

December 12, 2016

Business Law Policy  
Consumer and Business Policy Unit  
Ministry of Government and Consumer Services  
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***Delivered via Email***

***Re: Comments of the Investment Industry Association of Canada on the Report of the Business Law Advisory Council to the Minister of Government and Consumer Services***

The Investment Industry Association of Canada (IIAC)<sup>1</sup> commends the Business Law Advisory Council (the “Council”) on the completion of its first report (the “Report”) to the Minister of Government and Consumer Services. We are writing to convey our support for the Council’s recommendations to amend certain provisions in the Ontario *Personal Property Security Act* (PPSA) to enable security interests in cash collateral to be perfected by “control”.

In response to a consultation on proposed amendments to the PPSA in 2012, the IIAC expressed our industry’s support for legislative changes that would make it easier for businesses and financial institutions to provide or obtain a first-priority security interest in cash collateral. We further recommended that amendments proposed by the Ontario Bar Association (OBA) which would enable security interests in cash collateral to be perfected by way of control be adopted, because such changes are necessary to implement a well-functioning over-the-counter (OTC) derivatives clearing regime in Canada. Given the substantial progress that Canada has made toward meeting its international obligations to mitigate systemic risk related to OTC derivatives, we believe that these amendments to the PPSA are long overdue. Furthermore, the implementation of first-priority security interests in cash collateral through control is important not only to derivatives market participants, but also for securities lending,

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<sup>1</sup> The Investment Industry Association of Canada (IIAC) is the national association representing the investment industry’s position on securities regulation, public policy and industry issues on behalf of our 130 IIROC-regulated investment dealer Member firms in the Canadian securities industry. These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in public and private markets for governments and corporations.

repurchase (repo) and other collateralized transactions, as well as for markets that may develop in the future. Furthermore, as noted in the Report, without these changes, financial institutions and their clients in Ontario, and in Canada generally, would be at a competitive disadvantage vis-à-vis other jurisdictions that have already implemented similar changes, because of the potential for increased margin requirements and transactions costs.

We also recognize that the Council conducted careful consultation with many different stakeholders, and gave a great deal of consideration to the competing concerns expressed with respect to the existing priority interests of pension beneficiaries under subsection 30(7) of the PPSA. We believe that the compromise proposed by the Council is appropriate, but urge the Government to use care in drafting the amendments. As mentioned above, the implementation of first-priority interests in cash collateral is important for all types of “eligible financial contracts” (as defined in regulations to the federal *Bankruptcy and Insolvency Act* (BIA)), including securities lending and repurchase transactions, and not just for OTC derivatives. Any amendments to the PPSA should therefore be carefully drafted to allow for subsection 30(7) priority for all deposit accounts other than those that function as “financial collateral” for “eligible financial contracts” as defined under the BIA, and should not specifically limit that exception to OTC derivatives. As noted in the Report, special status has been given to all eligible financial contracts under the BIA, and this approach in the PPSA would be consistent with this approach nationally, and in other jurisdictions.

We greatly appreciate and support the ongoing work of the Council and the Ministry to improve Ontario’s business and commercial statutes. If you have any questions with respect to the foregoing, we kindly ask that you contact the undersigned at [irussell@iiac.ca](mailto:irussell@iiac.ca) or 416-364-2754.

Yours sincerely,



Ian Russell  
President & CEO  
Investment Industry Association of Canada

Cc:

Carol Hansell, Chair, Business Law Advisory Council