

Via Email

September 17, 2018

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British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Dear Sirs/Mesdames:

Re: Proposed National Instrument 93-101 *Derivatives: Business Conduct*, Proposed Companion Policy 93-101CP *Derivatives: Business Conduct*, Proposed National Instrument 93-102 *Derivatives: Registration* and Proposed Companion Policy 93-102 *Derivatives: Registration*

Olympia Trust Company (“**Olympia**”) is grateful for the opportunity to provide comments to the Canadian Securities Administrators (the “**CSA**”) with respect to Proposed National Instrument 93-101 *Derivatives: Business Conduct*, Proposed Companion Policy 93-101CP *Derivatives: Business Conduct*, Proposed National Instrument 93-102 *Derivatives: Registration* and Proposed Companion Policy 93-102 *Derivatives: Registration* (collectively, the “**Proposed National Instruments**”).

About Olympia

Olympia is a non-deposit taking trust corporation formed under the *Loan and Trust Corporations Act* (Alberta). Olympia is licensed to provide trust services in the Provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Quebec, Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador.

Olympia's Foreign Exchange division provides its customers with the ability to exchange currencies using spot trades and forward contracts, and is principally focused on providing individuals and small and medium sized corporations with a cost-effective currency exchange alternative to the major financial institutions. Olympia's Foreign Exchange division has allowed over 9,000 of its customers to exchange approximately \$20 Billion in currencies over its 13 years of operation.

Expansion of the Definition of "Eligible Derivatives Party"

It is Olympia's view that paragraph (o) of the definition of "Eligible Derivatives Party" as set forth in the Proposed National Instruments should be expanded to be consistent with definition of "Accredited Investor" as set forth in National Instrument 45-106: *Prospectus Exemptions* ("NI 45-106"). Olympia notes that subparagraph (o)(ii) of the definition of "Eligible Derivatives Party" is substantially the same as paragraph (j.1) of the definition of "Accredited Investor". It is Olympia's view that paragraph (o) of the definition of "Eligible Derivatives Party" should be substantially expanded to include the other categories of individuals identified in the definition of "Accredited Investor", specifically:

- (a) individuals who, either alone or with a spouse, beneficially own financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds \$1,000,000;
- (b) individuals whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year; and
- (c) individuals who, either alone or with a spouse, has net assets of at least \$5,000,000.

Olympia notes that even with the above additions to paragraph (o) of the definition of "Eligible Derivatives Party" the standard required of individuals wishing to be categorized as an Eligible Derivatives Party is still more onerous than the standard required of individuals wishing to be categorized as an "Accredited Investor". Olympia reaches this conclusion largely as a result of the provisions subparagraph (o)(i) of the definition of "Eligible Derivatives Party" which require that the individual represent that: "he or she has the requisite knowledge and experience to evaluate the information provided to the individual about

derivatives by the derivatives firm, the suitability of the derivatives for the individual, and the characteristics of the derivatives to be transacted on the individual's behalf". The definition of "Accredited Investor does not have a corresponding requirement.

Olympia is also of the view that the definition of "Eligible Derivatives Party" should be expanded to include corporations and other entities that are controlled by individuals who otherwise meet the definition of "Eligible Derivatives Party". Such a revision would be substantially similar to paragraph (t) of the definition of "Accredited Investor" which reads:

- (t) person in respect of which all of the owners of interests, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, are persons that are accredited investors,

Olympia is of the view that the proposed regulatory regime should not prevent individuals, who otherwise meet the definition of "Eligible Derivatives Party", from trading derivatives using corporations and other entities that they control.

Net Asset Threshold for "Commercial Hedgers"

Olympia applauds the CSA for its inclusion of "commercial hedgers" in the definition of "Eligible Derivatives Party", but is concerned that the requirement that commercial hedgers have net assets of at least \$10,000,000 as shown on its most recently prepared financial statements is too high and is out of step with the other financial requirements contained elsewhere in the definition of "Eligible Derivatives Party". In particular, Olympia notes that under paragraph (o) of the definition of "Eligible Derivatives Party" an individual is only required to own financial assets with an aggregate realizable value before tax but net of any related liabilities of only \$5,000,000.

Furthermore, a commercial hedger has the additional requirement of demonstrating that they meet the definition of "commercial hedger". Olympia notes that, as per the companion policies to the Proposed National Instruments, a general representation by a counterparty that they meet the definition of "commercial hedger" is not sufficient. Olympia understands that it is the CSA's expectation that derivatives dealers will establish policies and procedures to reasonably verify that a counterparty does indeed meet the definition of "commercial hedger". Given this additional requirement, it is Olympia view that commercial hedgers should not be subject to a financial requirement that is twice as onerous as that required of individuals.

If anything, the "commercial hedger" category of Eligible Derivatives Party should be structured in such a way as to allow parties who own financial assets with an aggregate realizable value before tax but net of any related liabilities of less than \$5,000,000 with the ability to be categorized as an Eligible Derivative Party if they can demonstrate that they are "commercial hedgers".

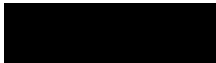
Accordingly, it is Olympia's view that commercial hedgers should be required to demonstrate that they own net assets of not more than \$5,000,000.

Conclusion

As a provider of foreign currency exchange services, Olympia is concerned that the Proposed National Instruments will create additional barriers to entry to an industry that is already dominated by large financial institutions. Under the Proposed National Instruments, many small and medium sized Canadian businesses with foreign business operations will not meet the proposed definition of an "Eligible Derivatives Party" and will be required to purchase currency risk mitigation products from large financial institutions for 2x to 3x their current cost, or forego such currency risk mitigation products altogether. While Olympia is certain this is not the intent of the Proposed National Instruments, if enacted as proposed, this will likely be an unintended consequence.

Olympia appreciates that the CSA needs to balance the twin goals of investor protection and the encouragement of an open and free capital market, but believe that the Proposed National Instruments may have swung the pendulum too far in away from a open and free capital market. Olympia strongly encourages the CSA to reconsider the financial thresholds set out in the definition of "Eligible Derivatives Party" and whether the CSA's competing policy objectives are being balanced appropriately.

Sincerely,



Craig Skauge
President
Olympia Trust Company



Derick Kachuik
Vice-President Foreign Exchange Division
Olympia Trust Company