

April 22, 2016

BY EMAIL

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, Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
consultation-en-cours@lautorite.qc.ca

and

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West Suite 1900, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: *Proposed National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives* (the “Proposed National Instrument”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to respond to the following questions with respect to the Proposed National Instrument.

¹The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfainstitute.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the

As a general comment, we would like to commend the CSA for taking a pragmatic approach to requirements relating to mandatory central counterparty clearing. We would like to continue to stress the importance for our legislation to be harmonized, to the extent possible, with the requirements of the other G20 countries. If parties to transactions are required to clear them in Canada through a central counterparty but are not required to do so elsewhere, it could lead to regulatory arbitrage opportunities.

1. *The scope of counterparties subject to the clearing requirement has been significantly scaled back since the publication of the Draft National Instrument. In your view, is the scope in the Proposed National Instrument appropriate considering the Proposed Determination?*

We strongly support the narrowing of the scope of the Proposed National Instrument requiring mandatory central counterparty clearing of standardized derivatives effectively to the largest participants in the OTC market. In the future, if the threshold for the month-end gross notional amount of outstanding OTC derivatives were to be reduced, it is likely that the largest of buy-side participants that would then become subject to the Proposed National Instrument would already be clearing those derivatives in other markets and would therefore already have the infrastructure in place to clear if facing a Canadian dealer. However, it is possible that some Canadian end-users would not be clearing. We note that there are large market imposed impediments to central clearing, in that many intermediaries require a large minimum annual fee guarantee in order to accept an entity as a client. As a result, prior to reducing the minimum it will be important to analyze whether or not the participants that would become subject to the Proposed National Instrument could in practice actually find an entity to assist them to clear. We recommend that the CSA continue to monitor the data and once participants have easier access to clearers it may be possible to lower the threshold further.

2. *Is the Proposed Determination appropriate for the Canadian market? Please provide specific concerns relating to any or all of the following: (i) US IRD; (ii) GBP IRD; (iii) EUR IRD; (iv) CAD IRS; (v) any other derivatives.*

We do not have sufficient market data to determine what percentage of the CAD IRS market is between two dealers in Canada, between two international dealers or between one dealer in Canada and one international dealer. If CAD IRS were included in the category of a mandatory clearable derivative, it could result in Canadian dealers utilizing their non-Canadian affiliates to trade in order to avoid the requirement. The requirement could be helpful to the extent the data illustrates that most trades in CAD IRS only occurs between Canadian dealers, but if the data were to prove otherwise, imposing a clearing requirement would only further fragment the market.

In practice, an end-user will clear in the market where liquidity is present. For example, we understand that the Japanese Yen would not be subject to mandatory clearing in Canada, but it is required in Europe and the United States. If a participant has the infrastructure to clear, it is likely

global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 135,000 members in 151 countries and territories, including 128,000 CFA charterholders, and 145 member societies. For more information, visit www.cfainstitute.org.

they will choose to clear on an optional basis. Once mandatory clearing in Europe has been in place for a period of time, it is likely that the liquidity in these interest rate products subject to mandatory clearing in Europe will further shift to the cleared space.

We believe that including CAD IRS should be delayed until such time as either data with respect to where the participants who trade in those instruments are located is more readily available, or when foreign mandates for those instruments are in place, in order to avoid the impact on the competitiveness of local counterparties that are subject to the Proposed National Instrument.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have or to meet with you to discuss these and related issues in greater detail. We appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Michael Thom*

Michael Thom, CFA
Chair, Canadian Advocacy Council