

Response to CSA Consultation Paper 91-407 – Derivatives Registration

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Introduction

The Wholesale Markets Brokers' Association and the London Energy Brokers' Association (hereafter referred to as WMBA) welcomes the opportunity to respond to the issues raised in the CSA Consultation Paper 91-407 – Derivatives Registration; and looks forward to further active engagement at the agency's pleasure.

WMBA comments are made from the viewpoint of its members who act as Limited Licence/Limited Activity firms in the wholesale markets not only in Europe but also around the world. Several of our members operate Canadian subsidiaries, most notably BGC Partners and Tullett Prebon. We note that WMBA member firms arrange the vast majority of C\$ financial instruments and their derivatives that are traded both within Canada and overseas.

Our response here is very brief, being an overseas Trade Association, but we note an interest on behalf of our membership most especially in cross border access to liquidity pools, financial market infrastructures and market participants. Details of members, methods employed in organising platform venues and in arranging transactions are detailed on www.wmba.org.uk and www.leba.org.uk

Summary of Key Points

1. WMBA notes that according to the definitions in the CSA paper, non position taking intermediaries whom are authorised as investment firms such as WMBA members are designated as "Derivatives Dealers". This is likely to bring about a disproportionate regulatory regime, especially in areas such as capital requirements, resolution and third country equivalence.
2. WMBA members very frequently arrange transactions in C\$ financial instruments or derivatives based upon Canadian underlying assets or

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indices from outside Canada. The equivalence regime therefore, whilst welcome in principal, highlights the widespread issue that no two regimes are at all equivalent due to differences in both regulatory and legal structures around the world. We would therefore support a more diversity embracing approach based upon regulatory recognition as opposed to legal equivalence.

Response to Questions

Q1: Should investment funds be subject to the same registration triggers as other derivatives market participants? If not, what registration triggers should be applied to investment funds?

Not applicable for overseas intermediaries.

Q2: What is the appropriate standard for determining whether a person is a qualified party? Should the standard be based on the financial resources or the proficiency of the client or counterparty? If the standard is based on financial resources should it be based on the net assets of the client or counterparty, gross annual revenues of the client or counterparty, or some other factor or factors?

Not applicable for overseas intermediaries.

Q3: Should registration as a derivatives dealer be subject to a *de minimis* exemption similar to the exemption adopted by U.S. regulators? Please indicate why such an exemption is appropriate.

WMBA understands that registration as a derivatives dealer should indeed be calibrated relative to the *de minimis* calibration for balance sheet size or volumes traded as market end user participant. This would enable IDBs to be regulated outside the balance sheet supervision metrics suitable for banks. We note here that all wholesale market sovereign and corporate bond markets are arranged using matched principal broking whereby the IDB offers their name as counterparty, but are only supervised for the operational risks accruing under pillar 2 disclosures. Therefore traded volumes alone would not identify derivatives dealers.

Q4: Are derivatives dealer, derivatives adviser and LDP the correct registration categories? Should the Committee consider recommending other or additional categories?

Following from the answer above, a further category is indeed required for the prudential supervision of market participants that do not have the permissions to hold position risk. Here we would invite Canada to follow the Limited Licence/Limited Activity regimes operated by the FSA in the UK for over a decade now. This allows for proportional and tiered supervision.

Q5: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of trading derivatives? Please explain your answer.

WMBA agrees with the listed factors.

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Q6: The Committee is not proposing to include frequent derivatives trading activity as a factor that we will consider when determining whether a person triggers registration as a derivative dealer. Should frequent derivatives trading activity trigger an obligation to register where an entity is not otherwise subject to a requirement to register as a derivatives dealer or a LDP? Should entities that are carrying on frequent derivatives trading activity for speculative purposes be subject to a different registration trigger than entities trading primarily for the purpose of managing their business risks?

Not applicable for non position taking intermediaries such as IDBs.

Q7: Is the proposal to impose derivatives dealer registration requirements on parties providing clearing services appropriate? Should an entity providing these clearing services only to qualified parties be exempt from regulation as a derivatives dealer?

Parties providing clearing services as FCMs or Prime Brokers need to be supervised as derivatives dealers. Parties providing clearing services as CCPs need to be supervised as systemic FMI in their own category.

Q8: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of advising on derivatives?

Not applicable for non position taking intermediaries such as IDBs who also do not give advice.

Q9: Are the factors listed for determining whether an entity is a LDP appropriate? If not what factors should be considered? What factors should the Committee consider in determining whether an entity, as a result of its derivatives market exposures, could represent a serious adverse risk to the financial stability of Canada or a province or territory of Canada?

Not applicable.

Q10: Is the Committee's proposal to only register derivative dealer representatives where they are dealing with clients or when dealing with counterparties that are non-qualified parties appropriate?

Not applicable for IDBs who are wholesale market intermediaries and will only arrange transactions between professional and eligible counterparties, or their overseas equivalents.

Q11: Is it appropriate to impose category or class specific proficiency requirements?

WMBA would support specific exam or experience based proficiency requirements and has indeed hosted qualifying exams for brokers in the UK.

Q12: Is the proposed approach to establishing proficiency requirements appropriate?

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WMBA has no comment on third country qualification regimes beyond those standards and principals laid out by IOSCO, whom we believe should set the minima for regulatory recognition.

Q13: Is the Committee's proposal to impose a requirement on registrants to "act honestly and in good faith" appropriate?

Whilst the WMBA has no comment on third country qualification regimes, we note that in Europe we understand that conduct of business requirements are central to supervision and, utilised appropriately make for a far more efficient wholesale regulatory environment than do impossibly complex and restrictive rules based systems.

Regulation focused on supervision of the activities of the participants also caters for wholesale markets that are intrinsically global in the nature of their transactions, but with relatively few participants in relation to the number of products traded.

Q14: Are the requirements described appropriate registration requirements for derivatives dealers, derivatives advisers and LDPs? Are there any additional regulatory requirements that should apply to all categories of registrants? Please explain your answers.

WMBA has no comment.

Q15: Should derivatives dealers dealing with qualified parties be subject to business conduct standards such as the ones described in part 7.2(b)(iii) above? If so, please explain what standards should apply.

WMBA has no comment.

Q16: Do you have a preference between the two proposals relating to the regulation of a derivatives dealer trading with counterparties that are non-qualified parties? Is there another option to address the conflict of interest that the Committee should consider? Please explain your answer.

WMBA has no comment.

Q17: Are the recommended requirements appropriate for registrants that are derivatives dealers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives dealers?

WMBA has no comment.

Q18: Are the recommended requirements appropriate for registrants that are derivatives advisers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives advisers?

WMBA has no comment.

Q19: The Committee is recommending that foreign resident derivative dealers dealing with Canadian entities that are qualified parties be required to register but be exempt

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from a number of registration requirements. Is this recommendation appropriate? Please explain.

WMBA are keen advocates of the home/host system of supervision. We would therefore support the registration regime detailed in the proposals.

Q20: Is the Committee's recommendation to exempt foreign resident derivatives dealers from Canadian registration requirements where equivalent requirements apply in their home jurisdictions appropriate? Please explain.

As per the answer to question 19 above, WMBA sees no alternative to a delegated network of regulatory recognition provided that IOSCO standards set the minimum requirements to the global framework.

Q21: Should foreign derivatives dealers or advisers not registered in Canada be exempt from the obligation to register where such requirements solely result from such entities trading with the Canadian federal government or provincial governments or with the Bank of Canada?

WMBA has no comment.

Q21: Is the proposal to exempt crown corporations whose obligations are fully guaranteed by the applicable government from registration as a LDP and, in the circumstances described, as a derivatives dealer appropriate? Should entities such as crown corporations whose obligations are not fully guaranteed, foreign governments or corporation owned or controlled by foreign governments benefit from comparable exemptions? Please provide an explanation for your answer.

WMBA has no comment.

Q23: Are the proposed registration exemptions appropriate? Are there additional exemptions from the obligation to register or from registration requirements that should be considered but that have not been listed?

WMBA has no comment.

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