



October 10, 2018

VIA ELECTRONIC MAIL

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

c/o: Me Anne-Marie Beaudoin
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c/o: Grace Knakowski
Secretary Ontario Securities Commission
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comments@osc.gov.on.ca

Dear Sir or Madam,

Re: Comments on Proposed National Instrument 93-102 Derivatives: Registration and Proposed Companion Policy 93-102

We support the CSA's proposed regulations contained in NI 93-101 and NI 93-102 and believe they will provide an additional level of accountability and transparency that will serve the best interests of investors and the industry.

The introduction of these new regulations provides a singular opportunity to capitalize on the current efforts of member regulators and stakeholders. **We believe that before the introduction of NI 93-101 and NI 93-102 it would be beneficial to ensure individual proficiency standards are aligned with the new regulations.** The benefits of aligning new proficiency standards with the new national instruments include; establishing clear expectations for individual behaviour, a market-wide reduction in compliance risk and a streamlining of industry investment in education.

1. Why does the securities industry need individual proficiency standards?

Regulatory compliance represents the collective efforts and resources of an entire firm. It involves individual registrants, managers, compliance officers, designated individuals, compliance procedures and technology. Proficiency standards, on the other hand, focus exclusively on the ability of an

individual to demonstrate behaviours that are compliant. They are both a measure of performance and a set of observable behaviours. If proficiency standards are properly designed, individual registrants should know the correct behaviour to model *regardless of the effectiveness of a firm's compliance efforts*.

Meeting proficiency standards provides the individual, the firm, regulators and the public with objective proof that an individual has the knowledge and skills required to perform a specific role. It provides the guarantee that the individual has the capacity—at least the knowledge and skills—to comply with the regulation. In the absence of proficiency standards, individuals and firms can appeal to the defence that they were not adequately prepared by their educators, firms or regulators to comply with regulations. Proficiency standards foster personal accountability.

2. Why should the CSA and its member regulators develop, publish and maintain proficiency standards?

Proficiency standards provide an objective basis for regulators, firms, registrants and the public to evaluate the suitability and effectiveness of education programs proposed by firms and education providers. If the CSA and its member regulators do not publish proficiency standards, firms and individual education providers must infer them from the regulations or worse, develop courses without any proficiency standards which is akin to allowing builders to build without a common building code.

Publicly-available proficiency standards have long existed in medicine, law, accounting, and engineering. In Canadian financial services, they are publicly available for Certified Financial Planners, life insurance agents and mortgage brokers. There are no publicly available proficiency standards for roles in the Canadian securities industry despite decades of collaboration between securities regulators and CSI Global Education. The industry relies on standards that are privately-owned by an American for-profit firm and that are unavailable to other Canadian education providers, firms, individuals and the public. The Canadian securities industry and the public can only infer proficiency standards from learning outcomes after enrolling in expensive courses which is inconsistent with regulators' goals of encouraging transparency in regulation. The CSA and its members should not rely on firms and education vendors to develop and depend upon privately-owned proficiency standards.

3. Why should proficiency standards be aligned with the National Instruments?

For any education program to be legally defensible, educators must demonstrate that they are evaluating individual performance (knowledge and skills) against valid proficiency standards. Creating valid proficiency standards requires extensive consultation with stakeholders and a thorough analysis of the duties of the specified job role. It parallels the same type of stakeholder consultation and job analysis that the CSA and its regulators conducted for the formation of the new regulations. Failure to align proficiency standards with the regulations means individuals learn irrelevant material and are inadequately prepared to comply with regulations.

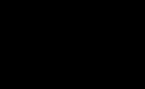
4. Why is now the right time to address this issue?

Ideally, proficiency standards should be developed and shared *before* new regulations are introduced for the following reasons

1. It establishes unequivocal expectations for individual performance before the regulation is made operational.
2. It provides time for firms to evaluate whether registrants are appropriately trained and to address any deficiencies prior to the enactment of the regulations.
3. It capitalizes on the assembled wisdom of the framers of the proposed regulations. The best time to develop proficiency standards is when discussions about job roles and expectations are still fresh in the minds of the framers of the proposed regulations. The current framers of the proposed regulations can provide unparalleled clarity of interpretation of the proposed regulations for the developers of the proficiency standards.
4. It will encourage more education providers to create educational programs related to the new regulations. Education providers are more prepared to invest in course development when they understand there is an objective standard against which their courses will be judged. We understand the CSA anticipates, “amending the proficiency requirements in the future as OTC derivatives’ specific designations or courses are offered.” We are encouraged that the CSA is responsive to industry developments, however, by articulating proficiency standards *prior* to the introduction of the new regulations, it will immediately foster the creation of more education offerings.

We are pleased to contribute to any discussion about proficiency standards. We believe that by collaborating now, the CSA, its members and stakeholders can capitalize on their recent efforts to produce a world-class standard for education.

Respectfully submitted,



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