September 13th, 2018

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

For delivery only to:

comments@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

RE: Canadian Securities Administrators Notice and Request for Comment
Proposed National Instrument 93-102 Derivatives: Registration and
Proposed Companion Policy 93-102 Derivatives: Registration

We are a Portfolio Manager whose head office is in B.C. We are also an Exempt Market Dealer and an Investment Fund Manager in several provinces. We market different classes of securities of a number of proprietary non-reporting investment funds to our clients and the clients of a registrant in which we have an equity interest. The overwhelming majority of the purchasers of these securities are fully managed accounts.

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Our comments are primarily directed towards Consultation Question #4 titled:

"*Application of the derivatives adviser registration requirement to registered advisers/portfolio managers under securities legislation"* (p. 20 of the Consultation Paper) which reads in part:

> *"We understand that a registered adviser under securities or commodity futures legislation may provide advice in relation to derivatives or strategies involving derivatives, or may manage an account for a client and make trading decisions for the client in relation to derivatives or strategies involving derivatives. If the performance of these activities in relation to derivatives is limited in nature so that it could reasonably be considered incidental to the performance of their activities as a registered adviser for securities, we may consider the registered adviser/portfolio manager to not be "in the business of advising others in relation to derivatives".*

The following questions are addressed to the investment industry:

(a) Do you agree with this approach? If not, why not? Alternatively, should we consider including an express exemption from the derivatives adviser registration requirement for a registered adviser under securities or commodity futures legislation? If yes, what if any conditions should apply to this exemption?

(b) When should the provision of advice by a registered adviser/portfolio manager in relation to derivatives be considered incidental to the performance of their activities as a registered adviser/portfolio manager? What factors should we consider in distinguishing between registered advisers who need to register as derivatives advisers from registered advisers that do not need to register as derivatives advisers?

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With respect to both (a) and (b):

We are not in the business of either dealing or advising in derivatives; however, we will occasionally, if circumstances make doing so to be in the best interests of our clients or funds, enter into FX contracts for them. Our funds are Eligible Derivatives Parties (EDPs) and most of our clients for whom we would make trade in FX contracts are EDPs as well. We do not trade in any OTC contracts except FX contracts. **These activities are for their protection, and are incidental to the goal of optimizing returns.** Therefore, we do agree with this approach and believe that this is true of registered advisers/portfolio managers like us (and we suspect there are many of them) whose derivatives advising is limited to entering into currency forwards to hedge against the risk of loss for client portfolios and pooled funds under their management and where certain conditions are met, namely:

1) the derivatives position is not an independent strategy intended for profit on its own, in the absence of a matched position to be hedged;

2) the aim of the derivatives position is to directly (not indirectly) limit or reduce the risk of loss to the portfolio;

3) the taking of derivatives positions of this type is not an advertised independent service of the firm and positions are entered into on a "needs-only" basis;

4) the derivatives position is specifically matched to (and dictated by) the exposure in the portfolio.

If these four points apply, then this is our response to (b). When these conditions are not met, registration obligations may apply.

However, no "exemption" should be required, as an exemption is intended only to provide "relief" from an obligation, in this case to register as a derivatives adviser; and, subject to the presence of points 1 to 4 above, there is no derivatives advising business being conducted and, therefore, no obligation to register. However, this clarity must be provided in the Companion Policy if there is to be consistency of interpretation through the passage of time.

Furthermore, with respect to the proposal overall, one of the unintended consequences of this may well be that industry participants will cease to protect their clients' portfolios if to do so potentially requires what the CSA may not realize is likely to cost a small or medium sized advisor a minimum of over $750,000 per year (in perpetuity) in new staff expenses.

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Irrespective of the number of staff a firm has (from 1 to 5, or more than 5 but not an SRO dealer member firm size) this breaks down as:

a) the hiring of new "derivatives" advisors (estimated at a salary or revenue-sharing cost of $200,000+ per year with additional costs to firms of approximately 30% more, or $60,000 in payroll taxes and benefits) each,

b) a CRO (referring to the qualifications required, salary databases indicate the same cost to firm, $200,000+ per year plus $60,000 in employer-paid taxes and benefits) and

c) an additional CCO-derivatives who meets the qualifications (referring to the qualifications required, salary databases indicate the same cost to firm, $200,000+ per year plus $60,000 in employer-paid taxes and benefits).

As most portfolio managers will not be deemed to be derivatives dealers, their existing staff registered as advisers and CCOs will be unable to provide dual coverage as these advisers and CCOs will not qualify under the regulations as written.

This cost burden imposed by the regulation as written, if the "exemption" is not applied to portfolio managers, would be borne by investors as fees paid by investors are the sole source of revenue for firms that are not also investment banks. This would be a detriment to investors as the CSA and its' members have pointed out in their proposals around their Requests for Comments on 33-404/31-103. We would see this as an unintended negative consequence of the imposition of this regimen as written.

This is prohibitive for small- and medium-sized firms that may do no more than a few contracts per day or month. There would likely be little to supervise or advise upon for this high price in most small- and medium- sized firms. The risk of firms just opting not to hedge their clients at all is a real unintended negative consequence here.

We would also like to make the point that this means that the experience component of the new proposals for Derivatives Advisers is going to be nearly impossible for individuals other than those who work for the largest firms to obtain, at least in the arena of comprehensive wealth management. This is another unintended negative consequence and we suggest that, as with advising in exchange-traded derivatives, being a registrant under NI 31-103 and having the required educational courses listed in the proposal should be considered adequate for those who wish to advise on OTC derivatives. Any concern about the

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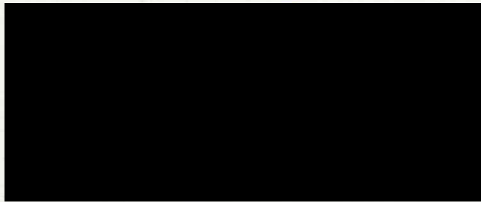
magnitude of contracts, inherent OTC contract risks and financial exposure should be addressed independent of the registration question.

It's important to note, too, that in light of the absence of any trigger-incidents or international outcry from members of IOSCO, etc. that would suggest this level of heavy oversight and regulation of retail advisors is necessary to protect the public, the industry or the integrity of the economic environment, we must raise the question of the real benefit to investors and the public of these regulations overall.

We do, however, appreciate the dedication of all your staff in seeking to protect investors and this opportunity to address our concerns with you and to provide this feedback.

With sincere regards,



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