Tom Phillips
Manager, Investment Compliance, Canada

BY ELECTRONIC MAIL: jstevenson@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

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Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

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

Anne-Marie Beaudoin,
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs / Madames:

RE: CSA Consultation Paper 91-301 – Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting

Thank you for the opportunity to provide comments to the Canadian Securities Administrators ("CSA") regarding Consultation Paper 91-301 Model Provincial Rules – Derivatives: Product Determination and Trade Repositories and Derivatives Data Reporting ("CP 91-301") related to the types of instruments that may be considered derivatives, and requirements related to record repositories for Over-the-Counter ("OTC") derivative transactions.

Fidelity Investments Canada ULC ("Fidelity Canada") is a fund management company in Canada and part of the Fidelity Investments organization in Boston ("Fidelity Investments"), one of the world's largest financial services providers. Fidelity Canada manages a total of $70 billion in mutual funds and institutional assets (the "Funds"). It offers approximately 150 mutual funds and pooled funds to Canadian investors.

Fidelity Canada's use of OTC derivatives currently includes currency forwards to hedge currency risk in certain Funds, interest rate swaps for the purpose of managing fixed income

portfolio duration, credit default swaps for managing credit risk, and customized forwards in certain Funds managed by Fidelity Canada.

Fidelity Canada supports the Canadian Securities Administrators OTC Derivatives Committee's efforts to clarify the types of financial instruments that should be considered derivatives and to introduce roles and responsibilities for OTC derivative record repositories. As noted in previous submissions, Fidelity Canada is concerned about the costs associated with the CSA's record repository proposals. We are also concerned about the purpose and timing of public disclosure under the CP 91-301 proposals. Fidelity Canada's comments on these and other matters related to CP 91-301 are noted below.

Model Provincial Rule – Derivatives: Product Determination

Fidelity Canada supports the CSA's efforts to introduce clarity and consistency across provincial jurisdictions for identifying instruments that should be considered "derivatives", and generally agrees with the proposed carve-out provisions of CP 91-301. We agree that spot market currency contracts should not be considered derivatives, but note that under Part 2(c)(i), in order to qualify for exclusion from the derivative definition, spot currency contracts require "the counterparties to make or take physical delivery of the currency within two business days".

Many Funds use spot market currency contracts to settle security trades denominated in currencies other than the base currency of a Fund, and delivery of such currency will typically correspond to the settlement date of a security trade. Since security trades generally settle on the third business day following trade date, we strongly recommend that the CSA consider amending the "two business day" delivery requirement to a "three business day" delivery requirement. A two business day delivery requirement would have significant operational and cost impacts on the Funds, especially with respect to trade repository reporting requirements, and would introduce significant complexity into the investment management process. We do not believe this was the intent of the proposed carve-out of spot market currency contracts and recommend that the CSA amend this proposal.

Reporting Counterparty and Derivatives Dealers

Under CP 91-301 Part 27(1)(a), derivatives data is to be reported to a trade repository by a counterparty that is a "derivatives dealer". We note that the classification of a firm as a "derivatives dealer" is not defined in regulation, nor is there an existing registration category for a "derivatives dealer". The CP 91-301 Model Explanatory Guidance clarifies this approach by providing that "the terms "derivative" and "dealer" are both defined in the Act and the term "derivatives dealer" takes its meaning from the combination of these definitions". In our view, it is important that a "derivative dealer" category be codified to assist firms who might otherwise be responsible for assuming the significant responsibilities associated with derivative trade and position reporting. Lack of clarity may require all counterparties to negotiate the responsibility for reporting trades to repositories, and since mutual funds are required to engage multiple counterparties under National Instrument 81-102 ("NI 81-102") counterparty diversification rules, such negotiations may have a significant negative impact on the cost and availability of parties willing to engage as counterparties with the Funds. As we await the CSA Consultation Paper on Derivatives Registration, we encourage the CSA to better define and codify a "derivatives dealer" registration category in a manner that corresponds with the obligations for reporting under CP 91-301.

Counterparty Cost/Benefit Analysis

While Fidelity Canada supports the CSA's efforts to establish record repository and reporting requirements, we note the absence of any discussion related to counterparty costs associated with the proposed reporting requirements. The use of OTC derivatives in the Funds is, in many cases, integral to each Fund's investment strategy and the cost models associated with those strategies are closely monitored to seek to ensure the Funds provide continued value to investors.

The costs associated with reporting may include new system development to ensure transaction data is reported in accordance with proposed standards, establishing processes to report continuation data throughout the life of a contract, and allocating personnel resource to effectively manage and oversee the reporting process. If these reporting responsibilities reside with market participants (i.e. "derivatives dealers") that have already established an operational infrastructure capable of providing the required reporting and have systems and procedures that are scalable, these costs may be minimized. However the incremental cost of reporting derivative trades on behalf of the Funds is likely to be passed, in whole or in part, to the Funds.

The costs associated with fulfilling the proposed reporting requirements, whether paid by the Funds or shared between the Funds and their counterparties, may jeopardize the viability of existing investment strategies and the availability of such strategies to investors. We recognize that reporting obligations will result in some additional cost, but are concerned about how these costs may present a barrier to participation in the OTC derivative market, and we strongly encourage the CSA to consider pursuing an industry discussion and conducting meaningful analysis related to these costs.

Data Reporting – Data Available to Public

We agree that reporting certain OTC derivative transaction data to trade repositories and regulatory authorities may improve market transparency and is a component of derivative market reform that should be considered.

CP 91-301 Part 7 Governance, notes that trade repositories must have governance arrangements that "support the stability of the broader financial system and other relevant public interest considerations", but it is unclear which matters related to OTC derivatives the CSA considers to be "relevant public interest considerations". Further, Part 39(1), Data Available to Public, requires trade repositories to "on a periodic basis, create and make available to the public, at no cost, aggregate data on open positions." However, the proposed rule does not define the frequency of such disclosure and we are concerned that lack of consistency in the public disclosure of aggregate derivative positions may enable the identification of market participants and their open positions, which could reduce liquidity and heighten volatility in the market.

Part 39(3) further requires the public disclosure of transaction level reports to the public one or two days after receiving the data from the reporting counterparty, without disclosing the identity of either counterparty to the transaction. While Fidelity Canada supports public transparency generally, we consider trade information to be highly sensitive proprietary information and are concerned about trade data being available to the public so soon after execution, especially in the Canadian marketplace where it may be relatively easy to identify counterparties based on trading patterns. While it might be argued that securities trade information is generally available

to the public real-time through various data service providers, we do not consider that OTC derivative trade information should receive the same treatment, as there are fewer market participants, participants are typically large institutions, and the volume of trading involving Canadian market participants is relatively small. In our view, the public disclosure of trade information in this context, and so soon after execution, would reduce market liquidity and harm investors' ability and cost to trade, and ultimately would not be in the interests of investors or their shareholders.

We encourage the CSA to clarify the concept of "relevant public interest considerations" as they pertain to the public disclosure of OTC derivatives trade and position data.

National Instrument 81-102

As noted in previous responses to the CSA's request for comment on OTC derivatives reform, the Funds that are mutual funds are subject to the provisions of NI 81-102 with respect to identifying and using derivatives in mutual fund portfolios. We encourage the CSA and provincial regulatory authorities to consider the impact of any changes introduced through product determination legislation on similar provisions in NI 81-102 to ensure clarity and consistency.

We thank you for the opportunity to comment on these matters. As always, we are more than willing to meet with you to discuss any of our comments.

Yours truly,

Tom Phillips
Manager, Investment Compliance

c.c. Rob Strickland, President
W. Sian Burgess, Senior Vice-President, Head of Legal and Compliance, Canada
Fidae Abbas, Vice-President, Compliance, Canada