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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
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Re: Proposed National Instrument 93-101 *Derivatives: Business Conduct* and Proposed Companion Policy (the “Proposed Rules”)

The Investment Industry Association of Canada (IIAC) would like to submit its comments regarding the Proposed Rules.

The IIAC and its Mandate

The IIAC is the national association representing the position of 131 IIROC-regulated Dealer Member firms on securities regulation, public policy and industry issues.

We work to foster a vibrant, prosperous investment industry driven by strong and efficient capital markets.

Proposed Rules and Objective

The Canadian Securities Administrators (CSA) issued the proposed National Instrument 93-101 on Business Conduct for Over-the-counter (OTC) derivatives and its proposed Companion Policy on April 4, 2017. The main objective of the Proposed Rules, as stated by the Autorité des Marchés Financiers at its roundtable, is to protect investors.

Under the Proposed Rules, various minimum standards would apply to the conduct of derivatives dealers and derivatives advisers.

Regulatory Overlap for Our IIAC Members

The IIAC and its members wish to remind the CSA of the strict regulatory framework that derivatives dealers regulated by IIROC are already subject to.

The proposed rules overlap with existing IIROC rules and regulations, as well as with the market conduct requirements applicable to registered dealers and advisers under National Instrument 31-103 “*Registration Requirements, Exemptions and Ongoing Registrant Obligations*”.

For example, our members currently comply with requirements that are being addressed by the CSA in the Proposed Rules:

Duplication on Fair Dealings:

Our members must follow multiple requirements on fair dealings which are explained in the CSI Conduct and Practices Handbook (CPH) Course and in the firms’ internal policies and procedures manual. IIAC members have a general obligation to act fairly and honestly with clients.

Duplication on Conflicts of interest:

Our members must identify, address and disclose conflicts of interest as per Rule 42 of the IIROC Rulebook. Each firm must develop and maintain written policies and procedures to identify, avoid, disclose and address material conflict of interest situations.

Duplication on Know Your Client (KYC):

Our members must comply with KYC requirements which are more stringent than the Proposed Rules. For example, the current requirements regarding anti-money laundering and anti-terrorist financing are more stringent than the proposed CSA requirements.

Furthermore, the Proposed Rules define different types of clients: Derivatives Parties and Eligible Derivatives Parties. These new definitions further complicate the derivatives landscape. We believe that the definition of Eligible Derivatives Parties should be the same as Permitted Client. In particular, we believe the definition should include managed accounts.

Duplication on Suitability:

Our members must assess suitability. IIROC Rule 1300 “*Supervision of Clients*” details the suitability obligations of our members. The proposed CSA requirements in Section 12, such as suitability regarding instructions received from counterparties, are too broad and should not be applicable to IIROC-regulated firms.

Duplication on Referral:

Our members must disclose business or commission referral arrangements they enter into with third parties to their clients to ensure transparency.

Duplication on Fair Terms/ Best Execution:

Our members must provide best execution to clients and have the general obligation to act fairly and honestly with clients. For example, members must comply with National Instrument 23-101 regarding Trading Rules.

Duplication on Mandatory Disclosures:

Our members must provide mandatory disclosures on many topics to their clients. We fail to see how the new disclosure requirements in the proposal, which are extremely burdensome, will further protect investors.

Duplication on Safekeeping:

Our members must comply with safekeeping and segregation requirements. Rule 2600 “*Internal Control Policy Statements*” details the current requirements.

Duplication on Books and Records:

Our members must maintain accurate books and records which must be retained and made available for audit.

Duplication on Complaint Handling:

Our members must comply with stringent complaint handling procedures, including the required filings through IIROC's Complaints and Settlement Reporting System (the ComSet system).

Duplication on Compliance/Risk Management and the Role of the Chief Compliance Officer:

Our members must ensure that compliance and risk management functions are accurately performed for all business activities and that the compliance oversight functions are independent of the business functions. Furthermore, Trading Supervisors are currently in place at our member firms.

The Proposed Rules make mandatory a new senior derivatives manager role. The manager would certify that the firm's derivatives business unit is in material compliance with the law. We believe that this new role, similar to what currently exists in the United Kingdom and Hong Kong, should not be applied to the Canadian environment. This new requirement would create an unwanted oversight separation between business units as well as a blurred line between business functions and compliance oversight functions which should be independent. We also believe that the proposed responsibilities set a different standard than what is required of a Chief Compliance Officer regarding Equity trading. We note that such a position does not and should not exist in this space.

Impact of Regulatory Overlap: High Cost for Clients

These proposed "duplicative" rules, often similar but rarely identical, would not better protect the investing public.

Furthermore, these new proposed requirements would potentially increase the trading cost for the investor. To implement these new rules, our members would need to modify their written policies and their operational procedures, all without a true benefit to clients. The cost incurred by our members to comply to these new rules would likely be passed on to the client.

Exemptions and Appendix B

Since IIROC-regulated dealers are already complying with extensive rules and regulations and because the Proposed Rules are mostly overlapping the current rules and regulations, we believe that IIROC-regulated dealers should be exempt from adhering to the Proposed Rules. Our members and their Canadian Financial Institution affiliates already meet equivalent regulatory requirements and therefore should not be required to comply with National Instrument 93-101.

Furthermore, National Instrument 93-101 indicates that, to the extent that there is a substantially similar provision in the IIROC Rules, IIROC members will not be required to meet the requirements:

“A derivatives dealer that is registered as an investment dealer and that is a member of the Investment Industry Regulatory Organization of Canada is exempt from the requirements set out in Appendix B if the derivatives dealer complies with the corresponding conduct and other regulatory requirements of that organization in connection with the transaction or other activity.”

We believe that, subject to reviewing Appendix B, IIROC members will not be required to comply with the requirements. IIAC would be happy to work with IIROC and CSA Staff to review Appendix B.

Conclusion

The IIAC and its members strongly believe that IIROC-regulated dealers should be exempt from the application of National Instrument 93-101.

We would also like to mention that we find the Canadian Market Infrastructure Committee (CMIC) comment letter on the Proposed National Instrument to be extremely detailed and thorough. CMIC has performed an exhaustive analysis of the Proposed Rules, with which we agree, and we would like to refer you to their letter.

Please note that the IIAC and its Members, as always, remain available for further consultations.

Yours sincerely,



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