

April 19, 2016

**BY EMAIL**

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  
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C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
[consultation-en-cours@lautorite.qc.ca](mailto: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](mailto:comments@osc.gov.on.ca)

Dear Sirs/Mesdames:

**Re: Proposed National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the “Proposed National Instrument”)**

The Canadian Advocacy Council<sup>1</sup> for Canadian CFA Institute<sup>2</sup> Societies (the CAC) appreciates the opportunity to provide the following general comments on the Proposed National Instrument.

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<sup>1</sup>The 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

We were satisfied with many of the responses of the CSA to comment letters on the prior Model Rule, and the responsiveness to concerns previously raised by commentators with respect to both harmonization of rules across Canada and substituted compliance with other jurisdictions.

As set out in the notice accompanying the Proposed National Instrument, OTC derivatives clearing currently takes place outside of Canada, most likely through clearing intermediaries located in the United States and Europe. In the United States, we understand that the CFTC regulations set forth customer protection standards for swaps, commonly known as the “LSOC”, or “Legal Segregation with Operational Commingling”. The standards generally affect cleared swaps customer positions and related collateral, and are intended to reduce the risk from other customers of the clearing agency and protect collateral in the event of certain defaults. Canadian participants in the US derivatives market would equally be subject to such US clearing agency protections, and as a result, the concept of substituted compliance is extremely important for the efficient functioning of the derivatives markets.

Revisions already made to the Proposed National Instrument will facilitate the operation of additional customer clearing models, for example, in Europe, in which many different models are already prevalent.

Given our comments above supporting substituted compliance, we query whether the requirement for clearing intermediaries to report on posted customer collateral in Forms 94-102F1 and 94-102F2 on a customer by customer basis is appropriate, where in jurisdictions such as the United States our understanding is that reporting is only required on an aggregated basis.

We are strongly supportive of the initiatives taken by the CSA to transform the former Model Rule into a harmonized National Instrument across Canada, in order for market participants to operate efficiently across the country.

### **Concluding Remarks**

We thank you for the opportunity to provide these comments. 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.

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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>.

<sup>2</sup> 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](http://www.cfainstitute.org).

Please feel free to contact us at [chair@cfaadvocacy.ca](mailto:chair@cfaadvocacy.ca) on this or any other issue in future.

(Signed) *Michael Thom*

**Michael Thom, CFA**  
**Chair, Canadian Advocacy Council**