FRANKLIN TEMPLETON INVESTMENTS

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VIA EMAIL

August 31, 2017

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention: Grace Knakowski, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor,
Toronto, ON M5H 3S8

Me 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

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators Proposed National Instrument 93-101 – *Derivatives: Business Conduct*

Franklin Templeton Investments Corp. ("FTIC") is writing to provide comments with respect to the Canadian Securities Administrators' ("CSA") Proposed National Instrument 93-101 – *Derivatives: Business Conduct* (the "Business Conduct Rule").

FTIC is currently registered in most provinces and territories in Canada as an adviser, investment fund manager, mutual fund dealer and/or exempt market dealer. FTIC is also

registered with the Ontario Securities Commission as a commodity trading manager. FTIC is a wholly owned subsidiary of Franklin Resources, Inc., a global investment organization operating as Franklin Templeton Investments. Through its subsidiaries, Franklin Templeton Investments provides global and domestic investment advisory services to the Franklin, Templeton, Franklin Bissett, Franklin Mutual Series, Franklin Templeton and Franklin Quotential funds and institutional accounts. In Canada, FTIC has almost 500 employees providing services to nearly 500,000 unitholder accounts and over 100 pension funds, foundations and other institutional investors.

FTIC and its affiliates do not engage in the business of what would constitute a "Derivatives Dealer" under the Business Conduct Rule, but do engage in the business of what would constitute a "Derivatives Adviser"; therefore, our comments are limited to the impact of the Business Conduct Rule on Derivatives Advisers.

The Business Conduct Rule would impose a range of business conduct requirements on FTIC as well as its foreign affiliates engaged in the business of advising Canadian clients in connection with transacting in derivatives in any Canadian province or territory ("Jurisdiction"). The CSA initially indicated that a separate rule setting out the obligation to register as a Derivatives Adviser would be issued in conjunction with the Business Conduct Rule (the "Derivatives Registration Rule"), but since the Derivatives Registration Rule has not yet been issued for comment, it is difficult to fully gauge the impact of these proposals in order to provide comments. Consequently, we are providing initial comments on the Business Conduct Rule, but we may have additional comments in light of the Derivatives Registration Rule and its impact on both the Business Conduct Rule and our business.

Definition of Derivatives Adviser

The Business Conduct Rule will apply to market participants that are "engaging in the business of advising others as to transacting in derivatives". It is implied that the person or company must be either located in a Jurisdiction or advising a person or company located in a Jurisdiction, but this does not appear to be explicitly stated. We believe it is imperative that the CSA clarify the intended jurisdictional scope of this definition.

The proposed companion policy to the Business Conduct Rule provides a non-exhaustive list of factors to be considered under the business trigger test; however, we believe that in addition to the exemption in section 43(2) for persons providing general advice, the definition of Derivatives Adviser should exclude professionals whose advisory services are solely incidental to their business or profession.

Furthermore, there is also no concept of a de minimis threshold for incidental advice. For example, an investment adviser may generally advise a client on securities but also employ a currency hedge on the account. Under the business trigger test in the Business Conduct Rule, the investment adviser could be viewed as a Derivatives Adviser, although that is not the intent of the strategy employed, since the use of derivatives is only incidental to the investment strategy.

Definition of Eligible Derivatives Party

The concept of "Eligible Derivatives Party" ("EDP") is different from the concept of "permitted client" in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registration Obligations* ("NI 31-103") and seems to exclude parties that are deemed to be sophisticated investors under NI 31-103. The definition of EDP does not include various entities that should be included, for example mutual fund dealers, exempt market dealers and charities. Nor does the definition of EDP take into consideration the commercial hedger exception that is found in the securities legislation of many of the Jurisdictions. Commercial hedgers, other registrants and large institutional investors are persons and entities that are sophisticated users of derivatives for risk management purposes who do not need the benefit of many of the requirements set out in the Business Conduct Rule. FTIC urges the CSA to align the EDP definition with the definition of permitted client in NI 31-103, and add the commercial hedger definition to reflect the nature of the derivatives marketplace.

The Business Conduct Rule requirements are divided into two tiers, the first tier applying to advisory activities for all classes of derivatives parties. Only a subset of the Business Conduct Rule requirements is intended to apply to dealings with EDPs, including individuals who are EDPs and who have waived in writing the protections under the Business Conduct Rule (the "Exempt EDPs").

However, the Business Conduct Rule would require a Derivatives Adviser to apply all the requirements of the Business Conduct Rule whenever it is advising a managed account, even when the owner of the managed account is an EDP. FTIC's managed account clients are typically large institutional investors (pension plans, insurance companies, charitable organizations and endowments) or other investment funds. The full application of the Business Conduct Rule to these types of accounts would be onerous, impractical and unnecessary. FTIC strongly believes that, in connection with its managed accounts, it should be able to look through to the EDP status of its underlying clients. FTIC submits that EDPs are sophisticated investors, and they should not be treated like non-EDPs simply because they have chosen to obtain advice and to invest through a managed account structure.

Furthermore, under the Business Conduct Rule, Derivatives Advisers will be required to conduct due diligence and obtain written representations from certain categories of EDPs, and to update this information periodically. Institutional clients will be required to represent in writing that they have the requisite knowledge and experience to evaluate the information provided to that person or company about derivatives, the suitability of the derivatives for that person or company and the characteristics of the derivatives to be transacted on the person's or company's behalf. The requirement for this level of representation, and the need to update these confirmations periodically, is onerous and does not achieve any additional protection. The different treatment of sophisticated investors under NI 31-103 and the Business Conduct Rule is confusing and, in FTIC's view, unnecessary.

Fair Dealing, Conflict of Interest, Derivatives Party Specific Needs and Objectives, Suitability and Fair Terms and Pricing

These provisions already exist for advisers under NI 31-103. Furthermore, these obligations are already covered by the fiduciary duty owed by an investment adviser to its clients, and FTIC does not believe that it is appropriate to impose specific requirements in connection with this duty in the context of derivatives. Further, imposing duplicative requirements between NI 31-103 and the Business Conduct Rule will complicate compliance with the established standards and practices that are already observed by investment advisers.

Senior Derivatives Manager

Under the Business Conduct Rule, a "Senior Derivatives Manager" must be designated for each derivatives business unit as responsible for directing derivatives activities of that unit. It is our understanding that it is likely that the Senior Derivatives Manager will not a compliance person. The Senior Derivatives Manager is required to take "reasonable steps to prevent or respond to non-compliance". It is unclear what this means and the consequences of a failure to do so. In particular, the imposition of a responsibility to prevent non-compliance is not appropriate. The Senior Derivatives Manager requirement will create a regime that is different than, and inconsistent with, the regime under NI 31-103.

In addition, the Senior Derivatives Manager requirement is also not consistent with most global derivative requirements. If foreign advisers are required to incur the cost and complexity of implementing such a regime just for Canadian clients, it would be a major disincentive to continuing to provide derivatives advisory services to Canadian clients. The imposition of a Senior Derivatives Manager regime could result in many foreign advisers ending cross-border advisory services in Canada. FTIC does not believe that it is appropriate to create a special regime that is largely limited to derivatives in Canada.

Foreign Advisers

Since the Business Conduct Rule does not specify the exemptions that may be available to foreign advisers, it is difficult to comment on the impact of the Business Conduct Rule to FTIC's foreign affiliates.

Conclusion

The differing concepts and protections for various types of investors under NI 31-103 and the Business Conduct Rule are confusing and unnecessary. FTIC strongly recommends that the CSA draft an integrated rule for all types of investments, especially since a typical client account would hold a mix of securities and derivatives. Having a different set of rules and exemptions for derivatives will increase administrative and compliance burdens, with no corresponding investor benefit.

Furthermore, the CSA should allow industry participants to provide additional comments on the Business Conduct Rule once the Derivatives Registration Rule is released since both rules are so inter-connected.

Thank you for your consideration of this submission. Please feel free to contact FTIC at 416.957.6010 should you have any questions or wish to discuss this submission.

Yours truly,

FRANKLIN TEMPLETON INVESTMENTS CORP.

"Brad Beuttenmiller"

Brad Beuttenmiller
Senior Associate General Counsel