Proposed Revisions to the *Lobbyists' Code of Conduct*

Submission to the Commissioner of Lobbying of Canada

Canadian Bankers Association

December 19, 2014

ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

EXPERTISE CANADA BANKS ON
LA RÉFÉRENCE BANCAIRE AU CANADA

Introduction

The Canadian Bankers Association (CBA) is pleased to have this opportunity to provide comments on the proposed revisions to the *Lobbyists' Code of Conduct*.

The CBA works on behalf of 60 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees. The CBA advocates for effective public policies that contribute to a sound successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness.

As a federally regulated industry, the CBA and our member banks take seriously the responsibility to engage cooperatively with public office holders in order to assist in the development of sound public policy, in full compliance with the transparency and accountability regime established in the *Lobbying Act* and the *Lobbyists' Code of Conduct*.

The banking industry plays a central role in the Canadian economy:

- Banks and their subsidiaries paid $23 billion in salaries and benefits in Canada in 2013.
- Banks provided financing to about 1.6 million small and medium sized businesses.
- Canada's six largest banks paid $7.9 billion in taxes to all levels of government in Canada in 2013.
- Canada's banks provided $13.5 billion in dividend income to millions of Canadians in 2013.
- The banking sector helps Canada grow, generating over $51 billion, or 3.1 per cent, of GDP.

Against this backdrop, the banking industry believes that dialogue with the federal government, parliamentarians, regulators and crown agencies is of fundamental importance to the well-being of the national economy.

While this is true at all times, an unusual and extreme circumstance like the Global Financial Crisis is an example which underscores how essential an open and free exchange of information and ideas is between the industry and public office holders. While banks in other jurisdictions around the world failed or received billions of dollars in taxpayer-funded bail-outs, this did not happen in Canada. Canada's banks remained strong and well-capitalized, continuing to lend to families and

small businesses throughout the crisis to help mitigate the domestic impact of the resulting global recession. In fact, Canada's banking system has been rated as the soundest in the world for seven straight years by the World Economic Forum.

One of the reasons that our banks were able to withstand the effects of the global crisis and become the model for the world is because of the federal policy and regulatory framework for banking in Canada. The government reviews the statutes that govern federally regulated financial institutions every five years to ensure Canada remains a global leader in financial services, and the banking industry is expected to be an active participant with public office holders in that review. That framework has been achieved, maintained and continually enhanced because of the effectiveness of the relationship between policymakers, regulators and the banking industry.

Preferential Access

We have limited our comments on the revised Code to address the proposed new Rule 8 dealing with "preferential access".

> *8. A lobbyist shall not lobby a public office holder who is a relative or friend of the lobbyist or has financial or business dealings with the lobbyist. A lobbyist shall also not lobby other public office holders who work within that public office holder's area of responsibility.*

Our commentary about Rule 8 is focused specifically on the concept of prohibiting a lobbyist from lobbying a public office holder who is a "friend", and from lobbying any other public office holders "who work within that public officer holder's area of responsibility".

The banking industry is extremely concerned about this proposed change to the Code due to the very real potential for this provision to impede the open, effective and necessary dialogue that currently exists between the industry and public office holders. Our concerns can be summarized in the following points:

- It is not clear from the Commissioner's *Background Paper*, which accompanied the release of the revised Code, what problem or deficiency exists in the current lobbying regime which Rule 8 is meant to address.

- The absence of a definition of "friend" in the proposed Rule 8 makes it impossible for a lobbyist to know when they could be in jeopardy of breaching this provision in the Code. Further, the term "friend" is an extremely subjective one and it is difficult to imagine how a workable definition could be achieved for the purposes of the Code. Regardless, it is untenable to expect the Office of the Commissioner of Lobbying to be able to determine whether a friendship exists between a lobbyist and a public office holder.

- The regime established in the *Lobbying Act* already provides for full transparency around the activities of registered lobbyists, including the subject-matters that are the focus of discussions, the departments that are the focus of lobbying, and reporting to the Commissioner on a monthly basis about individual lobbying contacts with senior officials known as "Designated Public Office Holders".

- The cascading effect in Rule 8 of the prohibition to apply to "other public office holders who work within that public office holder's area of responsibility" could dramatically impede effective and necessary dialogue. In a scenario where a senior executive in a bank is deemed to be a "friend" of a senior public office holder such as a Minister or Deputy Minister, that executive would be prohibited from lobbying an entire government department. This is an extreme over reach and could deny public office holders from the otherwise legitimate need to seek out the views of senior business leaders.

Conclusion

As noted at the outset, the banking industry takes seriously its role in providing input to public office holders for the development of sound public policy, in full compliance with the transparency and accountability regime established in the *Lobbying Act* and the *Lobbyists' Code of Conduct*. The industry believes that, as proposed, Rule 8 threatens to seriously undermine the dialogue between business and government. As such, the CBA strongly encourages the Commissioner to reconsider the elements of Rule 8 dealing with "friends" so as to maintain a necessary open and effective dialogue between public office holders and the business community for the benefit of the Canadian economy.