

August 30, 2017

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

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

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

Dear Sirs / Mesdames:

Re: CSA Notice and Request for Comment (“CSA Notice”) on Proposed National Instrument 93-101 Derivatives: Business Conduct (“93-101”) and Proposed Companion Policy 93-101 CP Derivatives: Business Conduct (“93-101 CP”)

Custom House ULC operating as Western Union Business Solutions (“Western Union”) appreciates the opportunity to comment on 93-101 and 93-101 CP. Capitalized terms used in this letter and not defined herein will have the same meaning as in the CSA Notice. Western Union is submitting comments now as requested in the CSA Notice and after seeing the registration rule once it is released, we may have further comments on

93-101 and 93-101CP after reviewing the registration rule alongside these draft conduct rules.

1. Uniform approach across Canada

Western Union is extremely supportive of the intention to “create a uniform approach to derivatives market conduct regulation in Canada”. Adopting a regime that is applied and interpreted consistently across the country for financial institutions, provincial credit unions and other market participants is very welcomed and we believe it will assist in ensuring an even competitive playing field for all market participants in the FX asset class in the marketplace.

2. Broadening the definition of eligible derivatives party to include hedging

Western Union requests that the regulators consider broadening the definition of eligible derivatives party to include a hedging exemption similar to the “qualified party” section (p) in Saskatchewan’s General Order 91-908 Over-the-Counter-Derivatives.¹ As highlighted in the CSA Notice, derivatives are different than securities and the risks associated with such products are also different. When entities, including small businesses, enter into FX hedging transactions, they are doing so based on the knowledge of their business and their business’ needs and are using such FX derivatives as risk management tools to hedge their currency risk exposure. Western Union sells FX derivatives products to its customers who enter into such transactions for risk management purposes to hedge their FX exposure and not for investment or speculative purposes. Based on these factors, we think that adding a hedging qualification to the definition of eligible derivatives party is warranted.

¹ “qualified party” means ...

(p) a person who or company that is an accredited investor and buys, sells, trades, produces, markets, brokers or otherwise uses a commodity in their business and that enters into an OTC derivative, provided that a material component of the underlying interest of the OTC derivative is:

(i) a commodity that the person or company buys, sells, trades, produces, markets, brokers, or otherwise uses in its business;

(ii) a related commodity, security or variable;

(iii) a commodity, security or variable that directly or indirectly affects the commodity that the person or company buys, sells, trades, produces, markets, brokers or otherwise uses in its business;

(iv) a commodity, security or variable for which there is a high degree of correlation between the movement in its value and the movement in the value of the commodity that the person or company buys, sells, trades, produces, markets, brokers or otherwise uses in its business; or

(v) another OTC derivative, where a material component of the underlying interest of that OTC derivative is a commodity, security or variable referred to in sub-clauses (i) to (iv) to above;

3. Senior Derivatives Manager Position

It was unclear in reading 93-101 and 93-101CP whether or not the intention is that the Senior Derivatives Manager be held personally liable when carrying out their duties in this role. We note that 93-101 requires that the Senior Derivatives Manager must certify annually to the board of directors that the derivatives business unit is in material compliance or specify all instances of material noncompliance. By comparison, a Chief Compliance Officer of a securities registrant is required to “submit [NOT CERTIFY] an annual report to the firm’s board of directors, or individuals acting in a similar capacity for the firm, for the purpose of assessing compliance by the firm, and individuals acting on its behalf, with securities legislation.”

Western Union would ask that the regulators consider why there would be a different standard between derivatives and securities for similar positions and consider whether the intention is for the Senior Derivatives Manager position to attract personal liability. If the intention is for the Senior Derivatives Manager position to attract personal liability, Western Union would ask the regulators to consider that there not be personal liability for this position for the FX asset class, as we feel this would be too strict a standard, and would make it challenging and costly to fill this role, especially because we are unaware that such a standard has been demonstrated to be warranted in the marketplace for the FX asset class.

4. Implementation Time

Western Union asks that the regulators consider a lengthy time period to implement the changes needed to become compliant with 93-101 and would ask that the minimum implementation period be a period of one year. A lengthy implementation period is needed to ensure compliance with the new rules, including time to amend existing policies and procedures, train staff on new policies and procedures, amend existing documentation and collect any new executed customer documentation as applicable and develop new reporting requirements, as applicable.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at shannon.seitz@westernunion.com, on this or any other issue in future.

A handwritten signature in blue ink that reads 'Shannon Seitz'.

Shannon Seitz
Counsel, Western Union Business Solutions