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INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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President & Chief Executive Officer

December 21, 2011

BY ELECTRONIC MAIL

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1432
regs.comments@federalreserve.gov

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN: 3064-AD85
Comments@fdic.gov

Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
Docket No. OCC-2011-0014
regs.comments@occ.treas.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100F Street, NE
Washington, DC 20549
File No. S7-41-11
rule-comments@sec.gov

Dear Ladies and Gentlemen:

Re: Comments on the Impact of the Proposed Volcker Rule on the Marketplace for Canadian Government Securities

The Investment Industry Association of Canada appreciates the opportunity to comment on the proposed Section 619 of the Dodd-Frank Act, referred to as the Volcker Rule, issued jointly by the U.S. Federal Reserve Board, Office of the Controller of the Currency, FDIC and SEC (the "Agencies") on October 11, 2011 which will be part of the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted July 21, 2010. The final rule is proposed to be effective July 2012, with an initial two-year conformance to provide full compliance.

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The Investment Industry Association of Canada is the national association of the Canadian investment industry that represents the interests of nearly 200 individual registered investment dealers, and their U.S. and non-U.S. affiliate firms. These firms carry out the vast majority of the financial advice, securities trading and underwriting business in Canadian capital markets. The six largest investment dealers are the affiliates of the six major Canadian bank financial groups, and undertake the majority of capital markets business in domestic markets. The U.S. broker-dealer affiliates of these six Canadian dealers are responsible for most of the cross-border trade with U.S. investors.

The comments in this submission focus on the impact of the decision to impose a prohibition on proprietary trading in Canadian government securities, while granting an exemption for U.S. Treasury bonds, and U.S. state and municipal bonds.

The Dodd-Frank Act is intended to strengthen the U.S. financial system and mitigate risk-taking by U.S. banks that benefit from Federal Deposit Insurance and access to the Federal Reserve discount window. Trading risks would be mitigated by prohibiting these institutions from trading directly as principal in debt, equity, and derivative securities for their own account, or indirectly through the ownership and sponsorship of hedge funds and private equity funds. The Volcker Rule, however, would permit principal trading to facilitate transactions executed on behalf of clients, including certain types of market-making, hedging, asset management and underwriting subject to a significant compliance and reporting regime. These client-focused principal trading activities would be subject stringent limit parameters, leading to a more cautious approach to market-making activities to ensure proper compliance under the Volcker Rule.

The Volcker Rule currently, will apply to the global activities of banking organizations with operations in the United States, and their affiliates and subsidiaries world-wide without regard to the jurisdiction of local oversight bodies. As a result, the Volcker Rule will apply to each foreign banking organization with a branch, agency and subsidiary in the United States, as well as all their U.S. and non-U.S. affiliates and subsidiaries.

Canadian federal and provincial government debt securities are distributed widely in institutional markets in the United States, reflecting the investment grade credit rating on these debt securities, the strong Canadian dollar and the solid economic and fiscal underpinnings of Government of Canada and provincial government bonds. As a result, it is unlikely that Canadian institutions would be able to avail themselves of the "solely outside the U.S." exemption for these securities. More than one-fifth of Canadian government debt is held by non-residents, with a significant share held by U.S. investors. Last year, more than $1.3 trillion in Government of Canada bonds traded with foreign investors.

The Volcker restrictions on proprietary dealing in Canadian government securities are of particular concern to the Canadian banks and investment industry. First, these government debt securities represent a relatively high proportion of overall securities market-making and principal dealing carried out by the affiliates of Canadian banks and dealers. The Volcker restrictions on proprietary trading, the limitations on the exemption in the proposed rule for market-making, and related compliance required to manage the distinction between client market-making and proprietary dealing, will result in more restrained market-making activity, interfering with the efficiency and liquidity of the traded marketplace. For example, the Rule could influence the

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timing and accumulation of large blocks of securities to meet client purchase and sale orders, impacting the liquidity and pricing of large transactions. The damaging impact on market-making activity would adversely affect the liquidity and pricing of Canadian debt for U.S., Canadian issuers and investors alike.

Moreover, the application of the Volcker Rule to Canadian government securities is an unprecedented departure from existing regulatory treatment. U.S. regulators have taken the position that foreign (Canadian) broker-dealers that execute transactions for U.S. investors placed through a registered U.S. broker-dealer are subject to Canadian regulatory standards. There is nothing in the statutory text of the Volcker Rule or legislative history to suggest that Congress intended the Agencies to depart from their long-standing approach to apply U.S. banking and securities law to cross-border transactions.

The compliance obligations under the Volcker Rule are not only substantive, including written policies to document and monitor covered activities and ensure compliance, internal controls to monitor and identify non-compliance, management framework, delineating responsibility and accountability, independent testing, training of personnel, and making and keeping records for at least five years, but an unprecedented reach of extra-territorial regulation.

The extra-territorial application of these compliance requirements appears to be quite extensive. It is realistically not feasible that a Canadian firm can limit compliance with these reporting requirements to the U.S. affiliates of the organization, or only to their U.S.-facing activities, as the compliance requirements would be triggered whenever a U.S. counterpart participated in a trade. Thus, a Canadian firm with U.S. operations may be required to implement the reporting and record-keeping requirements of the Proposed Rule on a global basis, including all non-U.S. operations. While it is unclear how U.S. regulators would examine such compliance programs, the compliance burden could be extensive and costly for Canadian firms, and may be inconsistent with home country laws.

Finally, the Volcker Rule will clearly interfere and raise the costs of cross-border dealing in Canadian securities. As a result, the Volcker Rule may contravene the NAFTA trade agreement.

Conclusion

The Agencies have enquired whether the exemption from the proprietary trading prohibitions for U.S. Treasury bonds and U.S. state and municipal bonds should extend to foreign government securities. We strongly recommend the Agencies grant this exemption under the Volcker Rule to the securities of Canadian federal and provincial governments. The Proposed Volcker Rule imposing prohibitions on proprietary trading will adversely impact the liquidity and pricing of Canadian government securities for U.S., Canadian and other investors. Second, the Proposed Rule is an unprecedented reach of U.S. law to non-U.S. financial institutions and markets. In this regard, the Rule introduces uncertainty and costs in respect of the conduct of trading for foreign financial institutions that have a significant primary and secondary market presence in the United States. Third, the Rule may contravene the provisions in the NAFTA trade agreement and even run counter to G20 and Financial Stability Board objectives for coordinated policy-making across jurisdictions.

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We respectfully request consideration of the comments and concerns raised in this submission related to aspects of the Volcker Rule, notably the implications for the Canadian affiliates of U.S. banking entities, and consequences for cross-border trading in Canadian federal and provincial government securities. We recommend the Agencies re-propose the Proposed Rule following consideration of our comments, and those of other market participants. We also encourage the Agencies to consider an extension of the comment period for an additional 90 days from the current deadline of January 13, 2012.

Yours sincerely,

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