May 13, 2015

BY EMAIL

Dear Sirs/Mesdames:

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

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
consultation-en-cours@lautorite.qc.ca

and

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West Suite 1900, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Re: CSA Notice and Request for Comment Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* and Proposed Companion Policy 94-101CP *Mandatory Central Counterparty Clearing of Derivatives* (together, the "Proposed National Instrument")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Proposed National Instrument and wishes to

[1]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.

[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

make the following remarks relating to the proposed rules for mandatory central counterparty clearing for certain derivatives.

We agree with the stated goal to harmonize as much as possible the determination of mandatory clearable derivatives across all jurisdictions of Canada. We would like to stress the importance for participants located in Canada to be able to transact among provinces and territories pursuant to harmonized legislation. It is also important that our legislation be harmonized, to the extent possible, with the requirements of the other G20 countries. If parties to transactions are required to clear them in Canada through a central counterparty but are not required to do so elsewhere, it could lead to regulatory arbitrage opportunities.

The notice accompanying the Proposed National Instrument indicates that the clearing rule is intended to provide for substituted compliance for (i) transactions involving a local counterparty, where the transaction is submitted for clearing pursuant to the laws of another jurisdiction of Canada or pursuant to the laws of a foreign jurisdiction listed in Appendix B or, in Québec, that appears on a list to that effect; and (ii) a local counterparty in a reliant jurisdiction if the transaction is submitted for clearing to a clearing agency or a clearing house that is recognized or exempted from recognition pursuant to the securities legislation of another jurisdiction of Canada. However, the concept of substituted compliance appears to be more limited in the Proposed National Instrument itself.

Pursuant to Section 5(5) of the Proposed National Instrument, a local counterparty that is a local counterparty solely under paragraph (b) of that definition will satisfy the clearing requirement with respect to a transaction if the transaction is submitted for clearing in accordance with the laws of a foreign jurisdiction that is listed in Appendix B of the Proposed National Instrument or in Québec, that appears on a list determined by the AMF. As a result, it could be interpreted such that only local counterparties that are affiliated counterparties would be permitted to use substituted compliance in a listed foreign jurisdiction. It thus does not appear that a local counterparty would be able to use substituted compliance for clearing pursuant to the laws of another jurisdiction of Canada.

The definition of "regulated clearing agency", other than in Québec, means a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction. Section 5(1) of the Proposed National Instrument provides in part that a local counterparty must submit a transaction for clearing to a regulated clearing agency that provides clearing services for that mandatory clearable derivative. The section suggests that, other than as provided for the provinces and territories specifically listed in Section 5(4) of the Proposed National Instrument, the clearing agency has to be recognized (or exempt) in the local jurisdiction. We are of the view that so long as a clearing agency is recognized in at least one jurisdiction of Canada, such recognition should be sufficient for a local counterparty to meet its obligations in Section 5(1) of the Proposed National

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.

Instrument, even if that clearing agency is not formally recognized or exempt from recognition in that jurisdiction.

The concept of substituted compliance is important for the efficient functioning of the derivatives markets and additional clarity with respect to this concept in the Proposed Instrument would be helpful.

With respect to the phase-in of the requirement to clear a mandatory clearable derivative, we agree with the premise that counterparties that are not financial entities should be subject to an 18-month transition period after the date the determination becomes effective for the first phase-in category. For the thresholds that would determine whether a financial institution should be included in the second or third phase-in category, we agree that the monthly aggregate gross notional outstanding value is an appropriate basis for the threshold, but we think that data over a one year period would be more robust than the last 3 months preceding the determination.

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 on this or any other issue in future.

(Signed) *Cecilia Wong*

Cecilia Wong, CFA
Chair, Canadian Advocacy Council