

December 18, 2015

BY EMAIL

comment@ccmr-ocrmc.ca

Dear Sirs/Mesdames:

Re: Draft Initial Regulations for the Co-Operative Capital Markets Regulatory System (the “Initial Regulations”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Initial Regulations.

As a general comment and notwithstanding the chosen governance structure, we generally hold the view that harmonizing securities legislation, to the extent possible, would benefit all market participants. We note that the proposed approach to transitioning market participants in each of the participating jurisdictions has recently been published. We look forward to reviewing the draft interface plans with the non-participating jurisdictions, as careful and effective implementation of this mechanism will be critical to minimizing market disruption and will also potentially strongly impact the efficacy of capital markets and investor protection.

We also note that the Initial Regulations, once implemented, will be interpreted and applied by many different types of market participants, some of whom may not appreciate some of the nuanced amendments from existing regulation. It could be helpful for all market participants if the regulations could avoid, for example, the use of double negatives and other constructions which make it more difficult to read and/or interpret, particularly as it relates to the framework for derivatives. In addition, outreach efforts across different segments of affected market participants are strongly encouraged.

National Policy 47-201

QUESTION FOR COMMENT ON NATIONAL POLICY 47-201 Although we have tried to anticipate the impact of this policy change for Ontario market participants, we seek

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 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.

comments on how NP 47-201 and related initial regulations may be drafted to minimize any disruption or unintended consequences to capital-raising or investing activities by those participants.

We support the proposed requirement to require a person located in a CMR Jurisdiction that distributes securities through the internet outside of the CMR Jurisdiction to still be considered trading securities and therefore subject to applicable registration and prospectus requirements in the CMR Jurisdictions. Issuers and others located in British Columbia are currently subject to, and are able to structure their affairs to comply with similar requirements and thus issuers in Ontario with appropriate notice should be able to comply with the requirements.

Framework for Derivatives

QUESTION FOR COMMENT: Section 10 [Registration and prospectus exemptions] of CMRA Regulation 91-501 provides that the registration and prospectus requirements applicable to an OTC derivatives trade do not apply where each party to the trade is a permitted client or a qualified party and where each party is acting as principal. Given the G-20 commitment to require OTC derivatives to be traded on an electronic trading platform, we expect many OTC derivatives trades in the future to involve agents who provide access to the platforms on behalf of the beneficial parties to the trades. Should the registration and prospectus exemptions in section 10 apply where the trade involves an agent acting on behalf of one or both beneficial parties to the trade where the beneficial parties are permitted clients or qualified parties?

We believe that there should be no exemption from the registration requirement for agents acting on behalf of one or both beneficial parties to an OTC derivatives trade where the beneficial parties are permitted clients or qualified parties. Agents who provide access to derivatives trading platforms require regulatory oversight. A registration requirement for agents might help mitigate some risks and potential or real conflicts of interest in order to protect those permitted clients and qualified parties. We do not believe that possessing investable assets above a certain threshold implies sophistication, with lottery winnings and inheritances being just two examples of how that threshold could be reached by unsophisticated investors. All investors should be entitled to similar basic protections.

In addition, there should be an exemption from the prospectus requirements for an OTC derivatives trade, even if it involves an agent acting on behalf of one or both beneficial parties to the trade. Many OTC derivative transactions are bespoke, and as a result, the prospectus requirement would increase costs and reduce flexibility (i.e. would result in more “standardized” derivative instruments) to investors and other derivative users, some of which may have very unique requirements.

QUESTION FOR COMMENT: Do you agree with the approaches to the unsolicited trade and hedger exemptions? We ask commenters to consider in their analyses the business trigger for the dealer registration requirement in the CMA.

A person may be entitled to rely on the proposed “trade through a registered dealer” exemption, and thus we agree with the approach to the unsolicited trade exemption. With respect to the hedger exemption, because of the nature of the trading activities of hedgers (i.e. not speculative), we agree the approach that a hedger that is not in the business of trading in exchange contracts should not be required to register as a dealer. Additional guidance with respect to the term “hedger” could be helpful to market participants considering its equivocal nature.

QUESTION FOR COMMENT: Should the Authority regulate market conduct in all types of Exempt Derivatives or should some or all types of Exempt Derivatives be entirely excluded from capital markets regulation?

The Authority should provide basic regulation of market conduct provisions such as the prohibitions on fraud and manipulation in all types of Exempt Derivatives, including gaming and insurance contracts.

QUESTION FOR COMMENT: Subsection 25(h) [Application of this Part] of proposed CMRA Regulation 91-502 provides that Part 3 [Data reporting] of that regulation does not apply to a contract or instrument used by an issuer or an affiliate of an issuer solely to compensate an employee or service provider or used as a financing instrument where the underlying interest of the contract or instrument is a share or stock of that issuer or its affiliate. Currently, in the Securities Act (New Brunswick) and in amendments to The Securities Act, 1988 (Saskatchewan) that have been passed but not yet proclaimed, the definition of “derivative” excludes a contract or instrument if the contract or instrument is an interest in or to a security and a trade in the security under the contract or instrument would constitute a distribution. As these contracts or instruments are not derivatives, they would not be subject to trade reporting in those jurisdictions. As a result, certain contracts or instruments not used for compensation or financing purposes would be exempt from trade reporting in New Brunswick and Saskatchewan, but would not be exempt under subsection 25(h) as proposed. Should the subsection 25(h) exemption be expanded so that it is not limited to contracts or instruments used solely to compensate an employee or service provider or used as a financing instrument but also to include any contract or instrument that is an interest in or to a security where a trade in the security under the contract or instrument would constitute a distribution?

We believe that the exemption in subsection 25(h) should not be expanded as it could provide a “loophole” for future types of contracts or instruments from being subject to the reporting requirement.

Concluding Remarks

We would support the inclusion of a statutory best interest standard on all registrants providing advice in the initial regulations. Such a standard would help ensure that investments are in fact in a client's best interests, and would help mitigate concerns relating to potential conflicts of interest. Investor protection is best enhanced by providing clear risk and conflict disclosures, taking steps to verify eligibility to participate in the exempt market (as applicable), and implementing a best interest standard on all registrants.

We thank you for the opportunity to provide these comments, and we look forward to commenting on the expected publication of additional draft regulations. 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*

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