the framework of a Master Agreement. Although the industry has been working diligently to remediate the gross-up provisions that exist in many types of Master Agreements, it is difficult to amend documents with counterparties in the absence of signed IGAs and final FATCA regulations. If grandfathering is not extended past December 31, 2012, FIs will be forced to choose between taking on unknown withholding risk or stop trading with counterparties under Master Agreements that have not been amended.

Grandfathered Collateral

We also appreciate the movement toward expanding the term "grandfathered obligation" to include any obligation to make a payment with respect to, or to repay collateral posted to secure obligations

[2] For the purposes of this letter, a "Master Agreement" is any agreement in respect of transactions entered into between the parties where the parties separately agree upon the specific economic terms of each transaction entered into under such Master Agreement. Examples of Master Agreements include (but are not limited to) Master Agreements for derivatives published by the International Swaps and Derivatives Association (ISDA), Master Repurchase Agreements, Master Securities Loan Agreements, or Master Securities Forward Transaction Agreements published by the Securities Industry and Financial Markets Association (SIFMA), Global Master Repurchase Agreements published by the International Capital Market Association (ICMA) and Global Master Securities Loan Agreements published by the International Securities Lending Association (ISLA).

under a notional principal contract that is a grandfathered obligation. We are concerned about the very narrow scope of this provision, which would exclude payments on most collateral, as it is only a small minority of situations where notional principal contracts are the only derivatives traded under a Master Agreement. Moreover, this limited scope would preclude grandfathering for any collateral posted under cross-collateral arrangements.

In a previous letter from the IIAC to you dated April 30, 2012, it was recommended that all accounts that hold collateral pledged under an ISDA Credit Support Annex (CSA) should be excluded from the definition of "financial account" in the final FATCA regulations as they pose a very low risk of being used for tax evasion purposes. CSAs are not used as investment vehicles; rather they represent amounts pledged to secure a derivative investment. We believe that this holds true for collateral posted under all Master Agreements (including cross-collateral arrangements), and support the removal of these accounts from the scope of FATCA.

However, at a minimum, the language of the final grandfathering rule should be amended to include "any obligation to make a payment with respect to, or to repay, collateral posted to secure ***any transaction or combination of transactions entered into before January 1, 2014***" [***removing the reference to notional principal contract and adding new language in bold italics***].

We would greatly appreciate the opportunity to discuss these issues with your further, or provide additional input as required. Please contact Andrea Taylor at 416-687-5476 if you have any questions.

Yours sincerely,

"Andrea Taylor"

Andrea Taylor
Director
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"Darren Hannah"

Darren Hannah
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