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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

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Dear Sirs/Mesdames:

I Introduction

CanDeal.ca Inc. **(CanDeal)** is Canada's leading online marketplace for Canadian dollar-denominated (CAD$) debt securities and CAD$ interest rate swaps **(IRS)** (www.candeal.com). CanDeal's institutional dealer-to-client request for quote **(RFQ)** marketplace provides online access to the largest pool of liquidity for CAD$ government bonds, money market instruments and CAD$ IRS. As a regulated alternative trading system **(ATS)**, CanDeal has offered fixed income and money market trading on an electronic marketplace for over a decade. Since 2011, CanDeal has also offered CAD$ IRS. CanDeal has developed fixed income trading protocols and technologies which support increased liquidity, transparency and lower risk for over-the-counter **(OTC)** markets.

CanDeal appreciates the opportunity to provide feedback on the consultation paper (**Consultation Paper**) addressing the Derivatives Trading Facility (**DTF**).

II Interpretation

In this comment letter:

CAD$ IRS means CAD$-denominated IRS.

Canadian CAD$ IRS means CAD$ IRS transactions to which one or both counterparties are Canadian.

Canadian IRD means IRD transactions to which one or both counterparties are Canadian (regardless of currency type).

Canadian IRS means IRS transactions to which one or both counterparties are Canadian (regardless of currency).

Committee means the CSA Derivatives Committee.

FRA means forward rate agreement.

IRD means interest rate derivative, collectively FRAs, IRS and interest rate options.

SEF means a swap execution facility.

US CAD$ IRS means CAD IRS transactions to which one or both counterparties are US persons.

III Executive Summary

CanDeal supports the creation in Canada of the DTF as a multilateral marketplace category for the trading of OTC derivatives. CanDeal also supports the Committee's recommendation that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF. CanDeal submits, however, that the introduction of a new marketplace for the multilateral trading of OTC derivatives must be accompanied by a concurrent obligation to trade appropriate derivative instruments on that marketplace. Available evidence supports the proposition that in the absence of a trading requirement, the proposed DTF will not be adopted by buy-side or other market participants.

If a trading obligation does not operate concurrently with the introduction of DTF trading, Canada will cede control of the market for multilateral trading of liquid derivative instruments to which one or both counterparties are Canadian (including in particular in CAD$ IRS) to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners**.** In addition to exporting this important sector of the Canadian capital markets, a further unintended consequence of inaction on the part of the Committee will be ceding control and regulation over a significant portion of the Government of Canada bond market to foreign regulators. The healthy operation of the Government of Canada bond market is a critical component of our Canadian financial infrastructure and essential to the funding capabilities of corporate Canada and all levels of government. The Canadian Securities Administrators (**CSA**), Bank of Canada and Canadian market leaders must not lose sight of the instrinsic, packaged nature of trading CAD$ IRS with Government of Canada bonds, and the distinct risks associated with ceding foreign regulatory control of liquidity protocols over these critically important segments of the Canadian marketplace.

The SEF framework will also be the only option available to Canadian buy-side and sell-side participants transacting in made-available-to-trade (**MAT**) derivatives with US persons. The Committee should therefore include in its recommendations a regulatory framework for DTFs that is comparable to that applicable to SEFs with respect to derivatives subject to MAT determinations in order to enable Canadian participants to use DTFs to execute cross-border transactions with US persons in MAT derivatives on the basis of substituted compliance.

Respectfully, CanDeal does not support the Committee's position regarding the need for further evidence of market size or liquidity as there is sufficient proof in a number of classes of CAD$ IRS to warrant the imposition of a trading requirement in respect of such classes at this time. CanDeal has included information in this comment letter relating to liquidity in CAD$ IRS that it believes will be of assistance to the Committee.

CanDeal submits that the Committee should clearly articulate the proposed standards for pre-trade and post-trade transparency that will apply to transactions required to be executed exclusively on DTFs. The Committee should also clearly define the execution methods that will be permitted in respect of such transactions. The Committee should include a comprehensive proposal in respect of the test for liquidity that will apply to determine whether a derivative instrument or class of derivative instrument will be subject to the requirement to trade exclusively on a DTF. In CanDeal's submission, it is neither necessary nor desirable to prescribe requirements in respect of pre-trade transparency or execution methods that would apply in the absence of a trading obligation.

IV CanDeal Response to Questions

Although CanDeal's comments will address a number of areas, we have re-ordered the sequencing of questions on which comment has been solicited by the Committee in order to address the topic of mandatory trading first. We believe the issue of mandatory trading is fundamental and influences the approach to be taken to other major issues.

Question 23: Trading Obligation

1. The Committee has previously released for comment a consultation paper and rule that will require the mandatory clearing of OTC derivatives. CSA member jurisdictions have also implemented or will implement rules requiring the reporting of OTC derivatives transactions to trade repositories. Accordingly, the CSA has taken steps to mandate the clearing and reporting of OTC derivatives transactions, in line with Canada's G20 commitment.

2. From a policy perspective, of the three principal elements of G20 reform (electronic trading, clearing and reporting), the most important is trading in that the supply chain of information begins with the electronic trade. It is the trade that triggers events related to reporting and clearing. It is the electronic trade that facilitates efficient reporting and efficient clearing; an electronic trade is effectively a matched trade and therefore acceptable as such for a central clearing party (CCP) (some, if not all require or at least prefer a matched trade prior to 'entry' into the CCP). Also, risk mitigation begins at the point of the trade, and the electronic trade is by far more risk compliant than a telephonic trade in terms of internal risk transparency, timeliness and error reduction.

3. With respect to the trading component of the G20 commitment, the Committee recommends in the Consultation Paper "that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF". The Committee also recommends factors that the CSA consider in determining whether to require a class of OTC derivatives to be traded exclusively on a DTF. Notwithstanding this statement of general principle, the Committee adds that it does not have "sufficient data with respect to liquidity levels in the OTC derivatives market in Canada to be able to assess whether the introduction of mandatory DTF trading for a particular class of OTC derivatives would be appropriate". The Committee goes on to state that it will not be in a position to recommend *any* OTC derivatives as suitable for mandatory trading until after trade reporting and clearing obligations have

been in effect for a period of time. The Committee further stipulates that even once sufficient information is in hand to make a determination, none shall be made until "consultation with other Canadian authorities and with the public" are completed. As will be set out in more detail below, CanDeal respectfully disagrees that there is insufficient data to assess whether mandatory trading is appropriate and submits that the introduction of a new trading venue for the multilateral platform trading of OTC derivatives must be accompanied by the concurrent imposition of an obligation to trade appropriate derivative instruments on that venue.

4. The Consultation Paper does not propose that a mandatory trading obligation accompany the creation of the DTF structure. Instead, the Committee proposes a DTF structure that is premised on the absence of a trading obligation in the first instance, with enhancement of certain standards relating to pre- and post-trade transparency and trade execution only when a trading obligation is eventually imposed.

5. In both the US and the EU, the implementation of a legislated trading obligation has driven the creation of new trading entities, not the other way around. Indeed, the trading obligation in both jurisdictions applies not only to the new categories of venues (swap execution facilities (**SEF**s) and organized trading facilities (**OTF**s) that have been created as a consequence of the trading obligation) but to existing trading venues (i.e. designated contract markets (**DCM**s) in the US, and regulated markets (**RM**s) and multilateral trading facilities (**MTF**s) in the EU). Both jurisdictions began implementation of the G20 commitment to move trading of standardized OTC derivatives onto organized platforms by requiring that sufficiently liquid OTC derivatives be traded on regulated multilateral platforms. Both jurisdictions have created new venues and their associated structures to the extent that implementation of the trading requirement has required that new trading venues be created. Simply stated, a trading obligation is the raison d'etre for such venues. Such venues have then been structured to define the parameters of the mandatory trading obligation on such platforms.

6. The purpose of a trading obligation is to increase transparency in the derivatives market, to improve the efficiency of the market by facilitating better price discovery and trade cycle processes, and to reduce risk. It is in this context that mandatory trading and associated pre-trade transparency and trade execution requirements have been prescribed. Neither of the US or EU regulators have created an entity that is to function in the absence of a trading obligation applicable to specified classes of derivatives.

7. Instead of the approach that regulators in the US and EU have taken, the recommendations in the Consultation Paper largely preserve the status quo in terms of OTC derivatives trading in Canada, at least until the specified preconditions for the imposition of a mandatory trading obligation have been satisfied. In the interim, participants will focus on satisfying foreign regulatory requirements where, for example, accessing a US person market-maker or market-taker is advantageous. Cross-border IRS transactions where at least one counterparty is a US person will gravitate to foreign-regulated electronic trading venues as an add-on where IRS subject to a MAT determination are trading. With no timetable for the imposition of such an obligation for any derivative instrument, market participants are unlikely to take any action to alter current domestic trading behaviours in anticipation of a Canadian change. The Committee's proposal leaves non-transparent single-dealer bilateral trading intact and Canada lagging.

8. In terms of what effect such a decision will have on Canadians and the Canadian OTC derivatives market, we believe that broadly speaking there will be four general impacts:

    A. In the absence of a trading requirement, the DTF framework will not be adopted by buy-side or other market participants.

B. The SEF framework will be the only option available to Canadians transacting in MAT derivatives with US persons.
C. Canada will cede control of the Canadian IRS market to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners.
D. A dangerous precedent will be set for the inevitable migration to mandatory electronic trading of all applicable OTC debt and deriviatives products.

These four impacts are discussed in more detail in paragraphs A to D below. Paragraph E discusses the existing evidence that the Canadian CAD$ IRS market is sufficiently liquid to support a trading obligation.

A. In the absence of a trading obligation, the DTF framework will not be adopted

9. In the absence of a trading obligation requiring Canadian participants to trade certain classes of derivatives on DTFs, existing Canadian bilateral trading facilities and relationships will be unaffected by the CSA proposals. There will be little reason for Canadian participants to abandon their current opaque bilateral trading methods and practices which are substandard in terms of risk mitigation, price discovery and transparency. It should be recalled that these characteristics are some of the very factors that contributed to the financial crisis. History has already demonstrated that OTC derivatives market participants prefer, in the absence of being required to do otherwise, to transact bilaterally and non-transparently for a variety of reasons. Nothing in the CSA proposals will provoke a positive change from the opaque telephonic market dynamic for OTC derivatives transactions to which one or both counterparties are Canadian, as there is no incentive for change in the absence of a requirement to change; whereas other jurisdictions have addressed their G20 commitments in order to mitigate risks and advance the public interest in stable financial markets.

10. The reason that the US and EU have not created new trading entities that are to function in the absence of a trading obligation is that the creation of such entities simply would not make sense in the absence of such an obligation. The derivatives market has not organically embraced multilateral trading, as has been the case from the early days in equities markets and commodity markets. The derivatives market instead organically developed around an OTC trading model where bilateral dealer-to-client trading became the norm.

11. The transition of OTC derivatives to electronic multilateral trading platforms is not a case of “if you build it, they will come”. Experience in the US and EU demonstrates clearly that participants will avoid more transparent, multilateral trading of derivatives unless it is required. Indeed, since the advent of the trading obligation in the US for MAT derivatives on SEFs, liquidity has fragmented into virtually watertight EU and US blocs as EU participants refuse to deal with US persons for fear of exposure to US SEF rules. This liquidity fragmentation is a direct result of the EU having lagged behind the US in imposing its corresponding trading obligation. EU market participants have changed their behaviour in order to avoid having to transact on SEFs, dealing more exclusively with other EU participants in EUR IRS in order to avoid dealing with US persons and the SEF trading mandate. The EU trading obligation is not scheduled to come into effect until early 2017 and EU market participants have shown that they will avoid the stiffer rules regarding pre-trade transparency and multilateral trading until it is forced on them

by EU regulators. The CFTC even offered no-action relief to EU MTFs that were prepared to adopt rules similar to US SEF rules, and no EU MTF applied to the CFTC under the relief.[1]

B. The SEF framework will be the only option available to Canadians trading MAT derivatives

12. The Bank for International Settlements' triennial survey of IRS for 2013 indicates that more than 75% of Canadian IRS trading is cross-border in nature[2] and that almost 50% of Canadian IRD trading is denominated in currency types, classes of which are included in the existing MAT derivatives list[3]. Canadian market participants who deal with US persons in MAT IRS are required to trade such derivatives on SEFs, there being no regulatory equivalent to a SEF in Canada. The CFTC has opened the door to substituted compliance in the case of SEFs by offering no-action relief to MTFs that adopt certain of the standards applicable to SEFs. Under the current proposals, the Committee is not proposing a comparable regulatory framework for a Canadian trading platform that would enable Canadian participants to use the domestic platform to enter into cross-border transactions with US persons in MAT derivatives on the basis of substituted compliance. Consequently, the Committee proposal would cede the cross-border market in MAT IRS to SEFs.

13. Of equal importance as a practical matter is that Canadian counterparties to MAT derivatives will have no incentive to use a DTF for such transactions in the absence of a regulatory requirement to trade such instruments on DTFs. By failing to enact the equivalent in Canada of the trading requirement in the US for MAT derivatives, Canadian counterparties to such transactions would continue to be required to trade through SEFs, thus driving potential Canadian business exclusively to non-Canadian platforms

14. The current proposals thus consign any multilateral Canadian platforms for the multilateral trading of liquid vanilla derivatives to also-ran status. Lacking the ability to serve Canadian participants for their cross-border transactions in mandated classes of derivatives, such platforms would essentially be empty storefronts. In proposing a DTF without a concurrent trading mandate, the Committee would create a shell without a purpose by exporting MAT derivatives trading by Canadians to US markets.

15. Given the factors stated above, any delay in imposing a trading requirement in respect of suitable classes of derivatives in Canada will seriously prejudice any Canadian trading venue operator or start-up entity that wishes to enter the multilateral derivatives trading space.

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[1] According to an ISDA study released in July 2014, the average volume of EUR IRS transacted between European dealers as a percentage of total EUR IRS volume increased from 75% in September 2013, before mandatory SEF trading, to 93% by May 2014 after the MAT determinations for SEFs came into effect. The average cross-border volume of EUR IRS transacted between European and US dealers as a percentage of total EUR IRS volume decreased from 25% in September 2013 to 6% by May 2014. Whereas the market for EUR IRS has a more global character and is thus more prone to fragmentation, the market for USD IRS is US-centric: Gyntelberg and Upper, *The OTC interest rate derivatives market in 2013*, BIS Quarterly Review, December 2013 at pp. 75-76. Accordingly, SEFs are USD-centric liquidity pools, with USD IRS trades accounting for over 80% of IRS volume traded on these platforms in December 2014: Clarus Financial, *December Volumes in Interest Rate Swaps*, January 5, 2015. Nevertheless, trading volume in EUR IRS on SEFs decreased from from 13% before the MAT determinations came into effect to only 4% in December 2014.

[2] Bank for International Settlements, *Triennial Central Bank Survey, Interest rate derivatives market turnover in 2013*, December 2013 (**BIS Report**), at p 16.

[3] BIS Report, pp. 8-13.

C. Canada will cede control of the Canadian IRS market to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners.

16. Experience with SEFs to date does show, however, that once mandatory trading forces participants onto a multilateral platform, those participants will execute transactions in other liquid swaps on the platform even if not subject to a trading mandate because their workflow has been designed around compliance with the rules of the platform. Data from the USA demonstrates that US persons have come to execute CAD$ IRS on SEFs in significant volumes even though such instruments are not subject to mandatory SEF trading. The compliance effort required by a mandatory trading obligation appears to "magnetize" transactions in other swaps for which liquidity is available to the platform.

17. If there is no mandatory trading obligation in Canada for CAD$ IRS, the moment US regulators decide to make classes of CAD$ derivatives MAT, the market in such classes of instruments will be ceded to foreign marketplaces and regulators. Canadian regulators will be forced to follow suit and introduce mandatory trading but, from a practical perspective, the market will already have been ceded to first-mover foreign entities who have been developing an active market in CAD$ IRS for some time. The introduction of viable DTF participants at such a point will be unlikely to gain traction.

18. The Committee proposal would also cede the cross-border market in sufficiently liquid classes of derivatives as determined by EU regulators and to which Canadian participants are counterparties to the MTFs and OTFs on which trading of such derivatives classes by EU participants will soon be mandatory.

D. A dangerous precedent will be set for the inevitable migration to mandatory electronic trading of all applicable OTC debt and derivatives products.

19. As a significant portion of Government of Canada bond secondary market activity is intrinsically linked to CAD$ IRS trading as 'Swap Spread versus Government of Canada Bond' trades, the Canadian marketplace for cash bonds will be influenced by the rules and regulations governing the IRS trading platforms. Hence, as the SEF model is either adopted by or forced upon Canadians as no substituted compliance alternative exists, the SEF rules will influence the trading and liquidity protocols governing a significant portion of the Canadian Government debt markets. By way of illustration, when a participant executes a swap trade in a MAT derivative against a cash bond ('Swap Spread versus Bond' trade), the two sides of the trade are packaged and executed simultaneously, thereby eliminating risk. Under SEF rules, a trade must go to a minimum of three dealers; as a consequence of which, the cash bond is subject to the same protocol.

20. The healthy operation of the Government of Canada bond market is a critical component of Canadian financial infrastructure and essential to the funding capabilities of corporate Canada and all levels of government. This market—which is similar to the IRS markets in Canada, being cross-border in nature—has begun to adopt electronic trading and it seems only a matter of time before either domestic or foreign regulators consider mandatory electronic trading in the OTC cash markets (see ESMA discussion paper). Ceding control of the derivatives markets at this point sets a dangerous precedent with unintended consequences in the OTC cash markets.

E. The Canadian CAD$ IRS Market is Sufficiently Liquid to Support a Trading Obligation

21. The trading of US dollar-denominated (**USD**) derivatives subject to MAT determinations on SEFs since the advent of mandatory trading in February 2014 has irrefutably established the viability of multilateral trading of MAT derivative classes, including classes of USD IRS and USD credit default swaps (**CDS**). US market participants have clearly adopted SEF trading and its benefits of risk mitigation, transparency, price discovery, and deep pools of liquidity. Data shows that while approximately $1 trillion a month in USD IRS was traded on-SEF in the first months after the MAT determinations came into effect, a significant pick-up of more than 40% in volume occurred from September onwards with approximately $1.5 trillion traded per month and record on-SEF volumes recorded in each of September, October and December.[4] Indeed, the success of SEFs in increasing buy-side trading of standardized derivatives shows that liquidity has in fact formed around these marketplaces.[5]

22. It is not only USD derivatives that are sufficiently liquid for mandatory multilateral trading. Existing data available to Canadian regulators demonstrates that there is sufficient liquidity in certain classes of CAD$ IRS to warrant a trading requirement in respect of such classes. This data is examined in detail in Appendix A to this comment letter. The Canadian CAD$ IRD market ($4 trillion in volume traded annually) is approximately half the size of the CAD$ bond market in terms of secondary market turnover. When considering the entire Canadian IRD market ($8.5 trillion in volume traded annually), it is equal in size to the CAD$ bond market in terms of secondary market turnover. [6]

23. CanDeal, which executed approximately $2.4 trillion in volume in 2014, has proven that its multilateral bond ATS can deliver risk mitigation, transparency, price discovery, and deep pools of liquidity even with a much smaller market size than that which exists for Canadian CAD$ IRD.

24. US swap data repository (**SDR**) data shows that CAD$ IRS are transacted in significant volumes on SEFs using multilateral execution methods. These include both fixed-floating and overnight index swaps (**OIS**) categories. The data shows that more than 50% of US CAD$ IRS transaction volume trades on SEFs[7]. This data is significant because the US CAD$ IRS market is virtually the same size as, in fact is even slightly smaller than, the Canadian CAD$ IRS market[8]. The existence of liquidity in the US CAD$ IRS market is therefore a sure indicator of liquidity in the Canadian CAD$ IRS market. By this measure, approximately 50% of the Canadian CAD$ IRS market by notional volume is sufficiently liquid to support the imposition of a trading obligation in Canada in respect of the instruments that comprise such volume.

25. The evidence of Canadian CAD$ IRS liquidity that may be gleaned from the US data is even stronger than this, however. US CAD$ IRS transactions are reported to US SDRs because US persons are counterparties to them. However, the other counterparty to many of these transactions is Canadian. That is because much of the volume in CAD$ IRS is cross-border. According to the BIS Report, 83% of CAD$ IRS transactions with buy-side participants were cross-border during the study period. In addition, the BIS data shows that more than 90% of cross-border CAD$ IRS transactions were executed in the US, i.e. with a US counterparty. This shows that many on-SEF US CAD$ IRS transactions are also Canadian CAD$ IRS transactions and that much of the US liquidity in CAD$ IRS is supplied by Canadian dealers. The liquidity

[4] http://www.clarusft.com/a-review-of-2014-us-swap-volumes/
[5] http://www.clarusft.com/a-review-of-2014-us-swap-volumes/
[6] http://www.bis.org/publ/rpfxf13irt.pdf
[7] See Appendix A.
[8] *Ibid.*

demonstrated by SEF trading of CAD$ IRS is therefore liquidity to which a Canadian trading obligation should apply.

26. In addition to the US data, the European Securities and Markets Authority (**ESMA**) has determined there is a liquid market in various classes of CAD$ IRS cleared by EU CCPs. The liquid classes include: (i) 6-month to ten-year tenors of fixed-floating CAD$ IRS; and (ii) one- and two-year CAD$ OIS.[9]

27. In CanDeal's submission these findings support the conclusion that there is sufficient liquidity in these classes of CAD$ IRS to warrant the imposition of a trading requirement.

Question 16: Pre-Trade Transparency

28. CanDeal is in agreement with the position taken in the Consultation Paper that pre-trade transparency requirements should not apply to transactions in OTC Derivatives on DTFs which have not been mandated to be traded on DTFs. Such OTC Derivatives will continue to trade bilaterally (voice trades, single-dealer platform, etc.) without a pre-trade transparency requirement. To prescribe pre-trade transparency requirements would disadvantage DTFs and ensure that participants continue to favour bilateral trading methods ensuring minimal participation on the DTFs.

29. With respect to pre-trade transparency for those OTC Derivatives which are mandated to trade on DTF, CanDeal accepts that while a measure of pre-trade transparency is required, it should not come at the expense of liquidity or efficient pricing. CanDeal's RFQ platform is successful because it permits buy-side participants to choose which liquidity provider or providers it wishes to secure quotes from. A buy-side participant may choose to request a quote from some, but not all, liquidity providers—or indeed even only one liquidity provider—and responding quotes are known only to the requestor. In this way, a buy-side participant is enabled to make their own decision between the benefits of more pre-trade transparency (i.e. more dealers included in the RFQ) and the detrimental effect on pricing and investment strategy resulting from excessive exposure. The CSA must be careful to calibrate pre-trade transparency requirements in such a way as to not negatively impact liquidity or make products more expensive to buy-side participants.

30. The EU approach to pre-trade transparency, for example, calibrates requirements to take into account the differing characteristics of various trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems. Where an order book is used, the venue will be required to make public the aggregate number of orders and the volumes they represent at each price level, for at least the five best bid and offer price levels. Where an RFQ system is used, the bids and offers and attached volumes submitted by each responding entity must be made public, although the quotes are executable exclusively by the requesting participant. Where streaming quotes are provided, the best bid and offer by price of each market maker in that instrument, together with the volumes attached to those prices, must be published.

31. Where a voice trading system is used, the information that must be made public is the bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system. The definition does not incorporate the concept of exclusivity in either party to the transaction, so other participants can participate in the price formation process on the basis of this

[9] See Appendix A.

information. The proposed standards do not set out a specific period of time for which such information must rest on the system before the orginal parties may execute on it. The requirement to make public bids and offers implies that the operator of a voice trading system will need to make use of electronic means in order to comply with the pre-trade transparency requirement. Each of the pre-trade transparency requirements is qualified by the condition that the trading systems to which they apply bring together multiple third-party buying and selling interests.

32. The details of the proposed EU approach to pre-trade transparency as set set out above have not been included in the Consultation Paper. Footnote 77 of the Consultation Paper makes reference to "forthcoming" ESMA technical standards. However, the technical standards were in fact published for final consultation in ESMA's *Consultation paper on MiFID II/MiFIR*, December 19, 2014, at pp. 206-208 based on draft technical standards published in ESMA's *Discussion Paper MiFID II/MiFIR*, May 22, 2014 at pp. 148-154. A more detailed summary of the EU technical standards relating to pre-trade transparency is attached as Appendix B to this comment letter. A summary of the EU technical standards related the criteria for determining whether derivatives should be subject to the trading obligation is attached as Appendix C.

33. CanDeal notes that concerns have been expressed by EU participants to the proposals in relation to RFQs, particularly with respect to making responses to RFQs public. If a liquidity provider is obligated to publish a price quote publicly and then honour that price to subsequent clients, providers will become cautious and reluctant to provide quotes, resulting in widened bid-offer spreads.

34. The US approach to pre-trade transparency obviates those concerns by stipulating that quotes provided in response to an RFQ be known only to the requester. SEFs are not required to disclose responses to RFQs to all market participants. The SEF rules ensure an adequate level of pre-trade transparency by also requiring that a SEF provide the RFQ requester: (1) with any firm resting bid or offer in the same instrument from any of the SEF's order books at the same time as the first responsive bid or offer is received by the RFQ requester and (2) with the ability to execute against such firm resting bids or offers along with the responsive orders. The requester retains the discretion to decide whether to execute against the resting bids or offers or responsive orders. This communication requirement promotes pre-trade price transparency and the trading of swaps on SEFs, as the RFQ requester will have the ability to access competitive quotes and quote providers will be able to have their quotes viewed by the RFQ requester. The SEF rules do not impose a specific requirement that the identity of the RFQ requester be disclosed or anonymous. The rules also do not provide a specific requirement regarding the publishing of the "request" for a quote. However, a RFQ system must permit RFQ requesters the option to make an RFQ visible to the entire market.

35. In the Consultation Paper, the Committee summarizes the US approach to pre-trade transparency as follows:

> The US approach to pre-trade transparency is to (i) require SEFs to provide an order book on which market participants may make executable bids or offers which are displayed to all participants, (ii) require an RFQ to be disseminated to a minimum number of liquidity providers, and (iii) require dealers to "show" other market participants the terms of a prearranged order book trade between customers or between themselves and a customer through the 15-second rule.

36. The US therefore takes the approach that the components of the prescribed execution methods determine the level of pre-trade transparency associated with each method, whereas the EU approach is to specify the information that must be made public in the case of each of several defined execution methods. Although both approaches essentially solve the same problem albeit through different methods, in Candeal's view the US approach is to be preferred for several reasons. First, the pre-trade transparency regime in respect of MAT derivatives has been in operation for over a year and is therefore a known quantity. Participants have adapted to the rules and volume has steadily grown. Second, this form of pre-trade transparency has been the standard in electronic bond trading for over a decade in Canada and the US. Thirdly, the majority of derivatives trades in Canada are cross-border and by far the majority of those trades are with US persons. Canadian participants will in many cases therefore already be familiar with the US rules through being required to execute transactions in MAT derivatives with US persons on SEFs. Fourthly, uniformity of regulation will reduce the possibility of regulatory arbitrage and minimize evasion. Finally, DTFs will have a better chance of qualifying for substituted compliance in the US as SEFs to the extent that they wish to expand their offering to US persons so that transactions with such persons initiated by Canadian persons who deal with the DTF for CAD$ denominated derivatives may also be completed on DTFs.

37. The US approach to pre-trade transparency, particularly in the context of RFQ systems, also strikes an appropriate balance between efficient price formation and pre-trade information, on the one hand, and concerns about information leakage in the event that pre-trade information was to be more broadly disseminated (subject to CanDeal's comments about a dealer minimum to be addressed below in the execution methods section of this comment letter).

Question 3: Permitted Execution Methods

38. The Committee sets out a number of execution methods that would be "permitted" to be used by a DTF in the absence of the imposition of any trading requirement: Consultation Paper on pp. 818-19. These recommendations form part of the CSA's conceptual approach to the DTF as a trading entity that is intended to operate in the first instance in the absence of any trading obligation. DTF rules relating to pre- and post-trade transparency and trade execution would be enhanced only when a trading obligation was imposed. In CanDeal's submission, permitted execution methods should only apply where a trading mandate exists.

39. In both the US and the EU, execution methods are prescribed solely in connection with a mandatory trading obligation. Neither jurisdiction prescribes "permitted" execution methods to apply where derivatives are not subject to a trading obligation. In the US, derivatives transactions that are not required to be executed on a SEF may be transacted using "any method of execution". This enables traditional bilateral methods of execution to continue to be used for derivatives transactions that are not subject to the mandatory trading obligation. Similarly, under the EU proposals, transactions that are not required to be traded on multilateral platforms (RMs, MTFs or OTFs) are not subject to execution requirements.

Question 4: Required Execution Methods:

40. For the reasons given above, the Committee should recommend that execution methods for transactions executed on a DTF should be prescribed only for derivatives transactions that must be executed exclusively on a DTF. Such execution methods should be imposed either directly or through pre-trade transparency requirements that essentially dictate the parameters of the permissible

execution methods.[10] It is submitted that the Committee's discussion of "Permitted Execution Methods" should be replaced by a more prescriptive version of the discussion of execution methods that may apply after a trading obligation is imposed, under the heading "Enhanced requirements where derivatives are subject to a DTF-trading mandate" on pp. 828-829.

41. CanDeal would not object to a provision specifying that an order book be offered by a DTF as a minimum trading methodology. Experience during the first year of mandatory trading on SEFs indicates that while order books have not yet gained significant traction per se among dealer-to-client SEFs, the ability of a requesting participant under an RFQ to execute on any resting bids or offers on an order book or, at its option, a quote in response to the request enhances competitive pricing and improves pre-trade transparency and liquidity. The SEFs that have made the most significant gains in market share and transaction volume since the initiation of mandatory trading (Tradeweb, for example) still see that liquidity makers and takers prefer RFQ as their predominant execution method. Experience to date indicates that in the dealer-to-client space, RFQ remains the overwhelming choice for execution method despite the existence of an order book. Nevertheless, an order book operating in conjunction with an RFQ system may be a valuable tool for price discovery and pre-trade transparency, and recent data indicates that order book trading is slowly increasing on SEFs, particularly as SEF trading moves products toward greater standardization.

42. In CanDeal's view, an appropriately tailored RFQ system operating in conjunction with an order book should be a permissible method for executing transactions subject to the trading requirement. As to the components of such a system, CanDeal is of the view that the applicable requirements in the US, adjusted for each currency type, are suitable for adoption in the DTF framework. In order to address concerns about liquidity and potential information leakage in the smaller CAD$ IRS market, however, it would be appropriate to limit the dissemination requirement to at least two liquidity providers, except in the case of IRS covered by MAT determinations, which would remain at a minimum of three in order to permit DTFs to qualify for substituted compliance in the US.

43. For the same reason, the US provisions relating to prearranged transactions negotiated on a bilateral basis should also apply to the DTF execution regime. Such transactions in derivatives subject to mandatory trading on DTFs should be required to be displayed on a DTF's order book for a minimum period, either 15 seconds or such other period approved by regulators, prior to execution, in order to permit best price, pre-trade transparency and multilateral trading objectives to be achieved.

Question 17: Post-Trade Transparency

44. In CanDeal's view, the Committee should address post-trade transparency in relation to DTFs by reference to the requirements of the OSC Rule *Trade Repositories and Derivatives Data Reporting* (**TR Rule**). It is essential that the Committee not create asymmetrical requirements applicable to transactions not subject to a trading mandate and those required to be executed on DTFs. An asymmetrical reporting requirement will create an unlevel playing field as well as create uncertainty and thereby disadvantage DTFs. Participants would not choose to trade on a venue that imposes different

[10] In the EU, execution methods for derivatives subject to the trading obligation are prescribed through pre-trade transparency standards applicable to each execution method. In the US, the pre-trade transparency available in the case of a mandatory trade is a function of the prescribed execution method.

and more onerous rules and requirements than those applicable in their existing bilateral relationship and to incur the infrastructure costs that would be required to interact with such a platform.

45. The approach taken in the US in the case of SEFs illustrates the approach the Committee should take in Canada to the issue of post-trade transparency. While SEF structure, required execution methods and required pre-trade transparency are specified in the final SEF Rule, post-trade transparency requirements applicable to SEFs are governed by the CFTC's regulation that sets out the framework for the real-time public reporting of swap transaction and pricing data for all swap transactions. Under the real-time reporting rule, parties to a swap are responsible for reporting swap transaction information to the appropriate registered swap data repository in a timely manner, except in respect of swaps executed on a SEF pursuant to an obligation to do so. For such publicly reportable swap transactions executed on or pursuant to the rules of a SEF (or DCM), the parties satisfy their reporting obligation by executing the transaction on or pursuant to the rules of the facility. The SEF or DCM must then report the swap transaction and pricing data to the appropriate registered swap data repository for public dissemination. It is submitted that this is the approach the Committee should use in the case of DTFs.

46. In CanDeal's view, the considerations raised by the Committee in the Consultation Paper as to whether to require a DTF to disseminate the transaction data to the public directly, or require a DTF to report the transactions to a trade repository, and require the trade repository to disseminate the trade data to the public, do not arise. CanDeal notes that while the CSA refers to the US real-time reporting rule and MIFIR provisions regarding post-trade transparency, no reference is made to the TR Rule. It is submitted that questions of this nature ought to be decided in the setting of the TR Rule, and that requirements of DTFs should not differ from those applicable from dealers or counterparties subject to trade reporting requirements. To the extent that rules applicable to DTFs impose additional or more onerous requirements in relation to post-trade reporting, participants will avoid trading on DTFs to the extent possible. Participants would not want to trade on a platform that would result in differing reporting requirements if they chose to trade on it.

Question 18

47. This should be governed by the TR Rule, with emphasis that all market participants and entities required to report should be subject to the same obligations.

Question 19

48. Section 39(3) of the TR Rule provides for times lines in public dissemination of transaction data. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size. Having regard to the delays provided for in the TR Rule, it is not necessary to prescribe any rules regarding deferred publication of trade information for DTFs. Having said that, the timing of public dissemination for transactions executed on DTFs should be no earlier than the standard applicable to transactions to which a derivatives dealer is a counterparty, i.e. by the end of the day following the day on which the designated trade repository receives the data. It is essential that a level playing field among the various reporting entities be preserved in order to preserve DTF liquidity and minimize evasion.

Question 22

49. Again, this should be governed by the TR Rule. DTF rules should not be more onerous in terms of trade reporting than other derivatives transactions. The variable scope of pre-trade transparency depending on execution method reflects the appropriate balance of policy considerations in terms of the benefits of disclosure relative to the risks associated with information leakage and associated potentially abusive trading strategies such as front-running, painting the screen or pre-arranged trading.

Question 1: Definition of DTF

50. The proposed definition is too narrow as it encompasses a facility that operates an order book only. It is overly reliant on para. (a)(iii) of the definition of "marketplace" in National Instrument 21-101 *Marketplace Operation*, which is appropriate to the trading of equities on an order book but does not capture more non-traditional execution methods used in respect of derivatives transactions, such as voice RFQ. The proposed definition is inconsistent with the proposals in the paper regarding permitted execution methods and is further inconsistent with the definitions of similar multilateral trading facilities for derivatives in the US and EU. Compare the US SEF definition, which takes into account the predominant RFQ execution method as well as other execution methods that incorporate "any means of interstate commerce": "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce"; and the EU OTF definition: "a multilateral system… in which multiple third party buying and selling interests in [derivatives] are able to interact in the system in a way which results in a contract", which captures a broad range of execution methods and is expressly intended to capture all existing and foreseeably future ways in which derivatives transactions may be included. The key limiting factor applicable to the definition is the multilateral character of the facility. The definition in all other respects must be sufficiently broad to capture a wide range of trading methodologies and means of execution, including for example voice and email components.

Question 2: Discretion

51. In CanDeal's view, a DTF should be based exclusively on an agency model and not permit discretion on the part of the operator of the platform.

We thank you for the opportunity to comment on the Consultation Paper and would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact Aubrey Baillie (416.814.7811 or abaillie@candeal.com) or Debra MacIntyre (416.814.7804 or dmacintyre@candeal.com).

Yours very truly,

"Aubrey Baillie"

Aubrey Baillie
Chief Financial Officer & Chief Compliance Officer
CanDeal.ca Inc.

Appendix A—Liquidity Analysis of Canadian CAD$ IRS Market

There is a wealth of existing data available to the Committee from authoritative sources that supports the conclusion that there is liquidity in certain classes of Canadian CAD$ IRS sufficient to impose a trading obligation at this time in respect of such instruments.

The market for IRS is by far the largest segment within the global OTC derivatives market[11].

Some of the sources CanDeal reviewed that support these conclusions include:

(i) Bank for International Settlements, *Triennial Central Bank Survey, Interest rate derivatives market turnover in 2013*, December 2013 (**BIS Report**)[12];

(ii) Bank for International Settlements, *Triennial Central Bank Survey OTC interest rate derivatives turnover in April 2013: preliminary global results*, September 2013 (**Preliminary BIS Report**);

(iii) Gyntelberg and Upper, "The OTC interest rate derivatives market in 2013", *BIS Quarterly Review*, December 2013, pp. 69-82 (**Gyntelberg**).

(iv) Futures Industry Association *SEF Tracker, Issue #9, October-December 2014*, February 2015 (**FIA SEF Tracker**);

(v) Clarus Financial, *A Review of 2014 US Swap Volumes* (**2014 SEF Report**);

(vi) Clarus Financial, *January Volumes in Swaps*, February 4 2015 (**January 2015 SEF Report**);

(vii) Clarus Financial, *February 2015 Review: ICAP vs. Bloomberg*, March 3, 2015 (**February 2015 SEF Report**);

(viii) Clarus Financial, SDRview database, http://sdrview.clarusft.com/# (**SDRview**);

(ix) ESMA, *Consultation Paper MiFID II/MiFIR*, December 19, 2014 (**ESMA CP**);

(x) European Central Bank, OTC Derivatives and Post-Trading Infrastructures, September 2009 (**ECB Report**);

The data reviewed by CanDeal from these sources supports the following findings:

[11] ECB Report at p. 16.

[12] The BIS Report contains data concerning Canadian IRS and CAD$ IRS as of April 2013. Included in the BIS Report is detailed data on global, country-specific, currency-specific, and counterparty-specific turnover in IRD in April 2013. The BIS Report further segregates counterparty-specific data into domestic and cross-border volume by currency. The unit of measure in the BIS Report is average daily turnover, which may be annualized through simple extrapolation. The data is further broken down among the various classes of IRD, namely, IRS, FRA and IRS options.

1. The market for CAD$ IRS is undeniably large enough to sustain a liquid market. When one compares the known market for the two most standardized classes of IRS, fixed-floating and OIS, to other liquid markets in Canada, the answer seems obvious.

2. CAD$ IRS are transacted in significant volumes on SEFs using multilateral execution methods. These include both fixed-floating and OIS categories.

3. Canadian participants executed significant portions of their IRS trade volume in currencies which are included in the MAT list, as the BIS Report shows.

4. The demand for CAD$ IRS comes predominantly from the US and Canada, with smaller participation from EU participants, as the BIS Report shows.

5. European Securities and Markets Authority (**ESMA**) research has determined there is a liquid market in various classes of CAD$ IRS. The liquid classes include: (i) 6-month to ten-year tenors of fixed-floating CAD$ IRS; and (ii) one- and two-year CAD$ OIS.

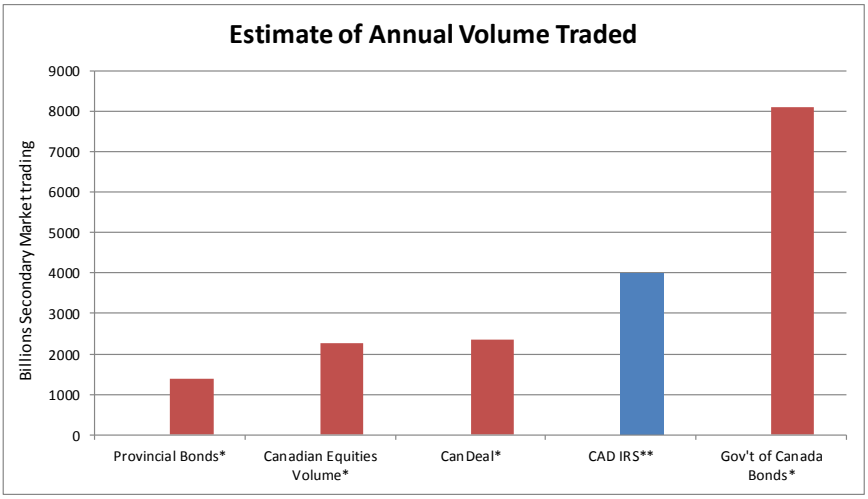
In CanDeal's submission these findings support the conclusion that there is sufficient liquidity in these classes of CAD$ IRS to warrant the imposition of a trading requirement in respect of such classes applicable to Canadian counterparties.

The basis for each of these findings is set out below.

1. The market for CAD$ IRS is undeniably large enough to sustain a liquid market.

A review of secondary market trading across a number of Canadian markets shows that the CAD$ IRS market is one of the largest markets by dollar volume in Canada (Figure 1).

Figure 1



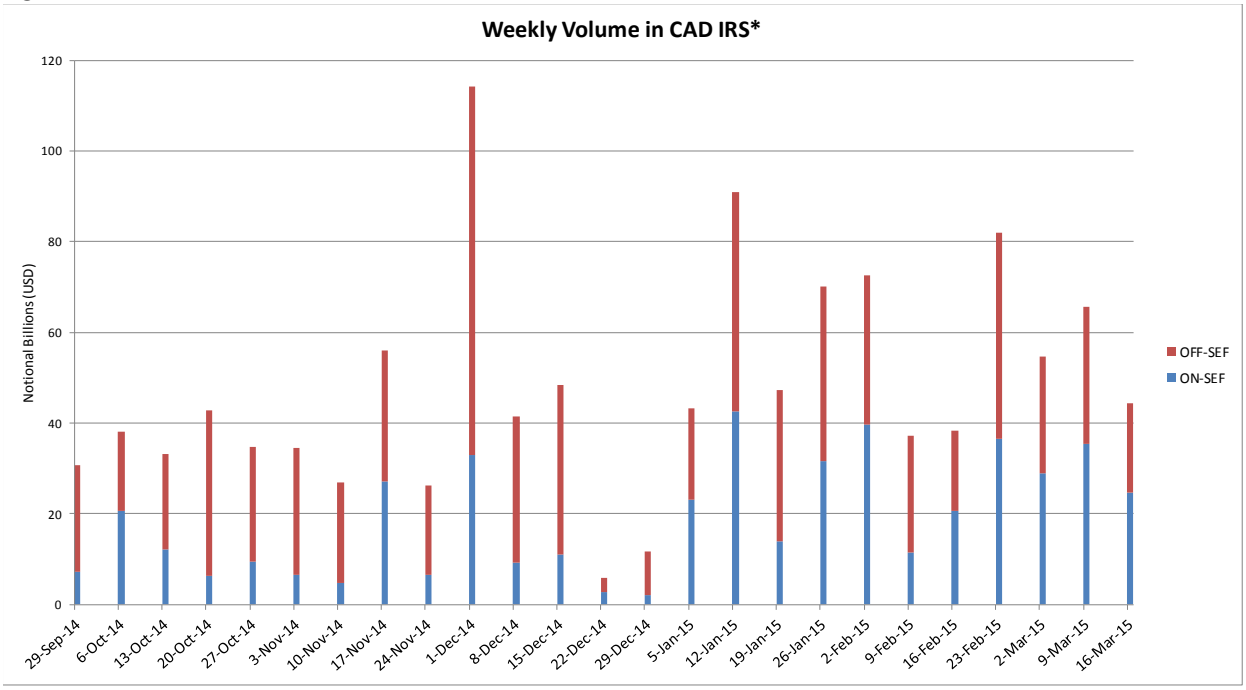
* Based on published actual 2014 volumes, various sources

** Annualized estimate based on CAD$ Fixed-Float IRS and OIS trade data collected from ESMA report on trades from March 1 - May 31, 2014.

2. CAD$ IRS are Transacted in Significant Volume on SEFs

US swap data depository (SDR) data sets out the current volume of CAD$ IRS transactions reported by US dealers to which one or both counterparties are US persons (**US CAD$ IRS**). According to the SDR data, $1.2 trillion was transacted in US CAD$ IRS during the past 6 months[13]. Of this total, $850 billion was in fixed-float IRS and $354 billion in OIS. Over that period $483 billion or 40% of that volume was executed on-SEF (Figure 2).

Figure 2



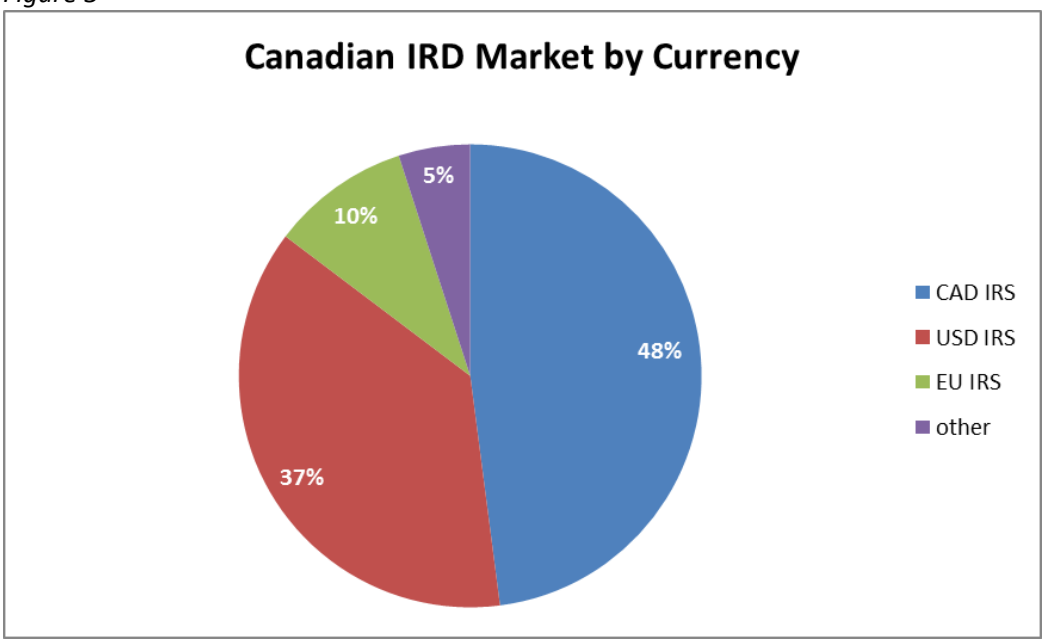
* CAD IRS SWAP: FixedFloat and CAD IRS SWAP: OIS. Source is Clarus SDR View application.

[13] The 126-trading-day period from October 1, 2014 to March 25, 2015.

3. Canadian participants executed significant portions of their IRD trade volume in currencies which are included in the MAT list

The BIS Report was based on one month of data (April 2013). This data states that 37% of IRD volumes executed by a Canadian (Canadian IRD) were denonimated in USD, 10% of IRD volumes executed by Canadians were denominated in Euro and 3% were denominated in GBP. At the time the volume in these MAT currencies executed by Canadians was about $17 billion daily or over $4 trillion annualized (Figure 3).[14]

Figure 3



[14] BIS Report, pp. 8-10, 13.

4. The demand for CAD$ IRS comes predominantly from the US and Canada with smaller participation from EU participants, as the BIS Report shows

The US data is significant because the volume of US CAD$ IRS is virtually the same as, in fact even slightly smaller than, the size of the Canadian CAD$ IRS market. Accordingly, the existence of liquidity in the US CAD$ IRS market is a sure indicator of liquidity in the Canadian CAD$ IRS market. The US SDR data shows that more than 50% of US CAD$ IRS transaction volume is sufficiently liquid to trade on SEFs. Given that the Canadian CAD$ IRS market is the same size, or perhaps slightly larger, it follows that approximately 50% of Canadian CAD$ IRS volume is sufficiently liquid to support the imposition of a trading obligation in Canada in respect of the instruments that make up that volume.

The evidence of Canadian CAD$ IRS liquidity is in fact even stronger than that indicated by the above analysis would indicate. US CAD$ IRS transactions are reported to US SDRs because a US person is a counterparty to them.[15] However, the other counterparty to many of these transactions is Canadian. That is because much of the volume in CAD$ IRS is cross-border. According to the BIS Report, 83% of CAD$ IRS transactions with buy-side participants were cross-border during the study period[16]. In addition, 88% of Canadian IRS transactions with buy-side participants were cross-border.[17] This data suggests that much of the liquidity provided for US CAD$ IRS is from Canadian dealers. Many US CAD$ IRS transactions would also therefore be Canadian CAD$ IRS transactions. The liquidity indicated by SEF trading is therefore directly applicable to CAD$ IRS transactions to which a Canadian trading obligation would apply. It may therefore also be concluded that the US data in fact directly reflects the liquidity of Canadian CAD$ IRS.

[15] The data on US CAD$ IRS consists of transactions reported by US dealers under CFTC real-time swap reporting rules. The data does not include dealer-reported Canadian CAD$ IRS transactions as these are not yet subject to public dissemination.
[16] BIS Report, p. 2, “other financial institutions” breakdown between local and cross-border.
[17] BIS Report, p. 16, “other financial institutions” breakdown between local and cross-border.

5. EU Data Confirms Liquidity of Classes of CAD$ IRS

The ESMA CP contains extensive analysis as to whether a "liquid market" exists in IRS of nearly every class and currency based on data reported to trade repositories by EU CCPs (including by LCH.Clearnet, the global IRS clearing market leader. The volume of CAD$ IRS transactions included in the ESMA data (approximately $14 billion per day) represents more than half of the global CAD$ IRS volume of approximately $26.8 billion per day. Among the conclusions drawn by ESMA from this data set are the following[18]:

(i) there is a liquid market in 6-month to ten-year tenors of fixed-floating single-currency CAD$ IRS;.

						Criteria applied for liquidity classification	Min values across liquid classes
Num of trades per day						2.00	1.20
Notional Amount per day						100,000,000	76,167,945
FIXED TO FLOAT SINGLE CURRENCY SWAPS	Num of trades	Num of trades per day	Num of days traded	Notional Amount	Notional Amount per day	Liquidity Flag	Final Liquidity Flag
FIXED-FLOATING__CAD__2 years	1,368	21.05	65	172,222,033,191	2,649,569,741	Liquid	Liquid
FIXED-FLOATING__CAD__3 years	1,638	25.20	63	162,934,502,383	2,506,684,652	Liquid	Liquid
FIXED-FLOATING__CAD__4 years	1,037	15.95	63	87,376,711,838	1,344,257,105	Liquid	Liquid
FIXED-FLOATING__CAD__5 years	1,741	26.78	63	111,125,983,859	1,709,630,521	Liquid	Liquid
FIXED-FLOATING__CAD__6 years	2,193	33.74	64	116,948,924,404	1,799,214,222	Liquid	Liquid
FIXED-FLOATING__CAD__7 years	491	7.55	58	28,735,026,157	442,077,325	Liquid	Liquid
FIXED-FLOATING__CAD__8 years	341	5.25	59	24,592,149,074	378,340,755	Liquid	Liquid
FIXED-FLOATING__CAD__9 years	451	6.94	62	15,487,704,002	238,272,369	Liquid	Liquid
FIXED-FLOATING__CAD__10 years	1,104	16.98	61	25,665,969,552	394,861,070	Liquid	Liquid
FIXED-FLOATING__CAD__11 years	1,698	26.12	64	37,963,663,410	584,056,360	Liquid	Liquid
FIXED-FLOATING__CAD__6 months	499	7.68	53	101,803,198,464	1,566,203,053	Liquid	Liquid
FIXED-FLOATING__CAD__1 year	719	11.06	64	108,972,568,520	1,676,501,054	Liquid	Liquid

(ii) and there is a liquid market in one- and two-year tenors of CAD$ OIS.

						Criteria applied for liquidity classification	Min values across liquid classes
Num of trades per day						1.00	0.58
Notional Amount per day						50,000,000	58,031,528
OIS SINGLE CURRENCY SWAPS	Num of trades	Num of trades per day	Num of days traded	Notional Amount	Notional Amount per day	Liquidity Flag	Final Liquidity Flag
OIS__AUD__1.5 months	47	0.72	11	14,793,308,660	227,589,364	Illiquid	Illiquid
OIS__AUD__3 months	79	1.22	16	22,837,989,511	351,353,685	Liquid	Illiquid
OIS__AUD__6 months	225	3.46	47	102,098,499,731	1,570,746,150	Liquid	Illiquid
OIS__AUD__1 year	390	6.00	53	218,232,960,861	3,357,430,167	Liquid	Illiquid
OIS__AUD__2 years	60	0.92	33	18,769,152,684	288,756,195	Illiquid	Illiquid
OIS__AUD__3 years	4	0.06	4	773,288,555	11,896,747	Illiquid	Illiquid
OIS__BRL__3 months	5	0.08	2	1,238,816,652	19,058,718	Illiquid	Illiquid
OIS__BRL__6 months	2	0.03	2	999,944,069	15,383,755	Illiquid	Illiquid
OIS__BRL__1 year	246	3.78	20	9,547,376,473	146,882,715	Liquid	Illiquid
OIS__BRL__2 years	79	1.22	30	4,608,934,438	70,906,684	Liquid	Illiquid
OIS__BRL__3 years	355	5.46	41	3,021,912,980	46,490,969	Illiquid	Illiquid
OIS__BRL__4 years	7	0.11	5	661,794,900	10,181,460	Illiquid	Illiquid
OIS__BRL__5 years	1	0.02	1	4,092,987	62,969	Illiquid	Illiquid
OIS__BRL__6 years	1	0.02	1	6,615,001	101,769	Illiquid	Illiquid
OIS__BRL__7 years	157	2.42	23	348,417,391	5,360,268	Illiquid	Illiquid
OIS__BRL__9 years	4	0.06	2	164,696,779	2,533,797	Illiquid	Illiquid
OIS__CAD__1.5 months	20	0.31	6	16,336,548,982	251,331,523	Illiquid	Illiquid
OIS__CAD__3 months	10	0.15	6	10,627,773,336	163,504,205	Illiquid	Illiquid
OIS__CAD__6 months	52	0.80	17	41,608,467,354	640,130,267	Illiquid	Illiquid
OIS__CAD__1 year	152	2.34	38	98,990,133,944	1,522,925,138	Liquid	Illiquid
OIS__CAD__2 years	135	2.08	40	40,279,958,093	619,691,663	Liquid	Illiquid

ESMA qualifies these findings by stating that, while the criteria for determining which classes of derivatives should be subject to the EU trading obligation should follow a similar approach to that used for the determination of whether a "liquid market" exists, the thresholds should not necessarily be the

[18] ESMA CP, pp. 179-180, 195. Trade data collected from March 1 – May 31, 2014.

same.[19]. Nevertheless, the ESMA "liquid market" analysis is highly persuasive in determining whether there is sufficient liquidity in comparable classes of Canadian CAD$ IRS to support a trading obligation. This is because, of Canadian IRS transactions, $16.3 billion per day are CAD$ IRS, while the ESMA data covers approximately $14 billion in CAD$ IRS, or virtually the same volume.[20] Given that the notional volumes are nearly identical, the liquidity of the equivalent classes of Canadian CAD$ IRS is likely to be identical to the CAD$ IRS classes analyzed in the ESMA CP. In fact, a significant volume of Canadian CAD$ IRS is cleared by CCPs whose data was included in the ESMA analysis (e.g. LCH.Clearnet, recognized as a clearing agency by the OSC, AMF and other CSA jurisdictions, and of which all six major Canadian chartered banks are clearing members) and is thus directly reflected in the ESMA liquidity analysis.

[19] ESMA CP, pp. 337, 341.
[20] BIS Report, p. 8; ESMA CP, pp. 179-180, 191, 195, 199, 200, 204.

Appendix B: ESMA Technical Standards Relating to Pre-Trade Transparency

CanDeal provides the following summary of ESMA's *Consultation paper on MiFID II/MiFIR*, December 19, 2014, at pp. 206-208 (**EU Consultation Paper**) and the earlier technical standards proposals set out in ESMA's *Discussion Paper MiFID II/MiFIR*, May 22, 2014 at pp. 148-154 **(EU Discussion Paper)**.

The EU Consultation Paper summarizes the EU approach to pre-trade transparency as set out in the MIFIR text as follows:

> [T]he EU will require each regulated venue, including an OTF, to make public current bid and offer prices, and the depth of trading interests at those prices, for derivatives traded on its platform. An OTF must make this information available to the public on a continuous basis during normal trading hours; however, the requirement for public dissemination will not apply to hedging transactions. The range of bids and offers, and the depth of trading interest at those prices, to be made public for each class of financial instrument, including derivatives, is to be specified by ESMA in forthcoming technical regulations.
>
> Article 8(1) of MIFIR provides that the transparency requirements will also apply to actionable indications of interest. MIFIR further provides in Article 8(2) that the transparency requirements are to be calibrated by the trading system or protocol used by the trading venue in order to bring together multiple third-party buying and selling trading interests in a derivative. The different types of trading systems for which the requirements are to be calibrated include order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

In the EU Discussion and Consultation Papers, ESMA has taken the directive in the second paragraph above-quoted as the starting point for determining the appropriate level of pre-trade transparency. The same pre-trade transparency requirements, defined at the trading system level, are to apply equally to regulated markets, MTFs and OTFs. ESMA notes that in non-equities trading — often characterised by low and episodic trading activity – a variety of trading systems or protocols are commonly used and need to be defined. ESMA regards the definitions of RFQ and voice trading systems as key in determining the minimum amount of pre-trade information that must be offered. In the Consultation Paper, ESMA defines an RFQ system as:

> …[a] trading system where a quote or quotes are published in response to a request for a quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request.

ESMA regards the definition of RFQ as sufficiently broad to capture a variety of trading protocols sharing the same core characteristics. The definition would, for example, include request-for-stream systems whereby market makers provide continuous streaming of firm quotes to buy and sell financial instruments for a predefined period of time based upon the client's request.

ESMA defines a voice trading system as:

> [a] trading system where transactions between members are arranged through voice negotiation.

ESMA regards a voice trading system as a system where members or participants agree to conclude transactions on the basis of voice negotiation. Apart from the use of designated telephone lines, voice trading systems may include venues based on 'open outcry' trading floors. ESMA clarifies that in its view a voice trading system includes a system where technological assistance by way of, for example, texting, electronic chat rooms and instant messenger systems is employed in the negotiation and conclusion of transactions so long as the voice element is the essential or core part of the system.

A trading system that does not fall within the definition of RFQ or voice trading system and is of a hybrid or bespoke character falls into a further separate category for purposes of pre-trade transparency. ESMA has created this category to take into account the complexity of the non-equity markets and their possible evolution in the years to come.

Where a venue uses an order book, ESMA will require that the aggregate number of orders and the volumes they represent at each price level, for at least the five best bid and offer price levels, be made public.

Where streaming quotes are provided, the best bid and offer by price of each market maker in that instrument, together with the volumes attaching to those prices, must be published.

With respect to a RFQ system, the bids and offers and attaching volumes submitted by each responding entity must be made public. Although the quotes are executable exclusively by the requesting participant, the other participants see the quotes in real time.

In the case of a voice trading system, the information that must be made public is the bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system. Since the definition does not incorporate the concept of exclusivity in either party to the transaction, presumably other participants can participate in the price formation process on the basis of this information. The proposed standards do not set out a specific period of time for which such information must rest on the system before the orginal parties may execute on it.

The requirement to make public bids and offers implies that the operator of a voice trading system will need to make use of electronic means in order to comply with the pre-trade transparency requirement (i.e. to broadcast those bids and offers to the wider public and not only to the members or participants of the trading platform). However, use of electronic means does not imply that a hybrid system (as described above) is operated by a trading venue: the electronic means are used only to fulfil the pre-trade transparency requirements to the public.

Each of the foregoing pre-trade transparency requirements is qualified by the condition that the trading systems to which they apply be operated in line with the definition of the trading venues under MiFIR. In other words, the content of the requirements must be consistent with the fundamental characteristic of such multilateral trading venues that they bring together multiple third-party buying and selling interests.

ESMA goes on to prescribe technical standards that are to govern exceptions to the pre-trade transparency requirement. Although it is not necessary to go into any detail as to those in a comment letter, examples of situations in which exceptions will be available include block trades.

Appendix C: EU Criteria for determining whether derivatives should be subject to the trading obligation

Whether or not a class of derivatives subject to the clearing obligation should also be made subject to the trading venue will be determined by two main factors:

(a) The venue test: the class of derivatives must be admitted to trading or traded on at least one admissible trading venue; and
(b) The liquidity test: whether the derivatives are 'sufficiently liquid' and there is sufficient third party and selling interest.

ESMA has drafted technical standards to specify the criteria to be used in determining whether there is sufficient third-party buying and selling interest in a class of derivatives that the class is considered "sufficiently liquid" to trade on trading venues only.

MiFIR requires ESMA to consider a list of further criteria when making a determination regarding whether the class of derivatives (or subset) is "sufficiently liquid" to be subject to the trading obligation. In summary, these are: the average frequency and size of trades, the number and type of active market participants, the average size of spreads, the anticipated impact of the trading obligation on liquidity and the size of the transactions to which it should apply.

The definition of the liquidity test for the trading obligation is very similar to the definition of 'liquid market' for non-equities under the section of MIFIR relating to exemptions from pre-trade transparency requirements. ESMA proposes that the assessments for determining whether there is a 'liquid market' under the pre-trade transparency exemption and for the trading obligation should follow a similar approach but the thresholds should not necessarily be the same.

ESMA's preferred approach for calculating the average frequency of transactions criterion will be to set thresholds for both a minimum number of trades per day and a minimum number of days on which trading took place, over an 'assessment reference period', or specified period of time. ESMA considers that MiFIR does not intend to include portfolio compression and intragroup transactions within the scope of the trading obligation assessment or the transparency thresholds for exemptions.

ESMA's preferred approach for calculating the average size of transactions criterion will be the division of notional size by number of trading days during the specified period.

ESMA considers that the assessment reference period may need to vary depending on the class of derivatives. ESMA does not intend to introduce hard timeframes within its draft technical standards but allow maximum flexibility, noting that the assessment reference period will depend on both the class and the quantity and quality of data available for such classes.

ESMA will assess the criterion of number and type of active market participants by giving consideration to the number of members or participants of a trading venue involved in at least one transaction in a given market or where any member or participant of a trading venue has a contractual arrangement to provide liquidity in a financial instrument at least on one trading venue.
ESMA considers that the end-of-day spread provides a very limited snapshot as to average size of spreads. Therefore, ESMA proposes to use the average size of weighted spreads over different periods of time.