

March 24, 2015

**BY EMAIL**

Dear Sirs/Mesdames:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Financial and Consumer Services Commission (New Brunswick)  
Nova Scotia Securities Commission

Michael Brady  
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British Columbia Securities Commission  
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**Re: CSA Multilateral Notice and Request for Comment Proposed Multilateral Instrument 91-101 *Derivative Product Determination* and Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the “Proposed Amendments”)**

The Canadian Advocacy Council<sup>1</sup> for Canadian CFA Institute<sup>2</sup> Societies (the CAC) appreciates the opportunity to comment on and wishes to provide the following general comments on the Proposed Amendments.

We fully support the goals of increased transparency and the ability to manage potential systemic risk in the over-the-counter derivatives market.

The five participating Authorities have indicated in the Notice accompanying the Proposed Amendments that they intend to harmonize the Proposed Amendments, to the extent possible, with the existing rules relating to derivatives product determination and trade repositories in Manitoba, Ontario and Quebec. We understand that the Authorities are somewhat constrained in their ability to harmonize the definitions of “derivative” and

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<sup>1</sup>The CAC represents the 14,000 Canadian members of 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.cfasociety.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>.

<sup>2</sup> 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 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 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org).

“security” in the Proposed Amendments as a result of existing differences in the securities legislation of each jurisdiction. However, participants in the over-the-counter markets operate on a national basis, where transactions cross provincial borders on a regular basis, and different definitions impose additional costs and administrative burdens on reporting counterparties. It is important for the efficiency of our capital markets, and in order to avoid regulatory arbitrage, that the financial instruments subject to the over-the-counter derivatives reporting regime be the same in each Canadian jurisdiction. Harmonization is particularly important for counterparties located in a jurisdiction outside of Canada in order to ensure compliance.

In addition to the legislative differences (changes to which we acknowledge involve a lengthy process), the Proposed Amendments also contain specific proposals which differ considerably from the existing rules in the three provinces noted above. These differences are particularly noticeable with respect to the proposed reporting waterfall provisions and the trade reporting exemption for derivatives based on commodities.

It is our understanding that the draft rules in Manitoba, Ontario and Quebec were amended numerous times in order to address comments from market participants who were concerned, among other things, about potential double reporting of over-the-counter derivative trades in two Canadian jurisdictions. While improvements might still be made to the rules already in force, the Proposed Amendments raise similar issues to the original draft rules in the other provinces and could result in inconsistent reporting requirements. It is important that in the event the two counterparties are in different Canadian jurisdictions that one party is able to report on the other’s behalf. In particular, we are concerned about potentially inconsistent reporting requirements for two local counterparties who are neither derivatives dealers nor Canadian financial institutions. The Proposed Amendments would provide that if the counterparties do not agree in writing who will report, then each local counterparty will be a reporting counterparty, resulting in double reporting. As set out in the Notice, the corresponding provision in Ontario requires the reporting counterparty to be determined pursuant to ISDA methodology, which we believe provides certainty and is well understood by market participants. A different rule requiring two reports will lead to added expense for reporting counterparties, as well as an inaccurate data base on the size of the over-the-counter derivatives market in Canada.

The Proposed Amendments provide an exemption from reporting trades of commodities derivatives if, at the time of execution, the counterparty’s aggregate notional exposure under all contracts based on commodities, other than cash or currency, is less than \$250 million. We believe that a number of companies who trade in over-the-counter derivatives where the underlying asset is a commodity may still do for financial purposes (and not hedging purposes) at amounts far lower than \$250 million, and thus such financial transactions should be reportable as they currently are in Manitoba, Ontario and Quebec.

With respect to the data that will be collected or made available to the marketplace, we are of the view that robust data collection should allow for more assessment of the level of speculation in the market and, ultimately, risk.

Finally, with respect to the trade repository rules, we agree that the draft rules relating to regulation and oversight are robust and will help ensure that recognized trade repositories operate in a transparent manner and in a way that will promote the public interest. The proposed three month period for trade repositories to seek and obtain recognition should be sufficient, since any entity that is either already operating as a trade repository or sophisticated enough to qualify would likely be preparing its application well in advance of the publication of the final rules. Ideally, the Proposed Amendments would impose the same recognition requirements on trade repositories already recognized in another Canadian jurisdiction, to minimize the administrative burden that would result in having to deal with a different trade repository by those market participants already reporting their trades.

### **Concluding Remarks**

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at [chair@cfaadvocacy.ca](mailto:chair@cfaadvocacy.ca) on this or any other issue in future.

(Signed) *Cecilia Wong*

**Cecilia Wong, CFA**  
**Chair, Canadian Advocacy Council**