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Via e-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

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**Re: Request for Comments**  
**Proposed Derivatives Framework**

BMO Nesbitt Burns Inc. (BMO) welcomes the opportunity to respond to the Autorité des Marchés Financiers' (AMF) request for comments respecting the proposed framework for regulation of derivatives markets in Quebec (The Proposal).

Initially, we would like to comment that we believe it is imperative that legislative and policy agendas remain consistent across the multiple regulatory jurisdictions in Canada. Consequently, we strongly encourage the AMF to actively cooperate with regulators in other jurisdictions to ensure, as much as possible, that a homogenous regulatory environment is available to participants active in the derivatives markets in Canada.

BMO concurs with the AMF's conclusion that principles based legislation complemented by regulatory policy statements should provide an effective regulatory framework that can more easily adapt to evolving derivatives markets within Canada. We believe this approach, which accords participants the flexibility to customize their approach towards regulatory compliance to suit their individual business environment, is especially important in the context of the dynamic evolution of derivatives products and applications. Within this context we would encourage the proactive publication of policy statements to ensure participants may clearly interpret the AMF's intent in terms of application of legislative principles in the context market developments.

Similarly, BMO supports AMF's initiative to exempt accredited clients from the registration and disclosure obligations associated with transactions executed with retail customers. We firmly believe that, in general, the knowledge level of

institutions and high net worth individuals affords them adequate protection, that market forces are sufficient to curb any unwarranted activity on the part of market participants, and that only in the most egregious instances is regulatory intervention required where these participants interact with each other.

In the context of the qualification of Accredited Clients, we believe the criteria established in the proposal are adequately broad so as to include all relevant parties. However, the asset test ascribed in section 14 will lead to confusion as it differs from the qualification of an Institutional Client ascribed in Investment Dealers Association Policy 4 or Accredited Investor definition in National Instrument 45-106. Therefore, we recommend that the AMF reconsider introducing a new term and definition and consider using an established nationally accepted defined term.

Similarly, the definition of an “exchange” in the proposal introduces subtle differences to the definition of “recognized exchange” as described in NI 21-101. The existence of multiple terms representing similar yet different concepts across different jurisdictions results in an unacceptable level of complexity for organizations operating in multi-disciplinary and multi-jurisdictional environments. Consequently, we recommend that the proposal adopt the language and definition of “marketplace” and “recognized exchange” found in NI 21-101.

In general BMO supports the qualifications and obligations associated with regulated entities as enunciated in Title II of the proposal. However, in respect to certain aspects of this part of the proposal we would like to offer certain reservations.

Specifically, the qualification under section 43 that a dealer that executes an over-the-counter trade in an exchange-traded derivative is deemed to be operating an organized market with the concomitant obligations ascribed to that type of regulated entity requires clarification. While seemingly obvious, the qualification of over-the-counter transactions should explicitly exclude transactions which may otherwise be effected by members under exchange rules such as exchange for physical transactions, transactions executed to adjust an error in connection with a client order, or other incidental transactions of this nature.

Furthermore, while we do not disagree with the principal of self-certification, we believe that it is incumbent upon legislation to ensure that all relevant market participants are provided the opportunity to comment in order to ensure that all concerns in relation to new or amended policies or rules are adequately addressed. We encourage the AMF to ensure that legislation or policy documents in relation to self-certification procedures clearly enunciate this requirement. In addition, we believe that the effective implementation of rules on the date of filing may result in significant inconvenience and expense for market participants in the event these rules are subsequently deemed discordant with

legislative principals. We believe policy documents must mandate that regulated entities' self-certification procedures ensure that all the relevant concerns enunciated by participants have been adequately addressed prior to rule or policy implementation.

Similarly, under Title III of the proposal, section 79, the exemption from best execution obligations for alternative trading systems registered as derivatives dealers seems to abrogate this responsibility with potentially detrimental impacts to market integrity in certain circumstances.

Finally, while we do not believe that the intent of section 83 is to provide an additional supervisory burden on participants in relation to Direct Market Access clients over and above the obligation to ensure the appropriate conduct of the clients in the areas for which the participant has direct knowledge and control, we recommend a clarification of the language so that the intent of the article may be clearly identified.

We hope that you find these comments helpful if you require any further information or clarification, please do not hesitate to contact us.

Sincerely,

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