FCAA
Financial and
Consumer
Affairs Authority

Suite 601
1919 Saskatchewan Drive
Regina, SK
Canada S4P 4H2

August 19 ,2016

In the Matter of
The Securities Act, 1988

and

In the Matter of
The Bank of Nova Scotia

DECISION

Background
The Financial and Consumer Affairs Authority of Saskatchewan (the Authority) has received an application from The Bank of Nova Scotia (the Filer) for a decision under section 83 of *The Securities Act, 1988* (the Act) exempting the Filer from the dealer registration requirement under section 27 of the Act and the disclosure requirement under section 40 of the Act to allow the Filer to trade Interest Rate Derivatives (as defined below) and FX Derivatives (as defined below) in the circumstances described below (the Requested Relief).

The Authority has assigned to the Director, Securities Division (the Director) the power to make exemption orders and rulings under the provisions of the Act.

Representations
This decision is based on the following facts represented by the Filer:

1. It is a bank listed in Schedule I of the *Bank Act* (Canada) (the "Bank Act");

2. It is a federally regulated financial institution subject to the Bank Act and the *Canada Deposit Insurance Corporation Act* (Canada) and supervised by the Office of the Superintendent of Financial Institutions (Canada) (OSFI);

3. Its head office is in Halifax, Nova Scotia. The Filer carries on business across Canada, including Saskatchewan;

4. It is not registered under the Act or the securities legislation of any jurisdiction of Canada;

5. The Filer is a reporting issuer in all jurisdictions of Canada and is not in default of any requirement of Saskatchewan securities legislation;

6. It is a financial services provider offering, among other things, commercial financial products and services;

7. The Filer obtained relief on May 8, 2013 akin to the Requested Relief on facts similar to those contained herein from the British Columbia Securities Commission;

8. An "Interest Rate Derivative" is any over-the-counter derivatives instrument where the underlying interest is a rate of interest. Interest Rate Derivatives include interest rate swaps, forwards and options. Interest rate swaps are arrangements where two parties exchange streams of payments based on two differing rates of interest applied to the same notional principal amount. An interest rate option is a financial instrument which gives one party the right but not the obligation to receive or pay an amount of money based on the interest rate payable on a notional principal amount. An interest rate forward (or a forward rate agreement) is a financial instrument that fixes the rate of interest payable on an obligation beginning on a future date;

9. An "FX Derivative" is any over-the-counter derivatives instrument where the underlying interest is a rate of exchange between two currencies. FX Derivatives include foreign exchange swaps and forwards and currency options. Foreign exchange swaps are arrangements where two parties exchange streams of payments based on two differing rates of exchange for the same currency pair. A currency option is a financial instrument which gives one party the right but not the obligation to exchange an amount denominated in one currency for an amount denominated in another currency at an agreed rate of exchange. A foreign exchange forward is a financial instrument that fixes the rate of exchange between two currencies at a future date;

10. Under the Act, Interest Rate Derivatives and FX Derivatives are captured under the definition of "derivative";

11. General Order 91-908 *Over-the-Counter Derivatives* (91-908) provides an exemption from the requirements of sections 27 and 40 of the Act in respect of trades in "OTC derivatives" (as defined in 91-908) where each party to the trade is a "qualified party" (as defined in 91-908) acting as principal;

12. The Filer is a qualified party (as defined in 91-908). It wishes to trade in Interest Rate Derivatives and FX Derivatives with certain counterparties in Saskatchewan who do not meet the definition of qualified party in 91-908 (each, a Non-Qualified Party);

13. It proposes to trade in Interest Rate Derivatives and FX Derivatives in Saskatchewan only with Non-Qualified Parties that are both:

(a) at the time the Interest Rate Derivative or FX Derivative is entered into, a commercial banking client (as described below) of the Filer and/or any affiliate of the Filer; and

(b) a business entity (including, but not limited to, corporations, partnerships and trusts but excluding individuals and sole proprietorships); (collectively, Clients);

14. Commercial banking clients are those clients of the Filer and/or an affiliate of the Filer who are provided with commercial banking facilities and services, including but not limited to operating accounts, deposits, borrowing, custodianship and cash management services;

15. As the Filer will only be offering Interest Rate Derivatives and FX Derivatives to Clients, the Filer will have knowledge of their business operations and the specific business risks that they seek to manage through transactions in Interest Rate Derivatives and FX Derivatives;

16. By limiting the transactions in Interest Rate Derivatives and FX Derivatives to Clients, the Filer will ensure that Interest Rate Derivatives and FX Derivatives are only distributed to counterparties who are sophisticated enough to understand the nature of these products and for whom these products are suitable; and

17. Clients entering into Interest Rate Derivatives and FX Derivatives transactions will be assisted by individuals employed by the Filer who have expertise in dealing in such transactions and understand the needs of Clients with respect to such transactions.

Decision

1. The Director is satisfied that it would not be prejudicial to the public interest to make the decision.

2. The decision of the Director is that the Requested Relief is granted provided that:

(a) The Filer will, prior to entering into its first Interest Rate Derivative or FX Derivative transaction with a Client, deliver to such Client a plain language risk disclosure statement providing disclosure substantially similar to that in the attached Schedule "1" (the Risk Disclosure Statement).

(b) Individuals employed by the Filer to deal with Clients in respect of Interest Rate Derivatives and FX Derivatives transactions will:

(i) have the education, training and experience that a reasonable person would consider necessary to perform activities related to Interest Rate Derivatives and FX Derivatives competently, including where such activities relate to the provision of trading services and advice to Clients;

(ii) have the necessary expertise to determine whether a specific Interest Rate Derivative or FX Derivative transaction is reasonably suitable to manage a Client's specific business risk; and

(iii) not be registered in any capacity under the securities, derivatives or commodity futures legislation of any jurisdiction of Canada.

(c) The Filer will comply with all applicable OSFI Guidelines in dealing with Clients with respect to Interest Rate Derivatives and FX Derivatives transactions including the duty to act honestly and in good faith in connection with the sale and execution of over-the-counter derivatives transactions.

(d) The Filer will only enter into Interest Rate Derivatives transactions with Clients which are transacting for the purpose of managing a specific risk relating to such Client and its exposures to interest rate risk resulting from business transactions with the Filer.

(e) The Filer will only enter into FX Derivatives transactions with Clients that are transacting for the purpose of hedging a specific risk relating to their business. For such purposes, the Filer may rely upon a representation provided by any such Client to the Filer that any such FX Derivative transaction or all FX Derivative transactions that such Client enters into with the Filer are intended solely to hedge such business risk provided that the Filer has no reasonable ground to believe that that representation is false.

(f) This decision will lapse on the earlier of the date when derivatives dealer registration regulations and disclosure requirements regulations for derivative trades are in force in Saskatchewan or on August 19, 2019.

Dean Murrison
Director, Securities Division
Financial and Consumer Affairs
Authority of Saskatchewan

Schedule “1”

Risk Disclosure Statement for Derivative Transactions

This brief statement is not intended to and does not disclose all of the risks and other significant aspects of trading in derivative products (including for purposes of this statement over-the-counter interest rate and foreign exchange derivatives). In light of the risks associated with derivative transactions, you should undertake such transactions only if you understand the nature of such products and the contracts (and contractual relationships) into which you are entering and the extent of your exposure and tolerance to risk. Trading in derivatives is not suitable for many members of the public. Before entering into any derivative transaction, you should conduct a thorough and independent evaluation of the terms of the derivative transaction in light of your particular circumstances and the nature and extent of your exposure to risk. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources, ability to bear risk, understanding of the products and other relevant circumstances.

You should not construe the content of this statement as legal, financial, tax, accounting or other advice. More generally, we are not providing you with legal, financial, tax, accounting, or other advice in connection with any derivative transaction, and you should consult your own legal counsel, financial advisor, tax advisor or accountant as to legal, financial, tax, accounting and related matters concerning any derivative transaction, including the impact on your business and the requirements and results of conducting transactions.

1.a Option Risks

Transactions in over-the-counter derivatives including options carry a high degree of risk. You should familiarize yourself with the type of option (i.e. put or call) or combination structures (put and calls) and the associated risks. You may be able to offset or exercise your options or allow the options to expire. Based on contractual arrangements, the exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. Selling ("writing" or "granting") an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the seller is “covered”, by holding a corresponding position in the underlying interest, the risk may be reduced. If the option is not covered, the risk of loss may be unlimited.

1.b Interest Rate Swap Risks

In a fixed-for-floating interest rate swap, one party makes periodic payments based on a fixed rate that is agreed upon at the execution of the swap, while the other party makes payments based on a floating rate that may be reset periodically. From the perspective of a fixed rate payer, an increase in the overall level of fixed interest rates of the relevant tenors in the swap market (e.g., an upward shift of the relevant yield curve) will generally cause the swap to increase in value, because the fixed rate payer's contractually specified fixed rate obligations will be lower than the fixed rate then prevailing in the market. Conversely, if the overall level of fixed interest rates falls, the value of the swap to the fixed rate payer will generally decline. From the perspective of the floating rate payer, the corresponding value changes will be reversed.

Therefore, if you are the fixed rated payer, you will be negatively affected by a **fall** in the overall level of interest rates. If you are the floating rate payer, you will be negatively affected by a **rise** in the overall level of interest rates. In the case where you are the fixed rate payer, your payments will not change over the life of the swap, but the value of the swap will decrease (with a corresponding effect on your financial statements) and you will be paying more than the going rate of interest. In the case where you are the floating rate payer, your payments will change over the life of the swap as the floating rate is reset from time to time and a rise in interest rates will result in you making greater payments under the swap and in the value of the swap declining (with a corresponding effect on your financial statements).

1.c Foreign Exchange Forward Risks

One of the most common types of foreign exchange transactions is the foreign exchange forward contract ("FX Forward"), which is an agreement to buy one currency against the delivery of another currency at a rate set on the trade date for settlement on a specified date in the future. Under a deliverable FX Forward, the transaction terms provide for an exchange of payments in each of the two currencies on the settlement date.

Some over-the-counter derivatives are levered so that small market movements in the price of the underlying interest will have a proportionally larger impact on your position.

3. Hedging Risk

Hedging risk is the risk that the results of a transaction will not meet your intended hedging objective. In some cases, you may enter into transactions to hedge, reduce or otherwise manage price or other risks to which you or your affiliates may be exposed. There is no guarantee that the relevant derivative transaction will provide you with the intended results or meet your objectives.

4. Liquidity and Restrictions of Pricing Relationships

Liquidity risk is the risk that you may be unable to, or cannot easily, unwind or transfer your position in a timely manner at or near the previous market price, or at all. Over-the-counter derivative products can be subject to liquidity risk. Market conditions and/or certain over-the-counter derivative products may increase the risk of loss by making it difficult or impossible to effect transactions or to liquidate or to offset transactions. The customized nature of many derivative transactions may also add to the illiquidity. There is no guarantee that you can liquidate or unwind your position.

Under certain market conditions (i.e. highly volatile markets, or temporary market disruptions) normal pricing relationships between the underlying interest and the over-the-counter derivative may not exist. The lack of availability of underlying reference price may make it difficult to judge the "fair" value of your position.

5. Credit Risk

Credit risk is the risk that your counterparty to derivative transaction, The Bank of Nova Scotia, may fail to perform its obligations when due. You should assess the creditworthiness of your counterparty.

6. Commissions and Other Charges

Before you begin to trade, you should obtain a clear explanation of all commissions, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

7. Currency Risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

8. Legal Risks

Legal risks include the risk your transactions and or their related agreements may not be legally enforceable, may conflict with applicable laws and regulations or that the agreements do not correctly reflect a parties understanding. You should consult your legal counsel prior to entering into any derivative transactions.

9. Management Risks

Over-the-counter derivatives are complex instruments that can be difficult to value and monitor. Therefore, before entering into transactions involving over-the-counter derivatives you should ensure that you have supervisory procedures and analytical systems commensurate with the level of activity you contemplate so that you are able to monitor your over-the-counter derivative exposure. The monitoring includes being able to value your derivative transactions, given different underlying assumptions such as changes in underlying values, and changes in volatility.

10. Tax Risks

Before entering into transactions in over-the-counter derivatives you should understand the income tax implications of doing so. Different over-the-counter derivative transactions may have different income tax implications. You should consult your tax advisor to understand the relevant income tax considerations.