

Sarah Williams
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Alberta Securities Commission
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

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

c/o Anne-Marie Beaudoin,
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3

Attn: Canadian Securities Administrators OTC Derivatives Committee

Re: CSA Staff Notice 91-304 Proposed Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions

To All Interested Parties:

ICE Clear Credit LLC ("ICC") welcomes the opportunity to submit comments to the Canadian Securities Administrators OTC Derivatives Committee (the "Committee") regarding the proposed Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions ("Model Rule"). ICC respectfully asks the Committee to amend the proposed reporting and disclosure requirements under Part 4, Section 28(3) and recordkeeping requirements under Part 3, Section 16 of the Model Rule that would be imposed on clearing agencies that are exempt from recognition under Section 147 of the Ontario Securities Act (the "Act").

About ICC

ICC is the world's largest clearing house for credit default swaps ("CDS"). In March 2009, ICC became the world's first central counterparty to clear CDS, in response to calls for greater risk management in the credit derivatives markets. ICC is registered with the U.S. Commodity Futures Trading Commission as a Derivatives Clearing Organization and with the U.S. Securities Exchange Commission as a Securities Clearing Agency. Since its launch, ICC has cleared over \$31 trillion in gross notional amount.

Proposed Model Rule Comments

The Model Rule defines a "derivatives clearing agency" as both a clearing agency exempt under Section 147 of the Act and a clearing agency recognized under Section 21.2 of the Act. Throughout the Model Rule, the term "derivatives clearing agency" is utilized, thereby providing for the same requirements for both exempt and recognized clearing agencies. Under Model Rule Part 4 (Reporting and Disclosure), Section 28(3), "a derivatives clearing agency that receives customer collateral must electronically submit to the [applicable local securities regulator], within two business days of the end of each calendar month,

a completed Form F1(C) Customer Collateral Report: Derivatives Clearing Agency.” ICC sought clarification from Ontario Securities Commission (“OSC”) staff regarding the information required to be reported in Form F1(C) Customer Collateral Report: Derivatives Clearing Agency.

OSC staff confirmed that ICC would be required to report information for all clearing participants (“CPs”) with “local counterparty” customers. Specifically, for non-Canadian CPs, reporting of data for local counterparty customer collateral would be required. Additionally, for Ontario based CPs, reporting of data for all customers would be required. Pursuant to U.S. regulations, customers clearing at ICC must submit trades through U.S.-domiciled Future Commission Merchant (“FCM”) and Broker Dealer (“BD”) CPs. Thus, since customers can only clear through U.S.-domiciled FCM/BD CPs, ICC would have no customer data to report from an Ontario-domiciled CP. ICC’s concern lies with reporting local counterparty collateral data for customers of non-Canadian CPs.

ICC has contractual relationships with its CPs, but not the customers of its CPs. As such, ICC has no direct relationship with the customers of its CPs. Therefore, ICC has no records obtained from the customers of its CPs identifying the specific domicile or identity of its CPs’ customers. ICC previously explained its model to the OSC, first in the process of applying to become exempt from recognition and again when the OSC was drafting the requirements of its order exempting ICC from the requirement to be recognized as a clearing agency under Section 147 of the Act (the “Exemption Order”). As ICC explained at that time, ICC utilizes a customer Desk ID in the course of clearing, but no legal name or domicile is identified. The Desk IDs consistently identify the account that owns the trading funds and ICC appropriately segregates customer funds based on Desk IDs. ICC does not maintain further customer entity or domicile information. Similarly, regulatory reporting submissions are made to U.S. regulators using Legal Entity Identifiers (“LEIs”). Data is identified using LEIs and not the legal entity’s name or domicile. Currently, ICC’s U.S. regulatory reporting requirements do not require identification of the domicile of an underlying customer.

ICC does not maintain the customer data necessary to meet the reporting requirements under the Model Rule. ICC’s Exemption Order provides for the reporting of certain information regarding Canadian CPs of ICC. As explained above, customer identification data is not part of ICC’s records. Furthermore, ICC is not currently required to maintain customer identification data under the Exemption Order or U.S. regulations. The customer identification data reporting requirements in the Model Rule would be a significant break in precedent from the data reporting requirements currently contained in ICC’s OSC Exemption Order and the U.S. regulations.

The reporting requirements included in the Model Rule would create a substantial burden for ICC. ICC would be required to materially overhaul its business operations in order to comply with the requirements. ICC has consistently provided all information required in compliance with the Exemption Order. As previously stated, the Model Rule defines both a clearing agency exempt under Section 147 of the Act and a clearing agency recognized under Section 21.2 of the Act as “derivatives clearing agencies” and imposes the requirements of the Model Rule consistently. Currently under the Act, exempt and recognized clearing agencies are subject to materially different legal requirements. This distinction should, at a minimum, be represented in the Model Rule to the extent ICC would be required to materially change its operations in order to comply with the Model Rule. ICC believes the reporting requirements that would be imposed by the Model Rule are a significant departure from the requirements ICC currently complies with under the Exemption Order.

Furthermore, the Model Rule would impose a more stringent burden than ICC’s U.S. regulatory requirements in one additional area. Under Model Rule Part 3 (Record-Keeping), Section 16, ICC would be required to maintain certain documentation “in a readily accessible location, for the life of the cleared derivative and for a further 7 years after the date on which the cleared derivative expires or terminates.” U.S. regulations require ICC to maintain such documentation for the life of the cleared swap and for 5 additional years following the final termination of the swap. ICC believes the Model Rule should remain consistent with the Act and differentiate between requirements for exempt and recognized clearing agencies. ICC does not believe that this provision of the Model Rule should apply to ICC or other exempt clearing agencies.

For the reasons stated above, ICC requests that the reporting and disclosure requirements under Part 4, Section 28(3) and recordkeeping requirements under Part 3, Section 16 of the Model Rule be amended to revise customer collateral data reporting and recordkeeping requirements for clearing agencies that are exempt from recognition under Section 147 of the Act. ICC also requests that the Model Explanatory Guidance to proposed Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions be updated to consistently reflect this change.

ICC would be pleased to respond to any questions the Committee may have regarding this letter. Please direct any questions or requests for information to the attention of the undersigned at Sarah.Williams@theice.com or (312) 836-6883.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Williams".

Sarah Williams
Staff Attorney

cc: Cosmin Cazan, OSC (by email)
Emily Sutlic, OSC (by email)
Aaron Unterman, OSC (by email)
Eric Nield, ICC (by email)
Michelle Weiler, ICC (by email)