Canadian Securities Administrators

CSA Consultation Paper 92-401

Derivatives Trading Facilities

Canadian Securities Administrators Derivatives Committee
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CSA CONSULTATION PAPER 92-401 – *DERIVATIVES TRADING FACILITIES*

On November 2, 2010, the Canadian Securities Administrators (the **CSA**) Derivatives Committee (the **Committee**) published for comment Consultation Paper 91-401 – *Over-the-Counter Derivatives Regulation in Canada* (**Consultation Paper 91-401**). That consultation paper set out high-level proposals for the regulation of over-the-counter (**OTC**) derivatives in Canada. The Committee sought input from the public with respect to the proposals and eighteen comment letters were received. This public consultation paper is the seventh in a series of papers that build on the regulatory proposals contained in Consultation Paper 91-401. It proposes a framework for the regulation of OTC derivatives trading facilities in Canada.

The Committee continues to consult and collaborate with the Bank of Canada, the Office of the Superintendent of Financial Institutions (Canada), the Department of Finance Canada, and market participants. The Committee also continues to contribute to and follow regulatory proposals and legislative developments in foreign jurisdictions and to work with international regulators and bodies such as the International Organization of Securities Commissions, the Financial Stability Board and the Over-the-Counter Derivatives Regulators' Forum in the development of international standards.

Although a significant market in Canada, the Canadian OTC derivatives market comprises a relatively small share of the global market and a substantial portion of transactions entered into by Canadian market participants involve foreign counterparties. It is therefore important that rules developed for the Canadian market are aligned with international practice to ensure that Canadian market participants have access to the international market and are regulated in accordance with international principles to the extent appropriate. The Committee will continue to monitor and contribute to the development of international standards. In this context, it is hoped that this paper will generate commentary and debate that will assist the CSA in developing harmonized policies and rules that are appropriate for Canada.

EXECUTIVE SUMMARY

At the Pittsburgh Summit held in September 2009, the G20 leaders agreed that "all standardized OTC derivatives should be traded on exchanges or electronic trading platforms, where appropriate".[1]

Exchanges and electronic trading platforms are systems or facilities that bring together buying and selling interests in one or more financial instruments, leading to the execution of transactions in those instruments.[2] In order to implement the G20 commitment to mandate the trading of suitable OTC derivatives on exchanges or electronic trading platforms in Canada, the Committee recommends that the CSA pursue two principal outcomes:

- develop a regulatory framework for "derivatives trading facilities" (**DTFs**), that is, organized trading platforms for the trading of OTC derivatives;
- require suitable OTC derivatives, or classes of OTC derivatives, to trade exclusively through a DTF.

The following is a summary of the Committee's specific recommendations in relation to pursuing these two principal outcomes.

Derivatives trading facilities

1. ***Definition of DTF:*** The Committee proposes to define a DTF to mean a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades.

   OTC derivative is used in this paper in its customary sense to refer to a derivatives contract that is traded other than on a formal exchange, such as on a dealer network or directly between two parties.[3]

   The proposed definition of a DTF is intentionally broad and would capture various multilateral execution processes and venues. However, the proposed definition is not intended to capture bilateral or one-to-many facilities such as single-dealer platforms, nor is it intended to capture facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards used solely for advertising buying and selling interests.

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[1] Statement No. 13, *Leaders' Statement: The Pittsburgh Summit* (September 24 – 25, 2009), available at http://g20.org/wp-content/uploads/2014/12/Pittsburgh_Declaration.pdf (the **G20 Leaders Statement**) at 9.

[2] Technical Committee of the International Organization of Securities Commissions (IOSCO), *Report on Trading of OTC Derivatives,* February 2011 (**IOSCO Trading Report**) at 10-11.

[3] However, for the purposes of this paper, an OTC derivative does not cease to be an OTC derivative merely because it may be traded on an exchange. This is important because, as discussed elsewhere, the Committee anticipates that in some jurisdictions a DTF may be recognized as an exchange.

2. ***Regulatory framework for DTFs***:

(a) Any DTF, regardless of whether it offers trading in OTC derivatives that are mandated to be traded on a DTF, would require an authorization from the securities regulatory authority in each jurisdiction in which it operates, or an exemption from such requirement.

(b) An authorized DTF would be permitted to provide facilities for trading in both OTC derivatives that are mandated to be traded on a DTF and those OTC derivatives not mandated to be traded on a DTF. For clarity, market participants would not be required to trade non-mandated OTC derivatives through a DTF.

(c) DTFs generally would be regulated similarly to an exchange. For example, all DTFs would be required to have rules governing the conduct of participants, designed to ensure compliance with applicable legislation, prevent fraud and manipulative acts and practices, and promote just and equitable principles of trade.

DTFs generally would also be required—directly or indirectly through an authorized third-party regulation services provider—to monitor compliance by participants with those rules and to appropriately discipline participants in the event of non-compliance.

(d) A DTF operator that exercises discretion[4] in the execution of transactions would be subject to additional requirements similar to those applicable to dealers.[5] Such requirements would include, for example, the duty to act fairly, honestly and in good faith, and requirements relating to proficiency of individual representatives, "know your client" and suitability, the handling of accounts, confidentiality of customer information, client order exposure rules, and best execution.

In addition, to address the potential for conflicts of interest, a DTF that exercises discretion would be required to retain an authorized third-party regulation services provider to monitor and enforce both its conduct and that of the participants on its platform.

[4] Discussed at para. 7 below.

[5] Including those applicable to dealers under current rules and those that will be applicable pursuant to derivatives registration rules yet to be enacted; see CSA Consultation Paper 91-407 – *Derivatives: Registration*, published on April 18, 2013.

3. ***Organizational requirements:*** All DTFs would be subject to basic organizational requirements, comparable, to the extent appropriate, to those established for marketplaces regulated under National Instrument 21-101 – *Marketplace Operation* (**NI 21-101**) and National Instrument 23-101 – *Trading Rules* (**NI 23-101**). Among other things, DTFs would be subject to requirements related to:

   - transparency, e.g., via disclosure on a website of, among other things, fees, how orders are entered, interact and execute, order types, access requirements, technology requirements, trading requirements, including market conduct requirements, and the policies and procedures for managing conflicts of interest;
   - record-keeping and record preservation, including in respect of records of market participants with access to the trading facility, trading summaries, and records of trades, orders, and quotations;
   - publication of and fair access to trade and price information;
   - access, including not unreasonably prohibiting, conditioning or limiting access to services offered;
   - system requirements, including adequate controls over those systems;
   - business continuity planning and independent system reviews;
   - adequate financial resources;
   - personnel and outsourcing of functions;
   - addressing conflicts of interest; and
   - reporting to securities regulators.

4. ***Contrast with NI 21-101:*** NI 21-101 provides a regulatory framework for a number of different "marketplaces", including securities exchanges,[6] alternative trading systems (**ATS**) and quotation and trade reporting systems (**QTRS**). A DTF would be distinct from the "marketplaces" currently regulated under NI 21-101. Although to the extent appropriate the rules governing DTFs will be consistent with NI 21-101, rules governing DTFs will be tailored to specifically address the organized platform trading of OTC derivatives. For example, unlike for trades executed on a marketplace regulated under NI 21-101, trades executed through a DTF would not be required to be cleared unless the derivative was of a class that had been mandated to be cleared pursuant to a clearing rule. As described elsewhere, it is also contemplated that the operator of a DTF will be permitted to exercise discretion in the manner of order execution, which is not something for which NI 21-101 provides.

[6] And futures exchanges in Quebec.

5. ***Existing marketplaces:***

   (a) The Committee recommends that exchanges trading derivatives that are not OTC derivatives would not be regulated as DTFs in respect of their current (non-OTC derivatives) operations.

   (b) Existing marketplaces that wished to provide a platform for trading in OTC derivatives would be required to apply for authorization to offer trading in OTC derivatives.

   (c) Depending on the products it trades, a trading platform might constitute both a DTF and a marketplace under NI 21-101. Where appropriate and possible, conflicting and duplicative regulation would be avoided, most likely on a case-by-case basis.

6. ***Execution methods:*** A DTF would be permitted to use a variety of execution methods, for example, continuous or periodic order book, request-for-quote, request-for-stream, voice, or hybrid voice-electronic execution methods. As discussed elsewhere in this Consultation Paper, certain execution methods may be compulsory for products that are mandated to trade on a DTF.

7. ***Exercise of discretion:*** The Committee is considering whether to permit the operator of a DTF to exercise a degree of discretion in the manner of executing transactions between its participants. In accordance with a DTF's rules, a DTF operator may be permitted to exercise discretion in determining, among other things, when to place an order for a participant or to retract it, which participants are contacted with requests for quote (**RFQ**), which orders or RFQs are matched with other orders or quotes, and the order and timing of such matching. In practice, discretion allows platform operators to run "hybrid systems," consisting of both electronic trading and voice broking, that allow for the periodic execution of trading interests. Such discretion enables platform operators to facilitate the pre-arrangement or pre-negotiation of transactions prior to execution.[7] A DTF exercising discretion would have additional requirements placed upon it, as described above. Even so, discretionary execution methods may not be permitted for products that are mandated to trade on a DTF.

8. ***Pre-trade transparency:*** Except in the case of derivatives that are mandated to trade on a DTF (see below), a DTF would not be required to provide a particular level of pre-trade transparency. However, if a DTF were to execute transactions in a way that inherently provides a certain degree of pre-trade transparency (as would be the case with a published order book), it would be required to do so in a manner that did not unreasonably limit access to such information by a participant or class of participants.

[7] Discretion exercised by the participants themselves is not the kind of discretion that is meant here. See infra note 55.

9. ***Post-trade transparency:*** A DTF would be required to report to the public transactions executed on its facility in as close to real-time as technically feasible.[8] Deferred publication would be permitted in certain circumstances, such as for block trades. Additionally, DTFs would be required to provide certain market information to the general public at no charge on a delayed basis. Although not required to, a DTF would not be prohibited from disseminating real-time data.

Mandating OTC derivatives to be traded on derivatives trading facilities

10. ***Trading mandate****:* Members of the CSA, after consultation with other Canadian authorities and with the public, may determine certain OTC derivatives to be appropriate to be mandated to trade exclusively on an authorized DTF.

Determining whether OTC derivatives should be mandated to trade on a DTF

11. ***CSA review of trading data:*** Prior to requiring that any class of OTC derivative be traded exclusively on a DTF, the Committee recommends that members of the CSA review trading and clearing data covering an appropriate time period. In particular, the Committee contemplates that the CSA will wish to review the level of liquidity of OTC derivatives in the Canadian market, the current volume and turnover in derivatives of various asset classes in Canada, the number and type of market participants transacting in OTC derivatives in Canada, and the extent to which multilateral execution methods are currently being used for OTC derivatives transactions. The Committee recommends that an OTC derivative be mandated to be traded on a DTF only after trade reporting and clearing data with respect to that derivative has been analyzed for a sufficient period of time. The Committee anticipates that the trading data would be reviewed periodically with a view to considering whether additional derivatives should be added to the list of those that are mandated to trade through a DTF, and whether there are derivatives on the list that should be removed.

12. ***Factors to be considered in determining whether to mandate trading on a DTF:*** In determining whether to require a class of OTC derivatives to be traded exclusively on a DTF, the Committee recommends that the CSA consider factors including whether the class of OTC derivatives is: subject to a clearing mandate, sufficiently liquid and standardized, subject to a similar trading mandate in other jurisdictions, or already trading through the facilities of a DTF or foreign trading platform.

13. ***Pre-trade transparency requirements applicable to derivatives mandated to be traded on a DTF:*** For OTC derivatives that are mandated to be traded on a DTF, we contemplate that a DTF would be required to provide pre-trade disclosure to all users of its facilities of current bid and offer prices and market depths. We contemplate that the nature of pre-trade transparency may need to be tailored to the form of execution

[8] The Committee is considering methods for public reporting of transactions; please see section 9, Post-trade transparency, in the main body of the paper below.

method.[9] Exemptions from pre-trade transparency requirements are contemplated for orders that, because of their size, would expose liquidity providers to undue risk.

14. ***Post-trade transparency requirements applicable to derivatives mandated to be traded on a DTF:*** For derivatives that are mandated to trade on a DTF, we do not contemplate standards of post-trade transparency that differ from the standards that would apply to all transactions executed on the DTF.

Exemptive relief for a foreign-based DTF regulated in its home jurisdiction

15. A foreign-based DTF (such as a "swap execution facility" based in the United States) that carries or would like to carry on business in Canada may apply for an exemption from the requirements that would otherwise apply to it as a DTF, where it can demonstrate that the regulation and oversight of the DTF in its home jurisdiction is comparable to that which would apply if the DTF were domiciled in Canada. In such case, the CSA members may, with respect to the day-to-day oversight of the foreign-based DTF, rely on the oversight by its home regulator; however, the ability of the regulator in Canada to engage in general oversight would be retained.[10] Such a DTF also might be required to fulfill reporting requirements to the regulators in the jurisdictions of Canada in which it operates.

[9] E.g., for trading via RFQ, the requests and quotes are only between the requester and the interrogated dealers. As discussed below in the main body of this paper, a degree of pre-trade transparency could be provided by ensuring that the requests are sent to several dealers, and that the reply include not only quotes but any matching orders from the order book.

[10] CSA members might retain discretion to oversee such matters as fair access and compliance with Canadian market integrity requirements.

SUMMARY OF QUESTIONS

The questions below appear in the order in which they appear in the main body of the paper.

Defining “Derivatives Trading Facility”

1. Is the DTF category appropriately defined? If not, what changes are needed and why?

2. Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

Permitted Execution Methods

3. Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

Regulatory Authorization of DTFs

5. Is the proposed regulatory framework for DTFs appropriate?

6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

7. To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?

8. What factors are relevant in defining the proposed best execution duty?

Organizational and Governance Requirements

9. Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

10. Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

11. Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

12. Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

13. Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

14. Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

15. How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

Pre-trade Transparency

16. Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

Post-trade Transparency

17. Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

18. What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

19. When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

20. Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

21. What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information

that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

Trading Mandate

23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

27. What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

28. For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

General

31. Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

COMMENTS AND SUBMISSIONS

The Committee invites participants to provide input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The comment period expires March 30, 2015.

Certain CSA regulators require publication of the written comments received during the comment period. We will publish all responses received on the websites of the Autorité des marchés financiers (lautorite.qc.ca), the Ontario Securities Commission (osc.gov.on.ca), and the Alberta Securities Commission (albertasecurities.com). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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1. INTRODUCTION

(a) G20 commitment

At the G20 Summit held in Pittsburgh in September 2009, the leaders of the G20 countries agreed that:

> All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest.[11]

The commitment to trade standardized OTC derivative contracts on exchanges or electronic platforms, where appropriate, is a central component of the G20 mandate to reform the OTC derivatives markets. A key objective of this mandate is to enhance the transparency and efficiency of OTC derivatives markets for the benefit of all market participants. Exchanges or electronic trading platforms can foster greater market integrity through transparent and enforceable participation and conduct requirements.[12]

(b) Benefits of organized trading platforms

Organized trading platforms bring together many market participants where their trading interests can interact. The potential benefits of organized trading platforms have been described by international regulatory organizations to include the following:

- the use by participants of similar means to express trading interests and execute trades can result in the accumulation of pools of liquidity on trading platforms;
- the concentration of liquidity may foster broader market participation, resulting in greater operational efficiencies, increased competition and deeper markets;
- increased competition which may, in turn, put downward pressure on trading costs, including a reduction in bid/ask spreads;
- tight bid/ask spreads and deep liquidity particularly for benchmark derivatives contracts;[13]
- increased participation in the OTC derivatives market, contributing to making markets less susceptible to the impairment of a single liquidity provider;[14]

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[11] G20 Leaders Statement, at 9. Although the G20 commitment contemplates that mandatory trading should be in place by end of 2012, as stated by the Financial Stability Board (**FSB**) in April 2013, implementation is still progressing in FSB member jurisdictions after the end-of-2012 deadline: *OTC Derivatives Market Reforms: Fifth Progress Report on Implementation*, April 15, 2013 at 2. See also infra note 24.

[12] FSB, *OTC Derivatives Market Reforms: Sixth Progress Report on Implementation*, September 2, 2013 at 18.

[13] Committee of European Securities Regulators (**CESR**), *Standardisation and exchange trading of OTC derivatives*, 19 July 2010 (CESR/10-610) (**CESR Report**) at 18.

[14] IOSCO Trading Report at 38.

- greater market integrity through transparent and enforceable participation and conduct requirements;[15]
- the verification of trade information through electronic confirmations, and an efficient link to clearing agencies and trade repositories;[16]
- a higher level of transparency, and a reduction in information asymmetry;
- making price and other trade-related information directly available to the market thereby improving price discovery and pricing of assets and enhancing comparability and strengthening risk management;[17]
- allowing market participants to directly price derivatives, with the role of a platform operator being limited to bringing together or facilitating the bringing together of multiple third-party buying and selling interests; and
- improved transparency to and surveillance by regulators and likely a clearer trail in terms of positions and exposures.[18]

The extent to which these benefits would be realized will vary depending on the product or class of product being traded, as well as the particular characteristics of the platform, including, for example, the nature and degree of transparency, the level of discretion afforded a platform operator and the level of automation employed.

(c) Limitations to organized trading platforms

The following limitations and potential drawbacks to the trading of OTC derivatives on organized platforms have also been identified:

- Platform trading may, depending on the structure of a platform, reduce the ability to customize contracts. This potential lack of flexibility may result in a lack of match with customers' needs, and a more limited possibility for product innovation.[19]
- The benefits of multilateral systems may appear only in some cases and not generally. As summarized by the CESR, "In this view, a multilateral system is not suitable for derivatives because of the bilateral character of contracts and little use of transparency information which disregard counterparty risk."[20]

[15] Supra note 12.

[16] Council of Financial Regulators (Australia), *OTC Derivatives Market Reform Considerations*, March 2012 (**CFR Report**) at 4; IOSCO Trading Report at 37.

[17] Ibid. at 18.

[18] Ibid.

[19] CESR Report at 19. See also infra note 20 at 20.

[20] CESR, *Technical Advice to the European Commission in the Context of the MiFID Review- Standardisation and Organised Platform Trading of OTC* Derivatives, 21 December 2010 (CESR/10-1210) at 16.

- Mandating or forcing the trading of OTC derivatives on organized platforms could, if not done correctly, be damaging to product markets.[21]

Where a requirement to trade certain OTC derivatives on an organized trading platform introduces costs or risks that outweigh the benefits of trading in derivatives, participants may be discouraged from participating in the OTC derivatives market.

These limitations may be mitigated by requiring a minimum level of standardization and liquidity as a precondition to mandating that an OTC derivative, or class of OTC derivatives, trade through an organized trading platform. This would have a corollary result of excluding from any trading requirement bespoke or illiquid contracts, and potentially transactions above a certain size threshold (relative to the market for a specific type or class of OTC derivative).

(d) Committee recommendations designed to encourage OTC derivatives to trade on organized trading platforms

In Consultation Paper 91-401, the Committee outlined its proposals relating to the regulation of OTC derivatives in Canada. The following three options were proposed for purposes of addressing the G20 commitment on OTC derivatives trading:

- <u>Option 1:</u> Mandate trading of all OTC derivatives on organized trading platforms, with such a requirement being contingent on the availability of a platform that has been recognized or designated.

- <u>Option 2:</u> Mandate trading of only those transactions with sufficient standardization and liquidity and/or that pose systemic risks to the integrity of the markets.

- <u>Option 3:</u> Permit market participants to choose whether or not to trade on an organized trading platform.

The Committee stated that although the benefits of trading on an organized platform were considerable, much could be achieved through post-trade transparency, utilizing data gathered from trade reporting and mandated central clearing. The Committee noted that there are many valid reasons why OTC derivatives do not trade on exchanges, such as increased flexibility and the ability to hedge specific risks. In addition, due to the bespoke nature of many OTC derivatives products and the sheer number of their variations, it was unlikely that all OTC derivatives could be traded successfully on organized platforms. Nonetheless, the Committee felt that considerable benefits for both regulators and market participants resulting from increased transparency and liquidity could be achieved through the trading of certain OTC derivatives on organized platforms.[22]

The Committee now recommends that the CSA pursue Option 2 through the development of

[21] CESR, *Technical Advice to the European Commission in the Context of the MiFID Review – Standardisation and Organised Platform Trading of OTC Derivatives*, October 2010 (CESR/10-1096) at 12.

[22] Consultation Paper 91-401 at 37-39.

(1) a new regulatory category of "derivatives trading facility", or DTF, for the trading of OTC derivatives, and

(2) criteria for identifying appropriate OTC derivatives to be mandated to be traded exclusively through a DTF.

The Committee recommends that a DTF be permitted to offer trading in OTC derivatives that have not been mandated to trade on a DTF, though market participants would not be required to trade non-mandated derivatives through a DTF. Additional requirements would apply to a DTF in respect of trading in OTC derivatives that are subject to a DTF-trading mandate including, for example, with respect to pre-trade transparency.

This consultation paper sets out a proposed definition for a DTF as well as proposals regarding the characteristics of a DTF, including permitted execution methods, recognition or registration requirements, organizational and governance requirements, and pre- and post-trade transparency requirements. The paper concludes with a discussion of the proposed parameters of a trading mandate for sufficiently liquid and standardized OTC derivatives, and a brief discussion of the Committee's recommended approach for the CSA with respect to organized derivatives trading platforms based outside of Canada.

The recommendations and proposals in this consultation paper relating to DTFs aim to create a system for regulating organized platform trading of OTC derivatives in Canada. The goal is to encourage the continued development of liquidity, transparency and standardization in the OTC derivatives market. In developing these regulatory proposals, we have been cognizant of the approaches taken in both the United States, with "swap execution facilities" (**SEFs**), and in the European Union, with "organized trading facilities" (**OTFs**).

2. OTHER JURISDICTIONS

Recognizing the international character of OTC derivative markets, the Committee is of the view that a Canadian regulatory approach to the platform trading of OTC derivatives should have regard to the approach taken in other jurisdictions, particularly in the US and EU. Moreover, the Canadian regulatory approach should be designed to coordinate with international regulation where possible, while recognizing the relative size and liquidity of the Canadian market and the unique features of the Canadian regulatory framework.

The regulatory landscape relating to the use of organized trading platforms for OTC derivatives trading has changed significantly since the publication of Consultation Paper 91-401 in November 2010. Legislation in the US now requires all multilateral platforms trading swaps[23] to be registered as a SEF or a designated contract market (**DCM**) and factors have been established for determining those OTC derivatives that will be subject to mandatory trading on SEFs or DCMs. In the EU, a third category of regulated trading venue, OTF has been introduced alongside the existing categories of regulated market (**RM**) and multilateral trading facility

[23] "Swap" is defined at 7 U.S.C. §1a(47). It is a complex definition that encompasses a broad variety of OTC derivatives contracts.

(**MTF**). Suitable OTC derivatives, e.g., those sufficiently liquid and standardized to be subject to a clearing requirement and also mandated to trade on a regulated trading venue, must be traded on one of the three venues.

Some jurisdictions have now implemented requirements that certain OTC derivatives be traded exclusively on organized trading platforms.[24] In the US, mandatory platform-trading has been implemented for certain types of interest rate and credit default swaps.[25] In the EU, a revised Markets in Financial Instruments Directive[26] (**MiFID II**), together with a Markets in Financial Instruments Regulation[27] (**MiFIR**), were adopted by the European Parliament and the Council of the European Union to facilitate, among other things, the mandatory trading of specified OTC derivatives. The texts of MiFID II and MiFIR came into force in the EU in July 2014, and must generally apply within European member states by January 3, 2017.

(a) United States

In October 2013, the rules of the US Commodity Futures Trading Commission (the **CFTC**) for the mandatory trading of certain OTC derivatives on SEFs came into effect. A trading mandate is a key aspect of Title VII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*[28] (the **Dodd-Frank Act**). The Dodd-Frank Act amended both the *Commodity Exchange Act*[29] and the *Securities Exchange Act of 1934* to establish a comprehensive new regulatory framework for swaps and security-based swaps in the wake of the financial crisis.

The Dodd-Frank Act provides that, where a derivative is subject to the clearing requirement (meaning it must be centrally cleared unless an exemption is available), and any SEF or DCM (i.e., a registered futures exchange) "makes" the derivative "available to trade" (i.e., it is subject to a **MAT determination**), then it must be traded on a SEF or a DCM.

The CFTC established in June 2013 a flexible process for SEFs to make a derivative "available to trade". SEFs are to determine which derivatives they wish to make available to be traded on their platforms. The MAT determination is then submitted to the CFTC either as self-certified by the trading platform or for CFTC approval. Unless the filing is found to be contrary to the CFTC's regulations, the derivative, if subject to the clearing requirement, will become subject to

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[24] The FSB reported that, as at November 2014, three jurisdictions – China, Indonesia and the US – had regulations in effect requiring organized platform trading. In 2015 such regulations are also expected to become effective or partially effective in India, Japan, and Mexico: FSB, *OTC Derivatives Market Reforms: Eighth Progress Report on Implementation*, November 7, 2014 at 24.

[25] In the US, the requirement to execute certain interest rate and credit default swaps on "swap execution facilities", foreign boards of trade or designated contract markets took effect in mid-February 2014; see http://sirt.cftc.gov/sirt/sirt.aspx?Topic=SwapsMadeAvailableToTradeDetermination.

[26] Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast) (**MiFID II**): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_173_R_0009.

[27] Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (**MiFIR**): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.173.01.0084.01.ENG.

[28] http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.

[29] Codified as Title 7 of the United States Code: http://www.law.cornell.edu/uscode/text/7/chapter-1. As section numbers do not always align, note that references herein are to the U.S. Code, not to the Commodity Exchange Act.

a trading mandate. Since January 2014, the CFTC has approved or deemed certified as available to trade certain specified interest rate swap (**IRS**) and credit default swap (**CDS**) contracts pursuant to MAT determinations by five different SEFs. Once the MAT determinations became effective the specified CDS and IRS contracts became subject to what is known as the "trade execution requirement".[30] A transaction in a swap that is the subject of a certified MAT determination may be made on any SEF or DCM, not just the SEF that submitted the MAT determination.

A SEF is defined under the Dodd-Frank Act to mean "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system", and that is not a DCM.[31]

All registered SEFs must offer a "minimum trading functionality" for transactions in all derivatives listed on the SEF, consisting of an order book, or an RFQ system offered in conjunction with an order book. For purposes of the SEF rules, an order book is defined as an "electronic trading facility",[32] a "trading facility",[33] or a trading system or platform in which all market participants have the ability to enter multiple bids and offers, observe or receive bids and offers, and transact on such bids and offers.

The rules do not impose any specific algorithm for matching participant bids and offers on an order book.[34]

One-on-one voice and single-dealer platforms do not meet the definition of a SEF, and may not trade derivatives that are subject to the trade execution requirement because they do not provide for the multiple-to-multiple interaction of buying and selling interests.

A SEF may provide RFQ functionality for those market participants that do not wish to display their bids, offers, or requests to all other market participants. An RFQ functionality allows a participant to transmit a request for a quote to a minimum number[35] of market participants in the trading system or platform, to which such market participants may respond.[36] A SEF's RFQ system may include a voice component.

[30] I.e., mandatory trading on either a DCM or a SEF; see Title 17 Chapter I of the Code of Federal Regulations, http://www.ecfr.gov/cgi-bin/text-idx?SID=2ed6cb4f87f8320c844139f05049281d&tpl=/ecfrbrowse/Title17/17tab_02.tpl (**CFTC Regulations**), §37.9(a) and 7 U.S.C. §2(h)(8).

[31] Dodd-Frank Act, s. 2(6); 7 U.S.C. §1(a)(50).

[32] 7 U.S.C. §1a(16) defines electronic trading facility as "a trading facility that—
(A) operates by means of an electronic or telecommunications network; and
(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility."

[33] 7 U.S.C. §1a(51) defines trading facility in paragraph (A) as "a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—
(i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or
(ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm."

[34] CFTC Regulations §37.3.

[35] For products not mandated to trade on a DCM or a SEF (i.e., for "permitted transactions"), the RFQ need not be sent to a minimum number of participants.

[36] CFTC Regulations at s. 37.9(a)(3).

In order to provide RFQ functionality for trading in products subject to a MAT determination, a SEF's RFQ system must be able to satisfy all of the following minimum functional requirements:

(1) receive a request for quotation from a market participant;

(2) submit that request to at least the prescribed minimum number[37] of unaffiliated market participants chosen by the requester;

(3) communicate the RFQ responses and any firm resting bids or offers on the order book to the RFQ requester; and

(4) allow the requester to execute against such firm resting bids or offers along with any responsive orders (RFQ responses).

The regulations do not require a SEF to display a requester's RFQ to market participants not participating in the RFQ. SEFs are also not required to display responses to an RFQ to anyone but the RFQ requester.[38] At the same time that the RFQ requester receives the first responsive bid or offer, the SEF must communicate to the requester any firm bid or offer pertaining to the same instrument resting on the SEF's order book(s).[39]

In providing either order book or RFQ functionality, a SEF may, for purposes of execution and communication, use "any means of interstate commerce, including, but not limited to, the mail, internet, email, and telephone", provided that the execution method otherwise satisfies the minimum requirements under CFTC regulations applicable to order book and RFQ functionality for SEFs.[40]

(b) European Union

MiFID II and MiFIR introduce new rules with respect to trading infrastructure. Among other things, they introduce the new trading venue category of OTF. Alongside RMs and MTFs, OTFs will be a third type of multilateral system in which multiple buying and selling interests can interact in a way that results in contracts. However, unlike RMs and MTFs, an OTF will only be permitted to trade derivatives and certain non-equity instruments, namely bonds, structured finance products and emissions allowances.[41] Operating an OTF will be considered to be providing an investment service so a person wishing to do so will need to be licensed as an investment firm. An RM operator will also be permitted to operate an OTF. Under MiFID II, the main factor distinguishing an OTF from an RM or MTF is that the operator of an OTF would have discretion over how a transaction is to be executed, whereas the interaction of orders on an RM or MTF must be non-discretionary.

[37] At least two unaffiliated market participants the first year after the final rule, and at least three unaffiliated market participants thereafter.

[38] CFTC Regulations at s. 37.9(a)(3).

[39] Ibid. at 37.9(3)(i).

[40] Ibid. at s. 37.9(a)(2)(ii).

[41] MiFIR at preamble (8).

The operator of an OTF would be permitted to exercise its discretion in two circumstances: (i) when deciding to place an order on the OTF or to retract it; and (ii) when deciding not to match a specific order with the orders available in the system at a given point in time, provided that this complies with specific instructions received from clients and with best execution obligations.

The operator of an OTF will be able to decide when and how to match a client order, and therefore to facilitate negotiation between clients, so as to bring together two or more potentially compatible trading interests. As a result of this discretion, the operator of an OTF will owe investor protection duties to its clients, consisting of conduct of business rules, best execution, acting in accordance with the client's best interest and client order handling obligations.[42]

Like RMs and MTFs, OTFs will be required to have transparent and non-discriminatory rules governing access to the facility. Unlike RMs and MTFs, OTFs will be permitted to determine and restrict access to their platforms based, among other things, on the role and obligations which the operator of an OTF will have in relation to its clients.[43]

The concept of an OTF does not include a facility "where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression, which reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios."[44]

The OTF category was intended to include much of the inter-dealer market. Subject to limited exceptions with respect to sovereign debt, an investment firm or market operator operating an OTF will be prohibited from executing client orders on the OTF against its own proprietary capital or that of any entity that is part of the same "group or legal person" as the operator.[45] Unlike the operator of an RM or MTF, the operator of an OTF will be permitted, with client consent, to engage in matched principal trading[46] of OTC derivatives that are not subject to a trading obligation. When matched principal trading is used, the OTF must comply with all pre-trade and post-trade transparency requirements and best execution obligations. An OTF operator or any entity that is part of the same group or legal person as the investment firm or market operator should not act as systematic internaliser[47] in the OTF it operates. The OTF operator should also be subject to the same obligations as an MTF in relation to potential conflicts of interest.[48]

[42] MiFIR, preamble (9).

[43] MiFID II, preamble (14).

[44] MiFIR, preamble (8).

[45] MiFID II, Article 20 at s. 1.

[46] MiFID II, Article 4(1)(38) defines matched principal trading as "a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction".

[47] A systematic internaliser has been defined as an investment firm 'which on an organised, frequent and systematic' basis deals on own account by executing client orders outside a regulated market or MTF: European Securities and Markets Authority (ESMA), *Discussion Paper: MiFID II/MiFIR*, (**ESMA Discussion Paper**), May 22, 2014 at s. 3.3.

[48] MiFIR, preamble (10).

In order to implement the G20 commitment to require standardized derivatives to be traded on exchanges and electronic platforms, MiFIR also creates a platform-trading obligation such that certain derivatives can only be traded on an RM, MTF, OTF or an equivalent third-country trading venue.[49] MiFIR sets out a procedure for determining whether a derivative should be subject to the platform-trading obligation. In implementing this procedure, ESMA will develop technical standards declaring which classes (or sub-classes) of OTC derivatives should be required to be traded only on these specified platforms.

Generally speaking, to be subject to the platform-trading obligation, a class of OTC derivative would be determined to be subject to the clearing obligation, traded on at least one RM, MTF or OTF, and considered sufficiently liquid.[50] The MiFIR contemplates that liquidity would be considered to exist when there are "ready and willing buyers and sellers on a continuous basis". Having regard to the trading venue and the particular class of OTC derivative, the assessment would involve consideration of the average frequency and size of trades in the class of derivatives over a range of market conditions; the nature and lifecycle of products within the class of derivatives; the number and type of active market participants including the ratio of market participants to products or contracts traded in a given market; and the average size of the bid/ask spreads.[51]

In preparing draft technical standards, ESMA is required to take into consideration the anticipated impact that a trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities.[52]

3. MARKETPLACES REGULATED UNDER NI 21-101 AND NI 23-101

NI 21-101 provides a regulatory framework to regulate the operation of "marketplaces"; NI 23-101 governs trading on marketplaces. NI 21-101 uses the term "marketplace" to describe a facility or venue on which securities – and, in some CSA jurisdictions, derivatives – can be traded, including exchanges, quotation and trade reporting systems (**QTRSs**), alternative trading systems (**ATSs**) and other types of trading systems. In general, each of these marketplaces share the following characteristics:

(a) they constitute, maintain or provide a market or facility for bringing together buyers and sellers,

[49] MiFIR, Article 28 at s. 1.

[50] FIA/FIA Europe, Special Report Series: Market Infrastructure Under MiFID II, 13 June 2014.

[51] MiFIR, Article 2(1)(17) and ESMA Discussion Paper at s. 3.6.

[52] MiFIR, Article 32 at s. 3.

(b) they bring together orders of multiple buyers and sellers, and

(c) they use established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade.[53]

NI 21-101 and NI 23-101 do not provide that the operator of a marketplace regulated thereunder may exercise discretion in the execution of trades on the marketplace. In contrast, customary execution methods in respect of OTC derivative instruments may involve the exercise of discretion in the execution of transactions, as described below. Furthermore, trades executed on a marketplace regulated under NI 21-101 must be reported to and settled through a clearing agency, whereas the OTC derivatives markets that are the subject of this paper do not necessarily impose such an obligation, and it is proposed that trades executed through a DTF would not be required to be cleared unless the derivative were of a class that had been mandated to be cleared pursuant to a clearing rule.

In the Committee's view, the OTC derivatives market in Canada could benefit from a regulatory framework that has sufficient flexibility to accommodate the unique features of OTC derivatives trading, including discretionary execution methods.

The Committee recommends that rules be developed to introduce the DTF as a new category of trading venue, specifically intended for OTC derivatives. We propose that DTFs be subject to rules tailored specifically to the organized platform trading of OTC derivatives, and which are separate from NI 21-101 and NI 23-101. To the extent appropriate, rules governing DTFs would be consistent with comparable requirements in NI 21-101 and NI 23-101.

4. DEFINING "DERIVATIVES TRADING FACILITY"

Having considered the regulatory context related to OTC derivatives trading platforms in the United States and Europe and the existing regulatory framework for marketplaces in Canada, we set out below the Committee's recommendation for the regulation of OTC derivatives trading facilities in Canada.

(a) Scope and key characteristics

The key characteristics of an organized trading platform that would constitute a DTF are described below.

(i) Execution

The Committee recommends that the application of the proposed DTF regulatory regime be limited to those systems and/or facilities that bring together multiple buying and selling interests leading to the execution of OTC derivatives transactions. This would not include bulletin boards and similar facilities that do not provide for the execution of transactions.

[53] Except in Ontario, the term "marketplace" is defined in subsection 1.1(a) of NI 21-101. In Ontario, the term is defined under subsection 1(1) of the *Securities Act* (Ontario).

(ii) Single dealer vs. Multi-dealer

The Committee recommends that the DTF regulatory regime be aimed at regulating those platforms that are multi-dealer or that facilitate many-to-many transactions. At this time we do not propose that single-dealer or one-to-many platforms be governed under this regime.

We note that platforms that trade OTC derivatives generally fall into one of two broad categories: those with a single liquidity provider (single-dealer/one-to-many platforms) and those with multiple liquidity providers (multi-dealer platforms). One-to-many platforms are structured around a single liquidity provider that provides liquidity for all trades on a bilateral basis to one or more counterparties. Broadly speaking, one-to-many platforms resemble the direct, principal-to-principal bilateral negotiation of transactions, traditionally by telephone, which has historically been the dominant mode of transacting in OTC derivatives. In contrast, multi-dealer platforms are multilateral (i.e., multiple-to-multiple) platforms structured to facilitate the interaction of multiple buying and selling interests, as well as competitive execution systems involving firm bids and offers from multiple dealers. Examples of multi-dealer platforms include (i) an RFQ system, where a participant requests a quote from multiple dealers that have been selected by the participant, and (ii) a competitive interaction of firm bids and offers through, for instance, an order book.[54]

(iii) Discretionary execution and order books

Derivatives trading platforms can also be distinguished by the degree of discretion, if any, that the operator of a platform is permitted to exercise over the execution process. In this context, discretion describes the ability of the platform operator to determine independently, among other things, when to place an order for a participant or to retract it; which participants are contacted with client RFQs; which client orders or RFQs are matched with other orders or quotes; the order and timing of such matching; and how the trade is executed (e.g., by way of voice, RFQ or another execution method). Such discretion assists the facility in seeking liquidity and arranging and negotiating transactions between buying and selling interests prior to execution.[55] Trading itself may then be neither continuous nor fully electronic, which can be important for purposes of finding liquidity in products that tend to trade episodically.

In contrast, some platforms, such as those utilizing an order book, are non-discretionary. A transparent order book in its most basic form allows market participants to enter multiple bids and offers, observe bids and offers entered by other market participants, and choose to transact on such bids and offers.[56] Such systems typically incorporate pre-determined criteria governing the prioritization of and interactions between orders, so as to provide a transparent and objective basis for the continuous or periodic execution of transactions. The operator provides the same prices for the same volume of trading interest in the same market situation, irrespective of the

[54] IOSCO Trading Report at 30.

[55] As discussed below, discretion exercised solely by the participants themselves is not what is meant here. What is referred to here is the situation where a party plays an active role in brokering the deal between the two participants, such as the role typically played by an interdealer broker in contacting potential counterparties and negotiating price and volume on behalf of (a typically undisclosed) client.

[56] Supra note 54 at 10.

individual participant or client.[57] The operator is in effect left out of the execution process with no discretion as to how interests may interact.[58]

It is important to distinguish between the discretion that a platform operator may have in executing transactions from the discretion that participants may have. We would not consider a DTF to be providing discretionary execution merely because its participants have the ability to amend or cancel their orders or to choose their counterparties under the rules of the platform. Similarly, we would not consider actions taken by a platform operator to ensure market integrity, such as cancelling or amending erroneous or unreasonable trades according to its rules,[59] or blocking access to the platform by a "runaway" algorithm, as an exercise of discretionary execution by a DTF.

We would also not consider a DTF to be exercising discretion only by reason of the communications medium involved (e.g., voice calls). For example, a non-discretionary trading system may feature a voice-order taker employed by the DTF, who receives telephone calls and enters orders into an order book or sends out an RFQ to specific participants as instructed by the caller.[60]

At this time, we have not defined a DTF to exclude platforms or facilities that engage in discretionary trading methods. This approach is consistent with the regulatory objective of regulating all multilateral facilities for trading in OTC derivatives. The Committee is considering whether to recommend allowing a DTF operator to exercise discretion for trading in some OTC derivatives. If the Committee does recommend allowing discretion, in order to address issues such as conflicts of interest we contemplate that DTFs that employ discretionary trading methods would be subject to additional requirements similar to those that apply to a dealer. Requirements currently under consideration by the Committee include requirements to act in the best interests of a client, including best execution obligations.[61] Furthermore, if the Committee does recommend allowing discretion, it may nevertheless recommend that discretion not be permitted in the execution of trades in products that have been mandated to be traded on a DTF.

(b) Proposed Definition of a DTF

(i) OTC Derivatives

OTC derivative is used in this paper in its customary sense to refer to a derivatives contract that is traded other than on a formal exchange, such as on a dealer network or directly between two parties. However, for the purposes of this paper, an OTC derivative does not cease to be an OTC derivative merely because it may be traded on an exchange. This is important because, as

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[57] Committee of European Securities Regulators (CESR), CESR Technical Advice to the European Commission in the Context of the MiFID Review – Equity Markets (CESR/10-802), 29 July 2010 (**CESR Technical Advice**) at 19.

[58] MiFIR at recital (7).

[59] Subject to appropriate conflict-of-interest rules and oversight.

[60] However, if that employee were to engage in negotiations with one or more other market participants on behalf of the market participant who placed the order, this would be indicative of a discretionary trading arrangement.

[61] This is discussed in more detail below in section 6, Regulatory Authorization of DTFs.

discussed elsewhere, the Committee anticipates that in some jurisdictions a DTF may be recognized as an exchange.

(ii) DTF

The Committee proposes to define a DTF to mean a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades.

The proposed definition of a DTF is intentionally broad and would capture various multilateral execution processes and venues. However, the proposed definition is not intended to capture purely bilateral trading, nor one-to-many facilities such as single-dealer platforms. A participant providing trading services to its clients via a single-dealer platform would instead be subject to dealer registration requirements.

Similarly, the proposed definition would not capture facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression, which reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios.

As discussed above, the Committee is considering whether to recommend allowing discretionary trade execution methods for some trading on DTFs, and the proposed DTF definition is intended to be broad enough to encompass facilities employing such methods. Should the exercise of discretion ultimately be permitted, we anticipate that a DTF that offered such discretionary execution methods would be permitted do so as part of the same entity offering other execution methods, subject to the entity complying with appropriate conflict-of-interest rules.

It is the Committee's intention that the existing framework for the regulation of securities and futures exchanges, ATS's and QTRS's would not be impacted by the new DTF category. The Committee recommends that exchanges trading derivatives that are not OTC derivatives not be regulated as DTFs in respect of their existing or future non-OTC derivatives operations. Existing exchanges that wished to provide a platform for trading in OTC derivatives would be required to apply for authorization to offer trading in OTC derivatives.

The Committee acknowledges that some trading platforms may operate as *both* marketplaces[62] under NI 21-101 and DTFs under applicable securities legislation (for instance, a platform that is both an ATS and a DTF). This may occur, for example, where an existing marketplace begins to offer trading in OTC derivatives. The Committee recommends that such hybrid marketplace-DTFs be subject to different regulatory regimes with respect to the different types of products for which they offer trading. The regulation of hybrid marketplace-DTF platforms would be

[62] Including exchanges.

addressed by CSA members on a case-by-case basis, with a view to mitigating or eliminating duplicative regulation.

Question 1: ***Is the DTF category appropriately defined? If not, what changes are needed and why?***

Question 2: ***Is it appropriate to permit DTF operators a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?***

5. PERMITTED EXECUTION METHODS

The Committee recommends that a DTF be permitted to use a range of multiple-to-multiple trading functionalities. Some examples of execution methods a DTF might use include the following:

- **order book** systems, typically fully automated, in which market participants can enter multiple bids and offers, observe bids and offers entered by other market participants, and choose to transact on such bids and offers. Order book systems can operate either continuously, or periodically based on the execution of orders in batches at set intervals, and may execute trades automatically at prices determined by a prescribed methodology;

- **RFQ** systems in which participants could transmit a request for a quote on an OTC derivative to market makers in the trading system or platform, to which such market participants may respond;

- **request-for-stream** systems, whereby market makers provide continuous streaming *firm* quotes to buy and sell derivatives contracts for a predefined period of time based upon a client's interest. The client receiving such streaming quotes can "click-to-trade" when the client is prepared to execute the transaction; or

- **hybrid** systems that blend execution functionalities, including those described above (for instance, an RFQ system linked to an order book as described below), or that combine an electronic platform with an element of voice negotiation in the execution of the transaction.[63]

These are merely examples, and the Committee expects that CSA members, upon appropriate review, could find other execution methods also acceptable.

[63] To illustrate, some multilateral systems provide for matching of indicative quotes. However, once matching interests are identified, a broker (the operator) directs negotiation of the final terms between the parties, discretionarily asking the parties to offer specific terms and thus shaping the deal. This is a common situation with many complex derivatives and fixed income products, though it is expected that technological progress will continue to reduce the need for such operator intervention: European Capital Markets Institute, *Setting the Institutional and Regulatory Framework for Trading Platforms: Does the MiFID definition of OTF make sense?*, by Diego Valiante, ECMI Research Report No. 8, April 2012 at 5–6.

As noted above, the Committee recommends that a DTF be permitted to use a hybrid system that blends execution functionalities. In particular, the Committee contemplates that a DTF might use an RFQ system that is linked to an order book in a manner similar to the requirements applicable to a SEF in the United States (described on page 21). Like on a SEF, the Committee contemplates that transactions could be executed exclusively through the RFQ system (i.e., off-order book) on the basis that pre-trade transparency would be provided by virtue of the RFQ functionality and the existence of the associated order book upon which the mandated product trades.

The Committee recommends that permitted execution methods include both systems that do and those that do not disclose counterparty identities. For instance, order book systems operating in some jurisdictions may not disclose the identity of the counterparties, while in a hybrid system participants often do not know who the other counterparty is until the negotiation of a transaction has been concluded. With RFQ systems, trading interest is initiated by a client requesting firm quotes from market makers. In some cases, the identities of both counterparties may be fully disclosed to each other in advance of execution.[64] Other RFQ systems may involve dealers and clients having pre-arranged credit limits which the system enforces, preserving the anonymity of both the requesting participants and the dealers who provide quotes.

As discussed above, the Committee is contemplating whether, and the extent to which, the operator of a DTF should be permitted to exercise discretion in the execution of trades. If discretion is permitted, the Committee may recommend that it be permitted only for products that are not mandated to be traded exclusively on a DTF.

Question 3: ***Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?***

Question 4: ***Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?***[65]

6. REGULATORY AUTHORIZATION OF DTFs

The Committee recommends that a DTF, regardless of whether or not it offers trading in OTC derivatives that are mandated to trade exclusively on a DTF, will require an authorization from the securities regulatory authority in each jurisdiction in which it operates, or an exemption from such requirement. The Committee recommends that DTFs generally be regulated similarly to exchanges. Additionally, a DTF that exercises discretion in the execution of transactions would be subject to requirements that are similar to those applicable to derivatives dealers.

It is the Committee's intention that the features and requirements of DTFs be harmonized across the various jurisdictions in Canada. However, in some provinces a DTF may be a category of exchange, while in other provinces a DTF may be a new type of entity. In either case, as

[64] Technical Committee of the International Organization of Securities Commissions (IOSCO), *Follow-On Analysis to the Report on Trading of OTC Derivatives,* January 2012 at 11-12.

[65] As contrasted with those execution methods that would be permitted for products that are mandated to trade on a DTF; see Question 29.

discussed above, NI 21-101 would not apply to DTFs, and a new regulatory framework, with such similarities to NI 21-101 as are appropriate, would apply.

(a) Base regulation for all DTFs

The Committee recommends that a basic level of regulation apply to all DTFs (i.e., the base level of regulation would apply to a DTF that employed only non-discretionary methods of execution, such as an order book or an RFQ system following set rules regarding routing of requests and quotes).

The Committee recommends that all DTFs be required to perform an appropriate regulatory function by, among other things, having established requirements to govern the conduct of participants on the DTF and, whether directly or indirectly through an authorized regulation services provider, monitoring compliance by participants with those requirements and appropriately disciplining participants in the event of non-compliance. The DTF's rules would be required to be designed to ensure compliance with applicable securities legislation, prevention of fraud and manipulative acts and practices, and the promotion of just and equitable principles of trade. A DTF would only be responsible to regulate activity taking place on that DTF. A DTF may also be subject to requirements relating to internal controls and systems, and such other requirements that currently apply to marketplaces as may be appropriate.

(b) DTFs exercising discretion

Additionally, the Committee recommends that a DTF that exercises discretion in the execution of transactions (as discussed above) be subject to requirements that are similar to those applicable to derivatives dealers.[66] Such a DTF would be required to retain a third-party regulation services provider to perform its regulatory function, including monitoring and enforcing the conduct of participants on the DTF—including the DTF operator itself—in light of the fact that the operator would be acting as a dealer on its own platform. Appropriate requirements addressing conflicts of interest would also apply.

The Committee recommends that a DTF exercising discretion be required to comply with relevant dealer requirements including, for example, a duty to act fairly, honestly and in good faith, proficiency requirements for individual representatives of the DTF, "know your client" and suitability obligations, account handling requirements, confidentiality of customer information, and best execution.[67] A DTF exercising discretion would also need to first inform its participants of the extent of its discretion and obtain consent from each participant of the DTF with respect to exercising discretion in its trading interactions with the participant.

[66] See CSA Consultation Paper 91-407 – *Derivatives: Registration*, published on April 18, 2013.

[67] NI 23-101 and its Companion Policy set out best execution obligations in the context of securities trading. Similar considerations may apply to trading on DTFs, as well as additional factors that may be relevant specifically to derivatives trading.

Question 5: ***Is the proposed regulatory framework for DTFs appropriate?***

Question 6: ***Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)***

Question 7: ***To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?***

Question 8: ***What factors are relevant in defining the proposed best execution duty?***

7. ORGANIZATIONAL AND GOVERNANCE REQUIREMENTS

All DTFs would be required to meet a number of basic organizational and governance requirements, including with respect to financial resources, systems, personnel, rules, monitoring, record-keeping, conflicts of interest and, where appropriate, non-discriminatory access.

Comparable to those established in NI 21-101 and NI 23-101, these requirements would include policies and procedures and, where applicable, agreements between participants and the facility, designed to define access requirements, ensure best execution,[68] ensure the integrity of market quotations and prices, clearly establish the characteristics of derivatives traded on the DTF, and require the implementation of compliance systems and oversight processes. A summary of the requirements recommended by the Committee is set out below.

(a) Access

To ensure that the rules, policies, procedures, and fees, as applicable, of a DTF do not unreasonably create barriers to access to the services provided by the DTF:

- a DTF would be required to establish written standards that are transparent and equitable for granting access to each of its services, including trade feeds to regulated clearing agencies, and keep records of (i) each grant of access, including the reasons for granting access to an applicant, and (ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant; and

- a DTF would be prohibited from unreasonably prohibiting, conditioning, or limiting access by a person or company to services offered by the DTF.

A DTF would be required to set fees that were fair and transparent, did not create unreasonable barriers to access and were commensurate with the services provided.

[68] Supra note 67.

The operator of a DTF might wish to require that all trades on its facility be cleared. The Committee is considering whether it is appropriate to allow a DTF to set such a requirement. (The Committee recognizes that a DTF may offer trading in products that are not cleared at all. Therefore such a requirement, if permitted, would apply only to trades that are capable of being cleared.)

Similarly, the Committee is considering whether or not it would be appropriate to allow a DTF to tie the use of its facility to a specified clearing agency or trade repository, having regard to the number of clearing agencies and trade repositories anticipated to be operating in Canada.[69] Prohibiting such tying could enhance market participants' choice in market infrastructure providers; however, it could also reduce the efficiency of clearing and transaction reporting, and it may be an unreasonable burden to require a DTF to establish links with all recognized trade repositories and clearing agencies.

Finally, the Committee is considering whether to permit a DTF that exercises discretion in trade execution to determine and restrict access to its services based on the role and obligations that the operator will have in relation to its participants.[70] Possible grounds for limiting access might include factors related to client sophistication and technical capability. To prohibit a DTF that exercises execution discretion from restricting access to its services could, in the Committee's view, result in the operator of a DTF being forced to assume a dealer-client relationship in respect of a particular person or company even where deemed unsuitable by the DTF operator.

Question 9: ***Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?***

Question 10: ***Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?***

Question 11: ***Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?***

(b) Regulatory function and market surveillance

DTFs would be required to establish requirements to govern the conduct of their participants on the platform, and to monitor and enforce compliance with these requirements.

All DTFs would be subject to a requirement to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets. This obligation would apply both to the operation of the DTF itself and to the impact of the DTF's operations on the Canadian market as a whole.[71]

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[69] Comparable to NI 21-101, s. 5.1 and proposed s. 13.2 published on April 24, 2014.

[70] This is comparable to the requirement in MiFID II that "OTFs should be able to determine and restrict access based inter alia on the role and obligations which they have in relation their clients": MiFID II, preamble (14).

[71] Comparable to s. 5.7 of NI 21-101.

(i) DTFs generally

All DTFs would be expected to perform certain regulatory and surveillance functions. The Committee contemplates that a DTF that does not exercise execution discretion may perform its regulatory and surveillance functions either itself or through regulation services provider. A DTF that does exercise discretion would be required to retain an authorized third-party regulation services provider to monitor and enforce compliance with the rules of the DTF. The Committee contemplates that these regulatory and surveillance functions would include, but may not be limited to, the following:

- personnel and system capability for real-time monitoring of all activities in the entire transaction cycle on the trading platform;

- reporting of any improper, disorderly or disruptive trading activity on its facilities, including potential manipulative or abusive transactions or behaviour, to regulators;

- systems capable of sharing information related to activities of the entire transaction cycle with regulators on real-time basis; and

- systems capable of recreating the trading environment at any point during the last seven years within a reasonable period of time.

The Committee contemplates that DTFs would be required to enforce compliance with their rules by means other than merely exclusion from the DTF (e.g., by fines). DTFs would be required to maintain sufficient resources to discipline, suspend, or expel participants that violate its rules, and to establish and impartially enforce rules governing denials, suspensions, and revocation of a participant’s access privileges to the DTF.

(ii) DTFs with discretion

DTFs exercising discretion in the trade execution process would be required to retain a third-party regulation service provider to perform the functions described above, since compliance by both the participants and the operator itself—due to its dealer-like functions—would need to be monitored.

(c) Rules

A DTF would be required to establish and clearly define rules governing the operation of the DTF and the conduct of the participants on the platform, and to make such rules publicly available. Rules would be required to address:

- participant conduct for order entry and trade executions to address abusive trading practices and/or manipulations;

- emergency procedures for matters such as trading halts or disruptions;

- procedures to resolve any disputes relating to trading activity on the platform, including disputes resulting from decisions, rulings or other determinations made by platform staff; and

- if applicable, the DTF's trading protocol, including the order entry mechanism and priority sequence of any transaction matching.

DTFs would also be required to have rules and policies that are not contrary to the public interest and are designed to

- require compliance with securities legislation;

- ensure compliance with applicable legislation;

- prevent fraudulent and manipulative acts and practices;

- promote just and equitable principles of trade; and

- foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in derivatives.[72]

(d) Prohibition against manipulative/fraudulent trading activity

DTFs and their participants will be subject to a prohibition against engaging in, directly or indirectly, any act, practice or course of conduct relating to an OTC derivative that the person or company knew, or reasonably ought to have known, would (i) result in or contribute to a false or misleading appearance of trading activity in, or an artificial price for, an OTC derivative; (ii) perpetrate a fraud on any person or company, or (iii) be otherwise harmful to derivatives markets.

(e) Financial resources

A DTF operator would be required to demonstrate evidence of sufficient financial resources to fund the ongoing operation of the platform.

(f) Personnel

A DTF operator would be required to have sufficient qualified and competent personnel to ensure effective operation of the trading platform, including to ensure technology and system stability and conducting monitoring, and to respond to enquiries or complaints from platform participants without unreasonable delay. DTFs that have assumed responsibility for regulating conduct of their participants would be required to have sufficient qualified and competent

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[72] Compare ss. 5.3-5.4 of NI 21-101.

personnel to monitor trading on their trading platform, monitor compliance with their rules and applicable legislation, investigate suspected violations and bring enforcement action where appropriate.

(g) Systems

A DTF would be subject to system requirements similar to requirements applicable to marketplaces regulated under NI 21-101. For example, a DTF would be required to

- develop and maintain an adequate system of internal controls over its critical systems;
- develop and maintain adequate information technology general controls, including for example, controls relating to information systems operations, information security, change or problem management, and network and system software support;
- at least annually engage a qualified party to conduct an independent system review and prepare a report in accordance with established audit standards for each system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance, if applicable, clearing, and the information security controls of its auxiliary systems;
- develop and maintain robust contingency and business continuity procedures;
- at least annually, in accordance with prudent business practice, make current and future capacity estimates for its systems and conduct capacity stress tests of its critical systems to test their ability to process information in an accurate, timely and efficient manner and further, consistent with the requirements of NI 21-101 and proposed changes to it, advise the regulator of the hours of operation of any testing environment provided, a description of any differences between the testing environment and the production environment and the potential impact of these differences on the testing;
- be accessible by all platform participants subject to adequate safeguards and controls, to prevent unauthorised access;
- take reasonable steps to ensure that all participants have a reasonable opportunity to access trading systems without a time delay;
- maintain appropriate documentation of the systems operation and be able to provide such documentation to regulators upon request; and
- have transparent and publicly available documentation relating to on-boarding criteria and system interface requirements.

A DTF would be subject to additional obligations including being capable of reporting transactions involving Canadian counterparties to a trade repository recognized, designated, or exempt in Canada by the applicable local regulator. Although not all transactions on a DTF would be required to be cleared, a DTF would be required to be capable of submitting all derivatives executed on its platform that were subject to mandatory clearing to a clearing agency recognized, designated, or exempt in Canada by the applicable local regulator, and fulfilling obligations placed on it by the clearing agency to ensure efficient and orderly execution of trades to be cleared, such as pre-trade credit limit verification.

In support of the trade reporting functionality described above and the record-keeping requirements described below, a DTF's systems would require

- the capability to assign a unique transaction identifier to each transaction executed on the DTF, to be used in publishing transaction information and in reporting the transaction to a trade repository or regulator, and in processing the transaction through a clearing agency; and

- the capability to time-stamp each activity in the transaction cycle, including order entry, amendments, cancellation, execution, transmission of information for clearing, and reporting to a trade repository.

(h) Record-keeping

A DTF would be required to keep, in electronic form, books, records and other documents reasonably necessary for the proper recording of its business, including the following:

- records of each grant, denial or limitation of access, as well as the reasons therefor;

- transactional records for all orders and trades, including cancellations or amendments of orders and trades, including prices, volume, counterparties, time order received, time trade executed, etc.;

- records of all bids and offers, RFQs, and replies to RFQs, including the time they were made available on the DTF;

- market statistical records, including historical prices, volume, high, low etc.;

- system records, including descriptions of system protocols, records of changes made to order management systems and transaction matching algorithms, results of system tests, and so forth; and

- records of all messages sent to or received from platform participants, including the identity of the participant involved, the instrument, the price, the volume and the time that the message was received or sent.

Consistent with requirements for marketplaces regulated under NI 21-101, a DTF would be required to keep these records for at least 7 years and in an easily retrievable format for at least the first 2 years. Upon request, these records would need to be made available to regulators as soon as practicable but in any event within 10 business days.

(i) Conflicts of interest

A DTF would be expected to establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the DTF or the services it provides.[73] Among other things, this means that a DTF would be required to have appropriate corporate governance structures, policies and procedures to address any conflicts of interest resulting from the ownership or control of the platform or its parent entity. In particular, where the platform is owned by participants in the derivatives market, regulators would expect that the platform's policies will ensure that its owners will not have a competitive advantage as a result of their ownership stake. A DTF would be expected to have appropriate structures to ensure that the interests of all market participants are considered when the platform is making decisions relating to its operations.

The operator of a DTF would be prohibited from entering into trades as principal on its own account. This addresses concerns related to the DTF's access to privileged order information and other information in the system. However, a shareholder or other owner of a DTF should be allowed to trade on the DTF for its own account, subject to appropriate conflict-of-interest rules.

(j) Disclosure by DTFs

A DTF would be required to publicly disclose, on its website, information reasonably necessary to enable a person or company to understand the DTF's operations and the services it provides, including but not limited to information related to fees; how orders are entered, interact and are executed; access requirements; and policies and procedures designed to identify and manage conflicts of interest arising from the operation of the DTF or the services it provides.[74]

As discussed above in section 6, a DTF exercising discretion in trade execution would be required to disclose the nature and extent of that discretion.

(k) Confidential treatment of trading information

A DTF would be required to implement reasonable safeguards and procedures to protect a participant's order or trade information. Among other things, a DTF would be prohibited from releasing a participant's order or trade information to a person or company other than the participant, a securities regulatory authority or a regulation services provider unless the DTF participant has provided prior written consent to the release of the information; the release of information is required by applicable law; or the information has already been publicly and lawfully disclosed to another person or company. However, subject to certain conditions, we anticipate that a DTF would be permitted to release trading data for use in research.

[73] Comparable to NI 21-101, s. 5.11.

[74] Comparable to NI 21-101, s. 10.1.

Question 12: ***Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?***

Question 13: ***Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.***

Question 14: ***Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.***

Question 15: ***How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.***

8. PRE-TRADE TRANSPARENCY

Pre-trade transparency in the context of OTC derivatives refers to the extent to which participants are able to observe orders and quotations prior to transactions being executed. For market participants, pre-trade transparency improves the price formation process and allows participants to assess liquidity. Market participants need complete, timely, and accurate information about markets or products to assess the potential return and/or exposure to risk posed by a derivative. Accordingly, a lack of pre-trade transparency with respect to product characteristics or market conditions can result in an inability to properly evaluate the appropriateness of a price or value of a trade as well as the potential consequences of entering an order or quote. In most circumstances, pre-trade transparency fosters investor confidence and promotes a fair market.

On the other hand, requiring details such as trade size or size and price of quotes to be publicly disseminated in certain trading systems (for instance, an RFQ system) may disadvantage the entity seeking the quote or its potential counterparty by permitting the broader market to use that information in a way that disadvantages the entity seeking the quote or its potential counterparty. Further, pre-trade transparency information in relation to an illiquid product may not significantly assist in price formation. For example, if a market maker were required to maintain bid and ask prices for an illiquid product, the spread would likely be wider. The price posted would then not accurately reflect the available prices and one would need to call (or otherwise submit a request for quote) to establish these. Accordingly, the Committee recommends that pre-trade transparency requirements apply only to those products that are sufficiently liquid to ensure that the information is of benefit to market participants and the price formation process.

Given the significant differences between these markets and equity market structures, we expect that pre-trade transparency requirements will need to be calibrated to take into account specificities of OTC derivatives. In that regard, we note that presently liquidity providers in derivatives markets often provide liquidity on demand via RFQ systems as opposed to continuous firm quotes.

The US approach to pre-trade transparency is to (i) require SEFs to provide an order book on which market participants may make executable bids or offers which are displayed to all participants, (ii) require an RFQ to be disseminated to a minimum number of liquidity providers, and (iii) require dealers to "show" other market participants the terms of a prearranged order book trade between customers or between themselves and a customer through the 15-second rule.[75]

Large notional size swap transactions that would otherwise be required to trade through a SEF or DCM (i.e., block trades) are exempted from pre-trade transparency requirements, where they meet or exceed a minimum threshold. As a result, a block trade could, for example, be pre-arranged and executed away from the SEF's order book.

In contrast to the CFTC approach of promoting pre-trade transparency, under MiFID II, the EU will require each regulated venue, including an OTF, to make public current bid and offer prices, and the depth of trading interests at those prices, for derivatives traded on its platform. An OTF must make this information available to the public on a continuous basis during normal trading hours; however, the requirement for public dissemination will not apply to hedging transactions.[76] The range of bids and offers, and the depth of trading interest at those prices, to be made public for each class of financial instrument, including derivatives, is to be specified by ESMA in forthcoming technical regulations.[77]

European regulators will have discretion to waive the obligation on OTFs and other trading venues to make public certain pre-trade information for any of the following:

(1) orders that are large in scale compared to normal market size (block trades);

(2) actionable indications of interest in RFQ and voice trading systems that are above a threshold size, calibrated specifically to the type of instrument, which would expose liquidity providers to undue risk;

(3) derivatives not subject to the trading obligation;[78] and

(4) other financial instruments for which there is not a liquid market.[79]

[75] Pursuant to the 15-second rule, SEFs must require that brokers or dealers who have the ability to execute on a SEF's order book against a customer's order or to execute two customer orders against each other be subject to a 15-second timing delay between the entry of the two orders, such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction (whether for the trader's own account or for a second customer) is submitted for execution.

[76] Defined as "derivatives transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group": MiFIR, Article 8 at s. 1.

[77] MiFIR, Article 9 at s. 5.

[78] I.e., the obligation to trade only on regulated markets, MTFs, OTFs, or equivalent foreign facilities.

[79] MiFIR, Article 9 at s. 1.

The Committee is of the view that requiring DTFs to publish pre-trade information for OTC derivatives that are not sufficiently standardized and liquid could have adverse and unintended consequences for the market and participants, including a negative impact on overall market liquidity. In the absence of a DTF-trading mandate for a particular derivative or class of derivatives, the Committee does not recommend requiring a DTF to provide a particular level of pre-trade transparency with respect to trading in that derivative. Nevertheless, if a DTF chooses to provide an execution method that inherently provides a certain degree of pre-trade transparency (for instance, a published order book),[80] the DTF would be required to provide the resulting pre-trade information in a manner that does not unreasonably prohibit, condition, or limit access by a participant or class of participants to such information. Further, the DTF will be required to report such information accurately and on a timely basis.

For trading in OTC derivatives that are subject to a DTF-trading mandate, the Committee recommends that DTFs be required to satisfy pre-trade transparency requirements, as discussed below in section 10.

Question 16: Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

9. POST-TRADE TRANSPARENCY

Post-trade transparency in the context of OTC derivatives refers to the dissemination of price and volume information, other than to the executing parties, on completed transactions.

Although orders and quotes may help investors decide where and when to trade, prompt post-trade transparency helps market participants determine whether quotes are reliable, to assess the quality of the markets, and to assess execution costs. Without post-trade transparency, there may be few warnings of impending market trends. Market participants cannot respond quickly to selling or buying surges because they cannot see them happening as clearly or quickly. Most importantly, post-trade transparency can help market participants assess liquidity in a given market.

In the US, SEFs are required to make public "timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission". Trades are to be reported to a swap data repository "as soon as technologically practicable" after execution.[81] In turn, the swap data repository must publish the information as soon as technologically practicable. Certain market information must also be made "readily available to the news media and the general public without charge, in a format that readily enables the consolidation of such data, no later than the business day following the day to which the information pertains."

[80] Although a firm quote in response to a request for quote might be considered to be an order for the purposes of subsection 7.1(1) of NI 21-101, the Committee would likely not recommend that pre-trade transparency be required from DTFs in the situation where a quote is provided only to the requesting party.

[81] CFTC Regulation, s. 37.900 and s. 43.3.

Under the SEF regime, block trades benefit from a delay in public dissemination of trade data. The length of the delay varies depending on the counterparty type and whether or not the swap is subject to mandatory clearing; block trade delays are subject to an initial phase-in period. For swaps subject to mandatory clearing involving at least one counterparty that is a swap dealer, the delay in the public dissemination of swap transaction data will ultimately be 15 minutes from the time of execution. The block trade rule also establishes "cap sizes" for notional and principal amounts that will mask the total actual notional size of a swap transaction if it exceeds the cap size for a given swap category. The notional size of such a trade will be reported as larger than the cap size, rather than as a particular notional amount.

The approach in the EU is very similar. Specifically, OTFs and other trading venues are required to make public the price, volume and time of transactions executed in respect of derivatives traded on an OTF or other trading venue, and to make these details public in "as close to real-time as is technically possible" and "on a reasonable commercial basis".[82] The information must then be made available to the public "free of charge 15 minutes after publication".[83] However, regulators will be able to authorize an OTF to defer publication of this information for transactions that are (i) large in scale compared with the normal market size for the derivative, or the class of derivative, being traded (e.g. block trades); (ii) related to derivatives, or a class of derivatives, for which there is not a liquid market; or (iii) above a threshold size, calibrated specifically to the derivative or class of derivative, which would expose liquidity providers to undue risk, taking into account whether the relevant market participants are retail or wholesale investors.[84] The ESMA is to provide further information regarding the meaning of "as close to real-time as is technically possible", and the length of delay that will be allowed for the deferred publication of post-trade information.[85]

With respect to post-trade transparency, the Committee recommends that DTFs be required to report to the public transactions executed on the DTF in as close to real-time as technically feasible. The Committee is considering the best method to achieve the public dissemination of transactions on a DTF, whether by requiring a DTF to disseminate the transaction data to the public directly, or by requiring a DTF to report the transactions to a trade repository, and requiring the trade repository to disseminate the trade data to the public.[86] In either case, deferred publication of this information would be permitted in certain circumstances, such as for block trades.[87] Additionally, the Committee recommends that DTFs be required to provide certain market information, to be determined by the Committee,[88] to the general public at no charge on a

[82] MiFIR, Article 10, s. 1; Article 13, s. 1.

[83] MiFIR, Article 13, s. 1.

[84] MiFIR, Article 11, s. 1.

[85] MiFIR, Article 11, s. 4.

[86] Cf. CFTC Regulations, §43.3, Method and timing for real-time public reporting.

[87] The deferral would take place either at the DTF, before reporting the trade to the trade repository, or at the trade repository, as is the case in the US.

[88] See Question 21, below.

delayed basis (e.g., the next business day). Although not required to, a DTF would not be prohibited from disseminating real-time data.[89]

In addition to a DTF's public reporting obligation, and especially in the event that a DTF is permitted to fulfill its public reporting obligation by reporting trade data to a trade repository, the Committee is also considering whether a DTF should be required to disseminate all transactions on the DTF directly to all its participants, in addition to reporting the transactions to a trade repository.

Separate from the post-trade transparency requirements described above, the Committee recommends that DTFs be required to provide information relating to a trade to the participants involved in that trade, at no additional cost to those participants.

Question 17: Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

Question 18: What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

Question 19: When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

Question 20: Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

Question 21: What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

Question 22: In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

[89] However, the Committee recognizes that it may not be desirable for a DTF to publish trade information *sooner* than that same information can be published by a trade repository, as this may create unintended incentives. The Committee recommends addressing this situation should the potential for it arise.

10. TRADING MANDATE

(a) Mandating OTC derivatives to be traded on an organized platform

The Committee recommends that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF.

At the present time, the Committee does not believe it has sufficient data with respect to liquidity levels in the OTC derivatives market in Canada to be able to assess whether the introduction of mandatory DTF trading for a particular class of OTC derivatives would be appropriate. Similarly, the Committee at present has insufficient data with respect to volume and turnover in OTC derivatives of various asset classes in Canada and the extent to which transactions in such asset classes are currently being executed electronically or on multilateral platforms. We anticipate being in a position to recommend particular OTC derivatives as suitable for mandatory DTF-trading after trade reporting and clearing obligations have been in effect for a period of time and the members of the CSA have had sufficient time to analyze the resulting data and consult with other Canadian authorities and the public. We anticipate further that such analysis will be repeated periodically, with a view to requiring additional derivatives to be traded through a DTF when conditions warrant, and possibly to removing derivatives that no longer meet the criteria for mandatory trading on a DTF.

The Committee is monitoring and will continue to monitor developments in the marketplace in respect of the trading mandate that has recently come into effect in the US for certain interest rate and credit derivatives. The Committee will closely gauge the level of adoption and the consequences, intended or otherwise, of the DTF-trading mandate on OTC derivatives markets.

In considering whether to require that a class of derivatives be traded exclusively through a DTF, the Committee proposes that regulators consider whether the class of derivative is

- subject to a clearing obligation pursuant to applicable securities legislation, which topic has been addressed by the Committee in CSA Consultation Paper 91-406 *Derivatives: OTC Central Counterparty Clearing*, published June 2012 and CSA Staff Notice 91-303 *Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives*, published December 2013;

- sufficiently liquid to trade exclusively through a DTF, having regard to factors including the average volume, frequency and size of trades; the number and characteristics of active market participants; and the characteristics of the derivative, including degree of standardization;

- traded by a sufficient number of regularly-participating market participants to ensure that the market is competitive and not susceptible to control by a small number of participants;

- mandated to be traded on a regulated venue in other jurisdictions; and

- already trading through the facilities of a DTF and, if so, the execution method in use for that class of derivatives.

This approach aligns with the procedure in the EU for determining whether a derivative will be subject to a platform-trading mandate (discussed above in section 2). This approach is also like that adopted in the US, in that it would take into account whether an OTC derivative, or class of OTC derivative, has already been made available to trade through the facilities of a DTF.

The Committee recommends that, where a derivative has been mandated to trade exclusively on a DTF, the mandate apply to all trading activity by all market participants. It is anticipated that this would maximize the liquidity and transparency benefits from shifting trading to centralized platforms. However, the Committee would like to learn whether there are any situations in which a product that has been mandated to trade exclusively on a DTF should nevertheless be permitted to trade other than on a DTF (or other exchange that has been authorized to trade in OTC derivatives).

Question 23: Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

Question 24: Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

Question 25: Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

Question 26: Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

(b) Enhanced requirements where derivatives are subject to a DTF-trading mandate

The Committee is considering additional, enhanced requirements for DTFs that offer trading in a class of derivatives that is the subject of a DTF-trading mandate.

First, the Committee recommends that a DTF be required to disclose to its users accurate and timely bid and offer prices, as well as market depth at each price level, with respect to derivatives subject to a DTF-trading mandate.

However, the Committee anticipates that pre-trade transparency requirements imposed in respect of derivatives subject to a DTF-trading mandate may need to be tailored for the execution methods employed on the DTF. For instance, for trading via RFQ, the requests and quotes are only between the requester and the interrogated dealers so that, if pre-trade transparency is to be achieved in an RFQ market, it would have to be through such measures as a requirement for an RFQ to be sent to a minimum number of unaffiliated dealers, as described below.

Pre-trade transparency requirements might also take into account transaction size, including turnover, and other relevant criteria. However, such customization may not be necessary if the range of execution methods is limited for trading in OTC derivatives subject to a DTF-trading mandate.

The Committee recommends that CSA members exempt orders and quotes from pre-trade transparency requirements (or perhaps permit modified disclosure that masks the size of the order or quote) where an order or quote is sufficiently large in scale relative to normal market conditions (specific to the instrument) such that it would expose liquidity providers to undue risk. The Committee is continuing to assess what size threshold would be appropriate for the Canadian OTC derivatives market, recognizing that what is appropriate may vary depending on the liquidity of a particular product.

In addition to an enhanced pre-trade transparency requirement for trading in derivatives subject to a DTF-trading mandate, the Committee is also considering whether to require a DTF that offers trading in a mandated product to provide a minimum order book functionality—comparable to that required of SEFs—so as to enable market participants to make executable bids and offers, and display those bids and offers to all other market participants on the DTF. The requirement for an order book would help to ensure an appropriate degree of pre-trade transparency is provided for OTC derivatives that are subject to a DTF-trading mandate.

The Committee is also considering permitting trading in OTC derivatives subject to a DTF-trading mandate to occur by way of an RFQ system in conjunction with an order book. The Committee contemplates that an acceptable level of pre-trade transparency may be provided where an RFQ is communicated to an appropriate number of unaffiliated participants, and responses to the request, together with matching bids or offers resting on the associated order book, are communicated to the requester. As on a SEF, the Committee contemplates that transactions could be executed exclusively through the RFQ system (i.e., off-order book) on the basis that pre-trade transparency would be provided by virtue of the RFQ functionality and the *existence* of a transparent order book which could encourage orders to compete with quotes.

The Committee contemplates that even if an order book, or hybrid order book and RFQ system, were required for trading in derivatives subject to a DTF-trading mandate, market participants would retain the option to pre-arrange transactions in OTC derivatives that have been mandated to trade—that is, to negotiate on a bilateral basis, separate and apart from the order book or RFQ system—provided that the order was both executed through the order book and subject to an appropriate time-delay. This requirement would be comparable to the 15-second rule applicable to order book trading on SEFs, referenced above in section 8. The underlying policy objective of the time delay is to "expose" the trade to the market prior to execution to allow the market to compete on one side of that trade.

Question 27: ***What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).***

Question 28: ***For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?***

Question 29: ***Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?***

Question 30: ***What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?***

Question 31: ***Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.***

11. FOREIGN-BASED DTFS

The Committee recommends that a foreign-based DTF, such as a SEF or OTF, that provides Canadian participants with direct access[90] to their trading platforms be subject to the requirements of the proposed DTF regulatory regime. A foreign DTF would be required to be authorized, or exempted from authorization, in each local jurisdiction of Canada in which it provides a local participant with direct access. However, the Committee recommends that CSA members consider exemptions for foreign-based DTFs, on a case-by-case basis, from some or all of the requirements of the DTF regime if the foreign-based DTF is able to demonstrate that the regulation and oversight in its home jurisdiction is comparable to that which would apply under the proposed DTF regulatory regime. In such cases the Committee recommends that CSA members consider relying on the day-to-day oversight by the home regulator of the foreign-based DTF, generally limiting direct oversight to matters of particular local importance.[91] The foreign-based DTF would still be subject to reporting obligations to Canadian securities regulators with respect to services provided to local participants.

[90] In this context, "direct access" means that a participant may transmit orders and enter trades directly onto a DTF without intermediation by another participant.

[91] CSA members might retain discretion to oversee such matters as fair access and compliance with Canadian market integrity requirements.

CSA Consultation Paper 92-401 *Derivatives Trading Facilities* – Comment Letters Received

#	Date	Commenter
1	24-Mar-15	Capital Power Corporation (**Capital Power**)
2	27-Mar-15	International Swaps and Derivatives Association (**ISDA**)
3	30-Mar-15	Canadian Advocacy Council for Canadian CFA Institute Societies (**CAC**)
4	30-Mar-15	Canadian Commercial Energy Working Group, submitted by Sutherland Asbill & Brennan LLP (**Sutherland**)
5	30-Mar-15	Canadian Market Infrastructure Committee (**CMIC**) – 2 letters: English and French
6	30-Mar-15	CanDeal.ca Inc. (**CanDeal**)
7	30-Mar-15	Global Foreign Exchange Division (**GFXD**) of the Global Financial Markets Association (GFMA)
8	30-Mar-15	Investment Industry Association of Canada (**IIAC**)
9	30-Mar-15	SaskEnergy Incorporated (**SaskEnergy**) and TransGas Limited (**TransGas**)
10	30-Mar-15	TMX Group Limited (**TMX Group**)
11	30-Mar-15	TriOptima AB (**TriOptima**)
12	31-Mar-15	FortisBC Energy Inc. (**FEI**) and FortisBC Inc. (**FBC**) (together, **FortisBC**)
13	01-Apr-15	State Street Corporation (**State Street**)
14	02-Apr-15	Bloomberg L.P. (**Bloomberg**)
15	02-Apr-15	Osler, Hoskin & Harcourt LLP (**Osler**)

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Financial and Consumer Services Commission (New Brunswick)
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Dear Sirs/Mesdames:

RE: Canadian Securities Administrators ("CSA") Consultation Paper 92-401 Derivatives Trading Facilities ("Paper 92-401")

Capital Power Corporation, together with its affiliates and subsidiaries (collectively "**Capital Power**"), makes this submission to comment on Paper 92-401 published by the Canadian Securities Administrators Derivatives Committee (the "**Committee**") on January 29, 2015.

Capital Power appreciates the opportunity to comment, and commends the Committee for seeking public input, on Paper 92-401. Capital Power generally supports the efforts of the CSA to establish a regulatory regime for the Canadian over-the-counter ("**OTC**") derivatives market in order to address Canada's G-20 commitments. To that end, Capital Power respectfully urges the CSA to develop regulations that strike a balance between not unduly burdening derivatives market participants while at the same time addressing the need to introduce effective regulatory oversight of derivatives and derivatives market activities.

Capital Power is a growth-oriented North America power producer headquartered in Edmonton, Alberta. Capital Power develops, acquires, operates and optimizes power generation from a variety of energy sources, including coal, natural gas, biomass and wind. Capital Power owns more than 2700 megawatts of power generation capacity across 15 facilities in Canada and the United States, and owns 371 megawatts of capacity through power purchase arrangements. An additional 1020 megawatts of owned generation capacity is under construction or in advanced stages of development in Alberta and Ontario.

Capital Power optimizes and hedges its commodity portfolio using physical forward contracts for electricity, natural gas, environmental commodities (e.g. carbon offsets and credits), USD/CDN currency exchange, and financial derivative transactions based on those same commodities. Capital Power's trading counterparties include other power producers, utility companies, banks, hedge funds and other energy industry market participants. Trading activities take place primarily through electronic exchanges, such as ICE (Intercontinental Exchange) and NGX (Natural Gas Exchange), but also through brokered transactions and directly with counterparties. Capital Power is a registered "market participant" in the Alberta wholesale electricity market constituted as the Alberta "Power Pool" under the *Electric Utilities Act* of Alberta (the "**EUA**") and is also a licensed "retailer" (as defined in the EUA) of retail electricity services to large commercial and industrial customers in the retail electricity market in the Province of Alberta.

SPECIFIC COMMENTS TO QUESTIONS:

Capital Power has the following specific comments in reply to specific questions posed in Paper 92-401:

Question 5: Is the proposed regulatory framework for DTF's appropriate? And

Question 13: Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

Capital Power considers Question 5 to encompass Question 13 and comments on them jointly. Capital Power is concerned about the regulatory, market surveillance and enforcement functions that the Committee proposes that DTF's would perform, regardless of whether or not DTF's would exercise any transaction execution discretion. Specifically, Capital Power submits that allowing, or requiring, DTF's to fulfill regulatory, market surveillance and enforcement functions creates a situation with an inherent and insurmountable conflict of interest for the DTF.

Capital Power has inferred from Paper 92-401, perhaps incorrectly, that the Committee envisions DTF's to be private for profit enterprises and not governmental agencies? Capital Power submits that the regulatory, market surveillance and enforcement functions that the Committee proposes for DTF's to perform would be most appropriately performed by a government agency, or other instrumentality of the state, such as the securities regulatory authorities in each province or territory. In any event, such functions should be performed by an entity independent from a DTF.

DTF's as private for profit enterprises would necessarily, and justifiably, have as their first and foremost goal the maximization of profits through the services they provide. Profits would be maximized by, among other things, providing more services to more "customers", that is, derivatives trading market participants. In that commercial context, Capital Power respectfully submits that it is both unrealistic and inappropriate for the Committee to expect DTF's to function, on the one hand, as promoters of their businesses and, on the other hand, as a combination of the police, judge, jury and executioner with respect to improper conduct of their customers.

Capital Power is particularly concerned about the proposals in Paper 92-401 that DTF's should have power to "discipline" their customers, including through "fines". Given that the relationship between a DTF and a customer would be based on a private contract between them, Capital Power is unsure how such fines would be enforceable outside of a successful judgment awarded by a court against a customer after a normal-course legal action brought by the DTF? Fines might be expressed within the contractual relationship as liquidated and/or pecuniary damages. Canadian courts typically do not award pecuniary damages and even non-pecuniary liquidated damages would have to be successfully claimed by the DTF through a trial process. At most, Capital Power submits that the power of a DTF to "discipline" its customers, in the event that the customer breaches the terms of the contract between it and the DTF, should be limited to the ability of the DTF to terminate the contractual relationship and thereby terminate the customer's access to the DTF's services.

Capital Power fully supports that DTF's, trading activities on DTF's and DTF customers should be subject to robust monitoring for improper, disruptive, manipulative, etc., trading activities. Capital Power also supports enforcement of trading rules designed to prevent such negative activities, including through suspensions and fines. As stated above however, Capital Power does not believe that such monitoring and enforcement functions should be carried out by a DTF itself because of the inherent conflict of interest between those functions and the DTF's profit and business growth goals. For the reasons discussed above, Capital Power respectfully submits that the regulatory, market surveillance and enforcement functions contemplated by Paper 92-401 should be performed not by DTF's but by independent entities such as government agencies or other instrumentalities of the state.

Question 9: Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

Capital Power submits that the requirement to clear particular derivatives trades, or classes of derivatives trades, should be based on a thorough and transparent analysis of the systemic risk, if any, posed by such trades and not simply transactional expediency on the part of a DTF. Accordingly, Capital Power submits that it is not appropriate to allow a DTF to require clearing of trades, which have not been mandated for clearing by the relevant securities regulator, simply because such trade would be capable of being cleared.

Except with respect to trades that have been mandated for clearing, Capital Power submits that allowing market participants discretion whether to clear trades or not preserves valuable transactional flexibility and liquidity in the market. Such flexibility and liquidity could be jeopardized if DTF's could require clearing of trades that had not been mandated for clearing by the regulators. In addition, Capital Power expects that the mandatory clearing of derivatives trades will likely result in a significant increase in capital requirements and transaction costs for such cleared trades. The increased costs associated with clearing may also result in decreased trading activity and a corresponding decrease in market liquidity. Derivatives markets, and market participants, should only be subjected to these adverse consequences to the extent justified in order to address systemically risky derivatives trades, or classes of derivative trades, which have been determined to be systemically risk by securities regulators after a thorough and transparent assessment process.

Question 10: Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

Further to our comments above about preserving flexibility and liquidity, Capital Power submits that it is not appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository. Allowing market participants to choose which DTFs', clearing agencies' and trade repositories' services they use should foster competition among those service providers. That competition should in turn lead to the optimization of efficiencies in service delivery by those entities and correspondingly lower prices for their customers.

Question 11: Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

Capital Power submits that it would be appropriate to permit a DTF, which exercises trade execution discretion, to limit access to its facility. Grounds for limiting such access could include the sophistication of a DTF's customer, the customer's credit rating and other financial metrics, technical capabilities, etc. Capital Power agrees with the comments in Paper 92-401 that denying DTF's such limiting ability could force DTF's into fiduciary-type relationships with persons with whom they would otherwise not choose to transact.

Question 18: What is the preferred method of real-time public reporting of transactions executed on a DTF (i.e. directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

Capital Power submits that the preferred method of real-time public reporting of transactions executed on a DTF would be through trade repositories and not directly by a DTF or some other method. Capital Power notes that trade repository and trade data reporting rules, including public dissemination of trade data, are already in effect in Manitoba, Ontario and Quebec. Proposed trade repository and reporting rules have been published by regulators in five other provinces. Capital Power anticipates that well before any DTF related rules become effective trade repositories and trade reporting will likely be in effect across Canada. Given the regulatory framework being developed around trade repositories and trade reporting, Capital Power sees no value in requiring DTF's to duplicate the public reporting that trade repositories will already be doing. Capital Power urges the CSA to avoid any duplicative, or potentially conflicting, efforts or requirements among the various streams of rule developments that the CSA is undertaking.

Question 22: In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to counterparties? Please specify.

Further to our comments in response to Question 18 above, Capital Power submits that trade information dissemination should be addressed in the context of existing or proposed trade repository and trade data reporting rules. Accordingly, Capital Power does not believe that DTF's should function as public disseminators of trade data because that function will be performed by trade repositories. A DTF's trade reporting and dissemination functions should be limited to disclosing all pertinent trade details to the two counterparties to such trade.

Capital Power respectfully requests that the Committee consider its comments and again expresses its gratitude for the opportunity to provide comments. If you have any questions, or if we may be of further assistance, please contact Mr. Zoltan Nagy-Kovacs, Senior Counsel, at [redacted]

Yours Truly,

"***CAPITAL POWER***"

Per: *"Zoltan Nagy-Kovacs"*

Zoltan Nagy-Kovacs
Senior Counsel

ISDA® Safe, Efficient Markets

27 March 2015

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RE: Canadian Securities Administrators Consultation Paper (92-401)—Derivatives Trading Facilities

Dear Sirs/Mesdames:

The International Swaps and Derivatives Association (***ISDA***) appreciates the Canadian Securities Administrators Derivatives Committee's (Committee) engagement with the industry throughout this consultation process. We welcome the opportunity to provide comments to the Committee concerning this Consultation Paper that sets out the framework for the regulation of Derivatives Trading Facilities (DTFs) in Canada.

We respectfully encourage the Committee to take a flexible approach focused on broad principles aimed at risk reduction, increased transparency and market integrity, rather

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than imposing detailed requirements, to allow for a smoother transition toward the use of DTFs.

ISDA has previously highlighted in its comment letters to a number of national authorities the importance of effective cross-border regulatory harmonization. Over-the-counter (OTC) derivatives markets have historically been the most global in nature of all financial markets. The absence of consistency in regulatory reform negatively impacts these markets and threatens the efficiency with which end-users can manage their business risk.

We urge the Committee to address how cross-border regulatory harmonization could be achieved and suggest ways to reduce undesirable regulatory outcomes that threaten the efficient functioning of markets. We stress the importance of an approach to a comparability of foreign rules based on regulatory outcomes rather than a detailed assessment of each jurisdiction's individual rules.

Below we respond to the questions posed in this Consultation Paper.

Question 1: Is the DTF category appropriately defined? If not, what changes are needed and why?

We are generally supportive of the proposed definition of a DTF. It provides sufficient flexibility to accommodate established and unique market practices.

However, as explained in more detail below, we urge the Committee to interpret this definition in a flexible way to allow DTFs to offer various methods of execution that take into account the liquidity and other unique trading characteristics of a particular product.

Question 2: Is it appropriate to permit operators a degree of discretion over the execution of transactions? Why or Why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

The discretion of the operator is important for participant choice. Preserving this discretion is especially important when trades are executed in less liquid markets or during a liquidity crisis.

Question 3: Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

ISDA is supportive of the Committee's intention to permit various execution methods on a DTF. An assessment of a DTF's execution methods must be based on an appreciation of the unique characteristics of the relevant swap's trading liquidity. Even relatively standardized contracts may trade infrequently and therefore cannot be executed on an Order Book or an RFQ to more than one person system. For such swaps, the requirement to advertise a requester's interest to a broad portion of the market may preclude maintaining confidentiality and may adversely affect the price to customers, who should be the primary beneficiaries of such regulations. Therefore, ISDA urges the Committee to allow DTFs' participants to decide what methods of execution are suitable for their particular instrument.

Question 4: Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

We believe the definition of a DTF allows participants a broad choice of execution methods that will satisfy product liquidity and participants' trading needs.

Question 5: Is the proposed regulatory framework for DTFs appropriate?

ISDA is supportive of the Committee's overall approach to the proposed regulatory framework for DTFs. We urge the Committee, however, to maintain a principles based approach to regulation of these new trading venues. Compliance with core principles will ensure reliable regulatory oversight and at the same time, will not put the Committee in a position of a front-line decision maker that imposes its judgment on every aspect of the DTF's operation. This will also allow DTFs to maintain their competitive positions in the Canadian market and globally and to keep pace with rapidly changing market demands.

Question 6: Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

ISDA believes that if the operator of a DTF exercises discretion in the execution of transactions, such operator should be subject to effective business conduct rules. We believe that an essential component of the regulatory framework is ensuring that the operator, in exercising discretion in the execution of transactions, makes such decisions based on sound risk management and free from conflicts of interest. However, we do believe that applying a blanket requirement to register as a swap dealer will lead to unnecessary burdensome regulatory compliance. A swap dealer registration will impose additional costly compliance requirements that have nothing to do with establishing a risk management program or avoiding conflicts of interest. A better approach is to require DTFs to establish reasonable procedures designed to prevent any conflicts of interest that may arise in the execution of discretionary trades by DTFs' operators.

Question 7: To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or Why not?

ISDA recommends that the Committee refrain from adopting the requirement that a DTF must only exercise discretion in the execution of transactions in a separate affiliated entity. This requirement will put a strain on the resources of new trading facilities that may use capital for prudential purposes and at the same time, will allow entities with the deepest pockets to set up separate affiliated entities and achieve trading dominance. As discussed above, a better approach is to establish effective procedures to avoid conflicts of interest in executing discretionary trades.

Question 8: What factors are relevant in defining the proposed best execution duty?

At the outset, the Committee should make it clear that the proposed best execution duty does not apply if a DTF does not act on behalf of a participant. In this case, neither the dealer nor the firm owes the participant an agency obligation.

We believe that a core-principles approach-- and not detailed regulation-- is the best way of ensuring that best execution is achieved in the derivatives markets, which are primarily institutional rather than retail. The Committee should allow DTFs the flexibility to develop their own best execution policy. A DTF should consider a number of factors, including delivery of a fair price (albeit not necessarily the best price), execution costs, likelihood of execution, the nature of the trade, and the unique characteristics of the relevant financial instruments.

Question 9: Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

ISDA believes that the Committee should not allow a DTF to require, through its rulebook, that its participants clear all transactions capable of being cleared (regardless of whether those transactions are subject to a mandatory clearing obligation). In this case, a DTF and not the Committee would effectively be establishing a mandatory clearing requirement. The Committee may permit a DTF to decide whether they would like to trade only products that have been determined to be mandatorily cleared.

Question 10: Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

We would like to see regulations that unambiguously allow two parties to trade a product on a DTF and agree in advance which clearing agency they will use to clear their transaction. In addition, a DTF should have the ability to provide access to a clearing agency that already clears existing products. We believe the above approach would not fragment liquidity since all participants would have access to the same clearing agency.

As to the reporting obligations, please see our responses to Questions 18, 19, and 22.

Question 11: Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds?

To require that all contract participants have impartial access to its markets and services may preclude a business model designed for wholesale participants only. European regulators, for example, permit platform operators to categorize clients and to make rules appropriate for the category based on objective, transparent criteria designed to ensure suitability and protect market integrity. This does mean that different clients may be treated in different ways. It is not necessary to prescribe that the business model of each DTF must ensure that all types of clients have equal access to its platform. However, similarly situated groups of participants have to be treated similarly to alleviate any anti-competitive conduct.

Question 12: Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

ISDA recognizes the importance of rules governing the establishment and operation of a DTF as they are essential for achieving the overarching goal of promoting trading on centralized venues. To this end, we support flexible governance rules that accommodate various business and corporate structures. We believe the Committee should offer guidance or best practices to encompass a broader range of violations and account for unique trading practices of a particular DTF.

We agree that recordkeeping is an essential element for monitoring trade violations. However, each DTF must retain the flexibility, within a core principles framework, to determine and implement a record retention system that is best suitable for its operations and is the most cost effective way of preventing abusive trading practices.

Question 13: Is it appropriate that a DTF that does not exercise discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

We believe that a DTF is best placed to and should have the flexibility to determine how best to perform its regulatory and surveillance functions. Requiring the use of a third-party regulation services provider may incur additional costs on DTFs, especially nascent platforms that do not have excess capital to invest in a third-party provider and may instead choose to perform these functions in-house.

To reiterate, DTFs should have the flexibility to determine the manner in which they are going to comply with their regulatory and surveillance responsibilities based on each DTF's financial resources, expertise and available technology on the assumption that it has a clear set of principles against which to assess itself. This again highlights the importance of an outcome based regulatory regime that provides for the necessary flexibility in determining how best to achieve desired regulatory objectives.

Question 14: Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own account? Please explain.

In general, ISDA believes that prohibiting operators of DTFs from entering into trades on their platforms as principals, on their own account may create a significant withdrawal of liquidity on these platforms. In derivatives markets, client transactions have traditionally involved firms employing their own capital and managing the risk associated with client-facing transactions. The ban may prevent the supply of additional liquidity by firms that are willing to use their own capital to take the risk on a short-term basis.

A better approach is to institute a comprehensive business conduct program to ensure that customer trades are executed fairly and free from conflicts of interest. Given the small size of the Canadian market, however, DTFs may be benefited from aligning their model with the U.S. CFTC Swap Execution Facility (SEF) model insofar as not permitting SEF operators to trade as principals. This will ensure a seamless transition by existing U.S. SEFs into Canada. If the Committee were to adopt rules allowing a different model, it would make the transition more difficult and consequently might deter U.S. SEFs from participating as DTFs in Canada.

Question 15: How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

We believe that financial resources should be construed broadly to include anything of value that a DTF has at its disposal, including operating revenues. We note that one DTF's failure will not lead to a liquidity crisis because swaps trade on various trading platforms with various liquidity pools. Therefore, DTFs should only be required to hold adequate resources to be able to wind-down their operations in six months.

Question 16: Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply?

Importantly, some form of pre-trade price transparency already exists in many forms across various different markets and has developed on the basis of the demands of market participants. For OTC contracts, for example, investors have access to multi-dealer trading venues offering composite pages "click and trade" systems, request for quotes and order books. To remain competitive in these products, dealers have a strong incentive to be as transparent as possible in order to ensure that they remain on the counterparty list of their clients.

In drafting DTF regulations, it is important to recognize this variety of transparency. However certain swaps, for example, commodity swaps, trade infrequently. For such swaps the requirement to advertise a requester's interest to a broad portion of the markets (because such market may have few participants) may preclude maintaining confidentiality, adversely affecting the price to the customer. Equally, order book trading is not suitable for more customized swaps, where price depends on various negotiable terms. Prescribing specific pre-trade transparency requirements could significantly raise transaction costs for commercial end-users and prevent such end-users from engaging in prudent risk management.

We would prefer to see a more targeted approach to pre-trade transparency, based on the needs of market participants, including end-users and the objective of ensuring the best possible price discovery and promoting trading on centralized venues. For DTFs to succeed, market participants must be given the discretion to choose the level of transparency that best meets their needs.

Question 17: Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

ISDA is concerned that this Consultation Paper does not take into consideration the post-trade transparency requirements for a DTF contained in the existing and proposed transaction reporting regulations - the Trade Repositories and Derivatives Data Reporting rule or regulation (91-507) issued by the Ontario Securities Commission (OSC), the Manitoba Securities Commission (MSC) and the Autorité des marchés financiers (AMF), as well as the proposed Multilateral Instrument (96-101), Trade Repositories and Derivatives Data Reporting (96-101). The post-trade transparency requirements for a DTF should consider the impact to the requirements under 91-507 and 96-101 (collectively, the Reporting Rules) and should leverage the experience resulting from compliance with the reporting requirements in other jurisdictions to fully consider the approach to and impact of transaction level public reporting.

Question 18: What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

ISDA notes that except as when entered as a principal, a DTF is not a reporting counterparty under §25 of the Reporting Rules. The consultation report suggests that a DTF would only be responsible for transaction level public reporting, either directly to the public or via a Trade Repository (TR). This implies that the reporting counterparty would still be responsible for reporting all transaction data to the TR, including the data subject to aggregated public reporting but excluding such data from transaction level public dissemination. This will lead to duplicative and inconsistent reporting. ISDA is concerned that bifurcation of the reporting responsibility will impact data quality and complicate compliance with the Reporting Rules for both reporting counterparties and TRs.

As evidenced by the Commodity Futures Trading Commission (CFTC) reporting rules, a shared responsibility for reporting a single transaction results in disaggregation of data and negatively impacts data quality. Under the CFTC reporting rules, a SEF is responsible for the initial creation data reporting, including the data for transaction level public dissemination, while the reporting counterparty is responsible for reporting continuation data, including life-cycle data and valuation data. This shared obligation is challenging since a SEF and reporting counterparties may have established connectivity to report to different Swap Data Repositories (SDRs). Such division in reporting is both complex and costly, and therefore ISDA has recommended that the CFTC eliminate this shared responsibility for reporting of swaps.

Similarly, in Canada, assigning partial reporting responsibility for transaction reporting to a DTF would hamper the ability of reporting counterparties to comply with §26(6) of the Reporting Rules that requires them to "report all derivatives data relating to a transaction to the same recognized trade repository to which the initial report was made." This requirement would increase the cost and complexity of compliance with the Reporting Rules.

ISDA believes that a DTF should be responsible for reporting trades executed on or via its facility that are intended for clearing. After trades have been cleared, the clearing agency must assume the reporting obligation for the cleared transactions in accordance with the reporting hierarchy prescribed by the Reporting Rules. For trades executed on a DTF that are not intended for clearing, the reporting counterparty should have the obligation to report in accordance with the hierarchy prescribed by the Reporting Rules. On February 11, 2015, the SEC issued the proposed rules – Reporting and Dissemination of Security-Based Swap Information (proposed SBSR). The proposed rules are consistent with this recommendation.

This approach eliminates the potential for transaction data to be reported to different TRs, thus streamlining the reporting process, improving parties' ability to comply with their reporting obligations and preserving data quality. We suggest that the Committee align the reporting obligations for DTFs and the Reporting Rules with § 901(a) (1) of the proposed SBSR. A consistent cross-border approach would allow a DTF that is also registered as a Security-Based SEF to report to a single multi-jurisdictional TR to satisfy its reporting obligations. This approach promotes efficiency and improves data quality.

It is important to note that there is little value in reporting a bilaterally executed transaction that is intended for clearing (an "alpha" trade) to a TR as the alpha trade is immediately or very shortly (usually within minutes) terminated and replaced by cleared trades (the "beta" and "gamma" trades) that are reported to a TR by the clearing agency. The beta and gamma trades more accurately represent the market exposure. To minimize the reporting cost incurred by DTFs and counterparties, the Committee should limit the reporting obligation for an alpha trade to only the data that is required for public dissemination in Appendix A of the Reporting Rules (Appendix A). If creation data reporting of all applicable fields in Appendix A is not required for alphas, then the DTF should not be required to source creation data that is not readily available to it (e.g., Master Agreement type and version). In this case, a reporting counterparty would not be required to supplement a report submitted by the DTF.

Notably, the jurisdiction where the DTF is registered should not trigger a reporting obligation. The DTF is merely a conduit for the trade (except to the extent it enters into a trade as principal) – it does not take on any credit or counterparty exposure and therefore the reporting rules of the DTF's jurisdiction are not relevant. Rather, a transaction executed on a DTF should be subject to reporting obligations only as they apply to the counterparties to the trade under applicable provincial reporting rules. To comply with its reporting obligation, the DTF will need to gather representations from its participants (e.g., as part of their on-boarding process) to establish which local reporting laws apply to a trade between two parties executed on the DTF.

Separately, one item worth highlighting relates to data confidentiality and privacy laws. In certain jurisdictions, consent is required from counterparties to allow reporting of counterparty information. While this adds an operational burden to the reporting process and requires a period of time to be implemented, consent where permitted, and where requirements for informed consent are met, serves to address confidentiality restrictions. Where consent, even if obtained, is not sufficient, and reporting of counterparty identifying information could lead to criminal charges, a regulatory solution is the only safeguard. Further, where local laws are unclear on the point, any ambiguity may not be resolved in favor of the reporting party and therefore a regulatory solution is the preferred safeguard. Execution of a Global MOU among regulators would be most effective to mitigate data confidentiality risk to reporting parties and resolve interpretive ambiguities.

Question 19: When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

Recent amendments issued by the OSC and MSC and an order issued by the AMF extend the date for transaction level public reporting under 91-507 to July 29, 2016. Prior to this deadline, significant work is expected to be undertaken by the authorities to determine an approach to transaction level public dissemination that balances the need for transparency with the necessity to preserve party anonymity and market liquidity.

The requirements for transaction level public dissemination should be based on a careful analysis of Canadian transaction data in order to determine where such requirements can align with those of other global regulators and in what cases distinct treatment is necessary to preserve the Canadian market. Any requirements with respect to block sizes, corresponding delays and other mechanisms that may apply to publicly reported transaction data (e.g., notional cap sizes) should be based on the relative liquidity of the product, not just the trade size, and should be consistently applied to a product or sub-product regardless of the execution method. For additional considerations and suggestions regarding transaction level public dissemination, please refer to our letter submitted to the Committee on January 16, 2015.

Question 20: Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

Achieving the appropriate relationship between reporting delay and frequency and volume of trading in a specific swap product is critical to achieving the balance between transparency and liquidity. In all derivatives markets, there are clearly definable categories of swaps that trade with significantly lower frequency and volume than more liquid categories of swaps.

ISDA believes that in determining an appropriate size of a block trade, the Committee should take into account the relationship between trading volume, frequency of trading and liquidity. Block treatment should be permitted for any swap transaction, regardless of size, in swap categories for which trade frequency is particularly low. In highly illiquid markets, a single transaction is especially likely to move the market (i.e., change the price that market participants would demand or accept for a particular swap transaction).

Question 21: What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to the data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

ISDA recommends that the Committee align the requirements with other jurisdictions, including the CFTC rules in 17 CFR 16.01. This would provide the public with access to consistent data across regimes and prevent any arbitrage that could result from differences in the reporting obligations between DTFs and SEFs, as well as other platforms.

Question 22: In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

We believe a DTF should be restrained from disclosing swap transaction and pricing data relating to publically reportable swap transactions prior to the public dissemination of such data by a TR. Advance disclosure by a DTF would undermine the party anonymity protections afforded to the counterparties and would negatively impact market liquidity. Moreover, DTFs that are registered as SEFs would already be restricted from disclosing swap transaction and pricing information prior to public dissemination of such data by an SDR.

Consistent with the requirement for SEFs and the proposed SBSR, DTFs should be required to report any transaction level data to a TR for public dissemination. Allowing a DTF to disseminate derivatives data directly will fragment data, impact data quality and impair data aggregation and analysis. If each DTF is allowed to disseminate its own data before a TR has disclosed swap transaction and pricing data, then in addition to the three TRs currently recognized for reporting under 91-507, there will be many DTFs publishing their own data in varying formats. Both regulators and the public will have to aggregate data across many sources to obtain a complete picture of the Canadian derivatives market, making it more difficult to access data.

Question 23: Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

In general ISDA supports the criteria proposed by the Committee. ISDA supports the criteria that measure liquidity on a product-specific basis. ISDA acknowledges, however, that in practice, defining a standard measure of liquidity is hard to achieve. At a minimum, a product that is determined to be suited for mandatory trading should trade multiple times daily with multiple distinct swap counterparties. We urge the Committee to perform an in-depth study of the markets on a swap-specific basis, in conjunction with market participants, to determine the appropriate criteria for a DTF-trading mandate. ISDA will be happy to assist the Committee in such efforts.

Question 24: Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

The critical issue in determining whether there is sufficient trading liquidity in a certain contract to justify a mandatory trading obligation must be assessed on a contract-by contract basis. Each relevant instrument should be broken down into fixed contract specifications, including specified maturity, rate source, currency, business day conventions, etc. While we recognize that two swaps with different contractual specifications may hedge each other, in whole or in part, the trading of these two swaps does not create a single trading liquidity pool for the purposes of generating readily observable prices and market volumes. We believe that certain interest rate and credit default contracts may be subject to mandatory DTF trading, while commodity and energy products do not have sufficient trading liquidity to be executed on a DTF.

In addition, as previously mentioned, the FX market is cross-border and global in nature. Clearing mandates and platform trading obligations should be globally aligned and we note that deliverable FX forwards and FX swaps, following the 2012 U.S. Treasury exemption,[1] are currently excluded from the definition of "swaps" in the Commodity Exchange Act (CEA) in order to exclude these types from the application of clearing obligations and SEF rules within the U.S.

Question 25: Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

If after a careful review of the available data, the Committee determines that certain swaps are subject to a mandatory trading obligation, then such swaps should be traded exclusively on DTFs. Otherwise, these products could continue to trade on other trading venues, including single-dealer platforms, which would lead to fragmentation of liquidity.

ISDA believes that commercial end-users should be exempt from a trading mandate and therefore any trade with an end-user can be traded off venue. End-users did not contribute to the financial crisis; they do not pose significant risk to the derivatives markets.

Also, ISDA notes that inter-affiliate transactions should be exempt from a DTF trading mandate. The distinctive characteristics of inter-affiliate swaps, the lack of systemic risk engendered by such trades, and the important systemic and private benefits of inter-affiliate swaps argue persuasively in favor of the Committee exempting such swaps from the mandatory clearing and trade execution obligations.

Finally, ISDA notes that each package transaction as a whole (and not its individual components) must be assessed for its liquidity characteristics to determine whether such transaction is suitable for trading on a DTF.

Question 26: Should there be a formal role for DTFs initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

[1] http://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx

While we understand the efficiency of requiring each DTF to make the initial assessment of whether a particular swap or a class of swaps should be mandated to trade on DTFs, the Committee should make the final determination pursuant to a set of objective criteria established by the Committee. ISDA believes that such criteria should be based on global minimum volumes of daily trading over a significant period of time for each swap. We also believe that the Committee must periodically re-evaluate the liquidity characteristics of a swap to determine whether a particular swap should continue to be mandated for DTF trading.

Having this determination made by the Committee will eliminate the competitive motivation of one DTF to determine that a particular swap is mandated to be traded on a DTF and thus force other DTFs to list this swap as a mandatorily traded swap.

Question 27: What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

Please see generally our answers to Questions 3, 4, and 16. We believe the Committee should not prescribe restrictive pre-trade transparency requirements for mandatorily traded swaps. Even mandatorily traded swaps will have various degrees of liquidity and frequency of trading. Consequently, a restrictive requirement to quote prices to all or a certain number of participants in less liquid markets would likely result in fewer dealers making markets, reduced liquidity, and greater costs to DTF participants.

Question 28: For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

Please see our answer to question 20. We also note that the Committee should use at least a 6-month window of data as part of its methodology for determining appropriate minimum block sizes for each swap category.

Question 29: Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request for quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

Please see our answer to Questions 3, 4, 16, and 27. We would like to reiterate that it is not appropriate to mandate specific execution methods for the OTC derivatives that have been mandated to be traded on a DTF. The proposed definition of a DTF as a facility "that bring[s] together multiple buying and selling interests leading to the execution of OTC derivatives transactions" does not limit execution methods for mandatorily traded products.

While we believe that the participants should be able to trade in a multiple-to-multiple environment, the participants should not be restricted in their execution methods and must be able to use their expertise to determine how to execute their orders. Requiring specific methods of execution for mandatorily traded contracts will increase hedging costs and the price offered in response to an RFQ request.

A pre-trade broadcast to all, in case of an Order Book, or to many, in case of an RFQ to more than one, could artificially affect prices and move the market against the requester, in particular, in the case of large size trades that do not qualify as block trades. Each participant, in every case, should be allowed to assess the balance between the available liquidity in the market and potential consequences of wide dissemination of the request. In more liquid markets, a requester may wish to execute a trade via an Order Book or an RFQ to a larger number of participants because the markets will not be affected by the request.

Question 30: What additional requirements should apply to DTFs with respect to products that have been mandated to trade on a DTF?

Please see our responses to questions 3, 4, 16, and 29. At this time, we don't believe that additional requirements should apply to DTFs with respect to products that have been mandated to trade on a DTF. As we explained above, we would prefer to see a more targeted approach to pre-trade transparency, based on the needs of market participants, including the objective of ensuring that end-users achieve the best possible price discovery on a DTF. This also requires flexibility of the execution methods, taking into account the characteristics of each mandatorily traded product.

Question 31: Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider which might justify a divergence between Canadian rules those in effect in the U.S. and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

Given the limited liquidity and the number of liquidity providers in many OTC products in Canada, it is important to allow flexible execution methods on a DTF. We also note that it is important to establish a workable post-trade transparency reporting regime.

In addition, the relatively small size of the Canadian market and the cross-border nature of OTC derivatives markets underscore the potentially significant risk of market fragmentation and loss of access to primary trading markets if cross-border harmonization of rules is not respected.

We support the Derivatives Committee's recommendation that exemptions should be available for foreign-based DTFs from the requirements of the Canadian DTF regime. However, we believe that these exemptions should not be granted only on a case-by-case basis. Given the importance of ensuring appropriate market access to regulated SEFs and OTFs and the principal of international cooperation and inter-reliance among regulators, we suggest that it is appropriate to grant an outright exemption from DTF rule requirements for SEFs and OTFs that are regulated under the CEA or MiFID II, are in compliance with related CFTC or EU requirements, have not improperly restricted access to trading by market participants in applicable Canadian provinces, and have complied with all Committee member requests for information and periodic reports as contemplated by the DTF rule. Such an approach could codify the exemptions provided to a number of SEFs by the OSC but do so on a transparent and equitable basis that eliminates unnecessary barriers to market access.

Additional Comments:

As we noted in Question 25, we expect that the Committee will provide an exemption from any mandatory DTF trading obligation for end-users that have the benefit of an exemption from the mandatory clearing obligation for the related trade. We consider such an exemption to be appropriate and consistent with the policy rationale for exempting end-users from a clearing mandate. For example, a company that is entering into a credit facility and simultaneously entering into related interest rate swaps with one or more hedge providers that are taking the benefit of security under the credit facility will negotiate numerous deal terms with the lenders and hedge providers. For numerous reasons, this type of standard market arrangement cannot be fit within a DTF trading model.

Separately, we believe that the end-user hedging exemption should also be available for financial entities. We expect to discuss this further in our comment letter on the draft Clearing Rule.

Further, we urge the Committee to exempt inter-affiliate transactions from a DTF trading mandate given the importance of permitting company groups to internally manage their risk.

Finally, we recommend that phase-in and staging provisions similar to that proposed for the clearing rule be included in the eventual draft DTF rule.

ISDA appreciates the opportunity to provide its comments on the DTF Consultation Paper and looks forward to working with the Committee as it continues to consider the

ISDA

issues outlined in this Consultation Paper. Please feel free to contact me or ISDA's staff at your convenience.

Sincerely,
Steven Kennedy,

[redacted]

Global Head of Policy
ISDA

The Canadian Advocacy Council for Canadian CFA Institute Societies
ADVOCATING THE CFA INSTITUTE'S CODE OF ETHICS AND STANDARDS

March 30, 2015

BY EMAIL

Dear Sirs/Mesdames:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West Suite 1900, Box 55
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and

Me Anne-Marie Beaudoin, Corporate Secretary
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Re: CSA CONSULTATION PAPER 92-401 *Derivatives Trading Facilities* (the "Proposed Amendments")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on and wishes to provide comments on the following specific questions posed with respect to the Proposed Amendments.

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[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 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.

Defining "Derivatives Trading Facility"

1. *Is the DTF category appropriately defined? If not, what changes are needed and why?*

Yes, the DTF category is appropriately defined.

2. *Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?*

It is appropriate to permit a DTF operator a degree of discretion over the execution of transactions because it provides additional flexibility for clients. Discretion should be permitted for trading in some products that are mandated to trade on a DTF, such as semi-standard swaps (e.g. CDS, IRS).

Permitted Execution Methods

3. *Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?*

We are of the view that the description of permitted execution methods is exhaustive and thus suitable for facilities that offer or plan to offer trading in OTC derivatives.

4. *Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?*

Given the broad scope of the Proposed Amendments, an order book or an RFQ should be the minimum trading functionality prescribed.

Regulatory Authorization of DTFs

5. *Is the proposed regulatory framework for DTFs appropriate?*

We agree that the proposed regulatory framework is appropriate.

6. *Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)*

We do not believe that it would be appropriate to impose all of the dealer requirements on a DTF in these circumstances. We believe that the dealer requirements currently applicable to exempt market dealers that address conflict of interest matters and financial solvency would be relevant to a DTF where the operator exercises discretion. We note that while it will be important that the operator of the DTF be subject to regulatory oversight and scrutiny, the functions of an operator exercising discretion in matching orders is different from an entity that is in the business of trading. If the operators were required to register as a dealer subject to all of a dealer's obligations, it could increase their operating costs which could be passed on to the end users.

7. *To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?*

We do not believe it would be necessary for a DTF to exercise discretion in a separate affiliated entity. The DTF would likely lose some operational and regulatory efficiencies if they were required to operate two entities, and clients could be subject to additional administration and costs if they were forced to deal with two entities. It would be more efficient for clients, and potentially for collateral management, if only one entity was required. As noted above, we do not believe that full dealer registration should be required in these circumstances but that a level of regulation and oversight may be desirable depending on the model of the DTF. From a registration and surveillance perspective, a single entity could be easier to monitor, and would have fewer related party conflicts to manage.

8. *What factors are relevant in defining the proposed best execution duty?*

With respect to the derivatives contemplated by the Proposed Amendments, it is difficult to quantify the factors in any specific case that would be relevant in defining the proposed best execution duty, resulting from the fact that these derivatives are non-standardized and thus each trade must be examined on a case by case basis. The factors that may be relevant are not just temporal factors; the attributes of the derivative being written or bought will help in the determination. Outside of an RFQ competitive quote situation it will be very difficult to define the duty. The implementation of the best execution duty is complex and ambiguous, as illustrated by the comprehensive CFA Institute Trade Management Guidelines for investment firms which was developed by the CFA Institute Trade Management Task Force, which sets out a framework for firms to make consistently good trade-execution decisions.

Organizational and Governance Requirements

9. *Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?*

Our response to questions #9, #10 and #11 depend in part on the number of DTFs operating in Canada. While it is appropriate to allow a DTF to require clearing of all trades that are capable of being cleared, it may not also be appropriate to allow that same DTF to mandate that certain clearing agencies or trade repositories be used, particularly if they are related entities. It should be the choice of the participant as to which facility they wish to use in order to clear their trades. Clients who do not want to be forced to clear trades through a particular clearing agency will deal with DTFs that do not have such a requirement.

10. *Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?*

Please see our response to #9 above.

11. *Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?*

We do not have a view as to whether or not a DTF that exercises discretion should be permitted to limit access to its facility. In the event DTFs are permitted to limit access, the criteria for determining access should be clear and disclosed to potential participants.

12. *Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?*

Yes, we believe the proposed organizational and governance requirements are robust and appropriate.

13. *Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.*

In order to encourage economic business models we believe that for most cases, it is appropriate that a DTF that exercises discretion be permitted to perform its regulatory and surveillance functions itself, provided that it is subject to regulatory audits. There is a lesser chance of a conflict of interest in the circumstances where the DTF does not exercise execution discretion. DTFs should however have the option of utilizing a third-party regulation service provider for this purpose if they so choose. In addition to being able to engage a third party regulatory service provider should they choose to do so, the regulators could require such an engagement if the unique aspects of a particular DTF's discretion or business model so warrants.

14. *Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.*

Such a proposal will help mitigate conflict of interest concerns.

15. *How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.*

A DTF's financial resources should be evaluated similar to those used for recognized exchanges and clearing agencies to the extent there is an inherent or related clearing business as part of the DTF, or if there is not, similar to the evaluation process of other jurisdictions (such as that used in the United States for SEFs).

Pre-trade Transparency

16. *Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?*

No, we do not believe pre-trade transparency requirements should apply to OTC derivatives that have not been mandated to be traded on DTFs. However, if pre-trade transparency requirements will apply, indicative (non-firm) bids and offers may be appropriate.

Post-trade Transparency

17. *Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?*

Yes the proposed requirements are appropriate.

18. *What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?*

We think the most efficient reporting could be done via trade repositories, assuming that reported trades are the sum of all the trades executed in the DTFs reporting to the trade repositories. Such reporting lines should provide a greater potential to preserve confidential information of participants. If a DTF provided real time public reporting directly, there could be a greater opportunity for market participants to identify confidential information.

19. *When should deferred publication of trade information be permitted? Are there circumstances other than block trades?*

Deferred publication of trade information should be permitted in the event of illiquidity (i.e. below a certain volume/trade count threshold). There should be a mechanism to prevent disclosure where the situation warrants delayed disclosure.

20. *Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?*

Criteria to be considered should include the instrument type, currency of the instrument, historical liquidity of the instrument (total notional amount and trade count), as well as settlement risk. The criteria should be reviewed at regular intervals (e.g. every six months) to determine if they are still relevant.

21. *What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).*

A DTF should be required to provide information on the total notional volume, market value and percentage of block trade volume per instrument type (e.g. IRS, OIS, CDS – single name, CDS Index). The information should be published daily within one business day of the trade.

22. *In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.*

A DTF should only be required to report to the counterparties to the trade. We do not believe there would be a benefit to providing post-trade information to all participants.

<u>Trading Mandate</u>

23. *Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?*

Yes the proposed criteria are appropriate.

24. *Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?*

To ensure the greatest amount of harmonization possible with the United States and other jurisdictions such as the EU, we would encourage the types of OTC derivatives suitable for mandatory trading on a DTF in the first instance be the same as those already designated in other jurisdictions (e.g. interest and credit swaps). We strongly support the "wait-and-see" approach discussed in the Notice, as there may be some products where there is insufficient liquidity in Canada to mandate clearing even though the market ecosystem in other jurisdictions is more developed. If package trades and total return swaps were subject to a mandatory trading obligation, it could be detrimental to market participants.

25. *Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?*

Package trades should be permitted to trade other than on a DTF, since they are used by commercial enterprises to hedge specific commercial risks. They may trade infrequently, and it could be more of a burden for such products to trade on a DTF than bilaterally (or through other means). Non-financial users of derivatives in certain instances should be eligible for non-DTF trading. Exemptive relief should be available for such trades, potentially though an expedited process.

26. *Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 813?*

Yes there should be a formal role for DTFs, but they should not be permitted to arbitrate the process for commercial reasons.

27. *What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).*

An order book model price and size would be appropriate, and for an RFQ model indicative size and a price would initially be appropriate.

28. *For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?*

The size threshold should be discretionary, and there should be a pre-trade process for exemption and/or standing criteria, regularly evaluated and updated by the regulator and/or the DTF in consultation with the regulator and industry, by which a trade is automatically exempted from the reporting requirements.

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*

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March 30, 2015

VIA ELECTRONIC MAIL

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Re: Comments on CSA Consultation Paper 92-401 Derivatives Trading Facilities

Dear Sir or Madam:

On behalf of The Canadian Commercial Energy Working Group (the "**Working Group**"), Sutherland Asbill & Brennan LLP hereby submits this letter in response to the request for public comment on CSA Consultation Paper 92-401 Derivatives Trading Facilities ("**Consultation Paper 92-401**") published by the Canadian Securities Administrators ("**CSA**") Derivatives Committee.[1] The Working Group welcomes the opportunity to provide comments on Consultation Paper 92-401 and looks forward to working with the CSA throughout the derivatives reform process.

As the drafting process continues, it is critical for the CSA to ensure that the regulatory framework for derivatives trading facilities ("**DTFs**") and the rules regarding the trade execution mandate are compatible with and accommodating of the unique characteristics of the over-the-counter ("**OTC**") derivatives market. With this in mind, the Working Group's comments

[1] CSA Consultation Paper 92-401 Derivatives Trading Facilities (Jan. 29, 2015), *available at* http://www.albertasecurities.com/Regulatory%20Instruments/5043114-v1-CSA_Consultation_Paper_92-401_-_Derivatives_Trading_Facilities.pdf.

contained herein identify issues and offer recommendations designed to ensure a workable regulatory framework for DTFs and rules regarding the trade execution mandate.

The Working Group is a diverse group of commercial firms that are active in the Canadian energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. The Working Group considers and responds to requests for comment regarding developments with respect to the trading of energy commodities, including derivatives, in Canada.

I. INTRODUCTION.

As Consultation Paper 92-401 sets forth a proposed regulatory framework for DTFs and the trade execution mandate, issues pertaining to the following topics should be addressed in the drafting process: (i) the role of voice brokers; (ii) the absence of exemptions from the trade execution mandate for end-users and intragroup transactions; (iii) the relationship between the determination process for mandatory trade execution and mandatory central clearing; (iv) the process to determine which OTC derivatives or classes of OTC derivatives are subject to the trade execution mandate as it relates to consistent application and market participants' input; (v) the definition of "OTC derivative;" (vi) the potentially insufficient public reporting delay; and (vii) the treatment of foreign DTFs. Each of these issues will be discussed in detail below.

II. COMMENTS OF THE WORKING GROUP.

A. The Obligations of Standalone Voice Brokers Are Unclear.

Under Consultation Paper 92-401, it is unclear what the obligations would be for a brokerage firm that only offers voice execution (*i.e.*, a "**standalone voice broker**"). This uncertainty primarily stems from the question of whether a standalone voice broker is a many-to-many platform, and thus falls under the scope of the DTF definition. Although Consultation Paper 92-401 does not directly answer this question, a standalone voice broker should fall outside of the scope of the DTF definition.

A standalone voice broker typically takes an order from one customer and then finds that customer a counterparty to the requested derivatives transaction. Unlike execution facilities where multiple sellers and multiple buyers come together to collectively engage in trading activity, a standalone voice broker handles transactions for single buyers or single sellers. The fact that a standalone voice broker might call multiple parties is irrelevant. While a standalone voice broker might be trying to facilitate a transaction for a number of customers at the same time, that standalone voice broker is trying to match a counterparty with each one of those customers – it is not matching multiple bids against multiple offers.

In short, a standalone voice broker does not facilitate a many-to-many trading environment, and there is no multiple-to-multiple trading occurring. Comments by the U.S. Commodity Futures Trading Commission ("**CFTC**") in the preamble to its final rule on swap execution facilities ("**SEFs**") support this position.[2] Specifically, the CFTC noted that "trading systems or platforms facilitating…execution…via voice exclusively are not multiple participant to multiple participant…."[3] Accordantly, a standalone voice broker should fall outside of the scope of the DTF definition.

If a standalone voice broker is considered a DTF under Consultation Paper 92-401, the Working Group is concerned that the proposed regulatory obligations for a DTF may compromise the traditional role of a standalone voice broker in commodity derivatives markets in two main ways. *First*, many of the potential requirements imposed on DTFs (*e.g.*, keeping electronic records of all bids and offers and "messages" sent to participants) are inconsistent with voice execution and may effectively prevent standalone voice brokers from operating at all if they must register as DTFs.

Second, the regulatory burdens under the proposed DTF framework (*e.g.*, obtaining regulatory authorization from the securities regulators in each jurisdiction) may drive some of the smaller standalone voice brokers out of the Canadian markets, potentially resulting in (i) fewer intermediaries for market participants to choose from and (ii) less liquidity in the markets.

However, to the extent standalone voice brokers are considered to be DTFs, voice execution should be a permitted execution method for OTC derivatives transactions subject to the trade execution mandate. Permitting voice execution in this context will provide market participants necessary flexibility and help preserve the integrity and function of the OTC energy derivatives market.

Solution. As the drafting process progresses, the Working Group respectfully recommends that amendments be made to clarify that a standalone voice broker is not a many-to-many platform and thus not a DTF. If, however, a standalone voice broker is considered to be a DTF, the Working Group respectfully suggests that the rules be extended to permit voice execution as a permissible execution method for OTC derivatives transactions subject to the trade execution mandate.

B. The Failure to Provide Exemptions for End-Users and Intragroup Transactions Could Potentially Introduce Costs or Risks That Outweigh the Benefits of Trading OTC Derivatives.

The Working Group appreciates the CSA's efforts to propose a regulatory framework for OTC derivatives trading that is consistent with Canada's G20 commitment. However, the proposed framework in Consultation Paper 92-401 does not appropriately balance the regulatory objectives with the burdens they would impose on market participants. Failure to strike an

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[2] *See, e.g.,* CFTC Final Rule, *Core Principles and Other Requirements for Swap Execution Facilities*, 78 Fed. Reg. 33,476, 33,500 (June 4, 2013), *available at* http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf.

[3] *See, e.g., id.*

appropriate balance could potentially introduce costs or risks that outweigh the benefits of trading OTC derivatives. To establish a balanced regulatory framework that would foster an efficient OTC derivatives market, the CSA should specifically include exemptions from mandatory trade execution for end-users and intragroup transactions.

The Working Group notes that the same arguments which support exemptions for end-users and intragroup transactions from mandatory central clearing apply in the context of the trade execution mandate. Specifically, exemptions for end-users and intragroup transactions should be included because (i) such exemptions would reduce unnecessary regulatory and economic burdens on market participants and (ii) the inclusion of such exemptions would be consistent with the recommendations of the Derivatives Committee to address Canada's G20 commitment to OTC derivatives trading.

In Consultation Paper 92-401, the Derivatives Committee recommends that the CSA pursue Option 2 to address the G20 commitment to OTC derivatives trading.[4] Option 2 provides that mandatory trade execution should apply only to those transactions with sufficient standardization and liquidity *and/or that pose systemic risks to the integrity of the markets*.[5] In this respect, an exemption for end-users would be consistent with the Derivatives Committee's recommendation since it would be limited in scope and would be available to market participants that do not pose systemic risks to the integrity of the markets. Similarly, an exemption for intragroup transactions is also consistent with the Derivatives Committee's recommendation because intragroup transactions simply represent transfers of risks *within* a corporation organization and do not pose risk to the integrity of markets.

Solution. The Working Group respectfully requests that exemptions from the trade execution mandate are added for end-users and intragroup transactions. The standards to qualify for these exemptions should be the same as the standards to qualify for the exemptions for end-users and intragroup transactions, respectively, in the anticipated, final National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives.[6]

[4] Consultation Paper 92-401 at 17.

[5] *Id*.

[6] When the Working Group notes in this comment letter that the standards to qualify for the exemptions should be the same as the standards for the exemptions in the anticipated, final National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives, it means that the standards should be *consistent* – not that the proposed standards, as currently drafted in Proposed National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives ("**Proposed Clearing Rule**"), should be used. The Working Group largely supports the construct of the proposed exemptions for end-users and intragroup transactions in the Proposed Clearing Rule. However, the Working Group plans to submit comments on the Proposed Clearing Rule in advance of the May 13, 2015 deadline and will offer suggestions to improve the proposed exemptions for end-users and intragroup transactions.

C. The Standard for OTC Derivatives or Classes of OTC Derivative to Be Subject to Mandatory Trade Execution Should Be Higher Than the Standard in the Context of Mandatory Central Clearing.

The Working Group appreciates that the CSA contemplates separate analyses for the determination processes regarding mandatory trade execution and mandatory central clearing. The Working Group agrees that the analysis for each should be separate since each generally serves different purposes (*e.g.*, mandatory trade execution aims to increase transparency and mandatory central clearing aims to reduce credit risk). Although each generally serves different purposes, certain of the factors that regulators should consider for each determination are critical for both determinations (*e.g.*, product liquidity and product standardization). However, the Working Group respectfully suggests that the standard for OTC derivatives or classes of OTC derivatives to be subject to mandatory trade execution should be higher than the standard in the context of mandatory central clearing.

The reason for the higher standard with respect to the mandatory trade execution determination process is, in part, because more liquidity is needed to facilitate effective platform execution than mandatory central clearing.[7] Fostering efficient markets will, in turn, help reduce market risks. To effectively achieve this, only OTC derivatives or classes of OTC derivatives that are subject to mandatory central clearing should be considered for mandatory trade execution. The determination of whether OTC derivatives or classes of OTC derivatives are subject to mandatory trade execution should not be a *fait accompli* if an OTC derivative is already subject to mandatory central clearing.

Amendments to the mandatory trade execution determination process to require OTC derivatives or classes of OTC derivatives to first be subject to mandatory central clearing before they can be considered for mandatory trade execution would, in this respect, bring the derivatives regime in Canada in line with the regime in the United States.

Solution. Consultation Paper 92-401 should be amended so that the OTC derivatives or classes of OTC derivatives must first be subject to mandatory central clearing before they can be considered for mandatory trade execution.

D. The Proposed Trade Execution Mandate Determination Process May Not Have Adequate Safeguards to Ensure Consistent Application and Would Benefit from Guaranteeing the Opportunity for Market Participants to Comment.

The Working Group respectfully submits that the proposed process for determining which OTC derivatives or classes of OTC derivatives would be subject to the trade execution

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[7] It is the Working Group's understanding that a certain level of liquidity is required for a clearing house to safely clear a derivative. That level of liquidity is lower than the level of liquidity required for market participants to feel comfortable trading a derivative solely on a platform. Said another way, the level of liquidity necessary for market participants to safely enter into and exit larger positions is higher than the level of liquidity necessary to safely clear a derivative.

mandate may benefit from modifications. Specifically, the Working Group suggests that modifications could be made to (i) ensure a consistent application of the trade execution mandate within and across provinces and (ii) guarantee market participants the opportunity to provide input with respect to pending mandatory trade execution determinations.

Consultation Paper 92-401 contemplates that the regulators would make the final determination as to which OTC derivatives or classes of OTC derivatives would be subject to the trade execution mandate. This is an appropriate course for making that determination.

For the determination process, Consultation Paper 92-401 provides a proposed list of factors that the regulators should consider. While the Working Group supports the proposed factors listed, it is unclear whether the proposed list would be the universe of factors regulators could consider or if other factors may be taken into account. Without a uniform list of criteria that regulators must consider when making the trade execution mandate determination, there is potential for inconsistent application in the same province as well as across provinces. The potential lack of consistency may result in OTC derivatives or classes of OTC derivatives being subject to mandatory trade execution in one province but not in another, or it could result in derivatives with similar characteristics (*e.g.*, similar levels of liquidity and standardization) being treated differently under the trade execution mandate.

As noted above, the trade execution mandate determination process would benefit from market participants' input. Under the proposed framework in Consultation Paper 92-401, however, it is unclear if the public will be guaranteed an opportunity to comment on pending trade execution mandate determinations. Since these determinations will impact market participants, their comments should be considered in the determination process.

Solution. The Working Group proposes that a uniform list of factors should be considered by the regulators for the trade execution mandate determination. Such a list should provide the regulators with the flexibility to determine how much weight to give each factor. In addition, the Working Group suggests that regulators modify the proposed framework to guarantee market participants an opportunity to comment on pending mandatory trade execution determinations.

E. The Definition of "OTC Derivative" Is Unclear.

In Consultation Paper 92-401, the Derivatives Committee notes that the term "OTC derivative" refers to "a derivatives contract that is traded other than on a formal exchange."[8] Based on this definition, it is unclear the extent to which the definition of "OTC derivative" will be consistent with the definition of "derivative" in the Scope Rule (in Ontario, Manitoba, and Québec, the Scope Rule is numbered 91-506; in Alberta, British Columbia, New Brunswick, Nova Scotia, and Saskatchewan, the Proposed Scope Rule is numbered 91-101).

[8] Consultation Paper 92-401 at 26.

Solution. The Working Group respectfully suggests that the regulators include explanatory guidance as to the relationship between the definition of "OTC derivative" in the context of DTFs and the definition of "derivative" in the Scope Rule.

F. The Post-Trade Transparency Proposals Regarding Public Dissemination Requirements Are Potentially Insufficient to Protect Counterparties to a Transaction.

The Working Group generally supports initiatives to increase transparency in derivatives markets and, as such, appreciates the importance of the proposals set forth in Consultation Paper 92-401 regarding pre- and post-trade transparency requirements. However, the Working Group is concerned that the post-trade transparency[9] proposals are potentially insufficient with respect to: (i) the public reporting delay; and (ii) the explanation of what qualifies as "market information."

In Consultation Paper 92-401, the Derivatives Committee recommended that DTFs be required to publicly report transactions executed on the DTF "as close to real-time as technically feasible,"[10] with an exception. The Derivatives Committee proposed an exception to this time frame that would permit, but not require a reporting delay for block trades in order to provide protection for larger transactions.[11] In addition, under the post-trade transparency proposals, the Derivatives Committee recommended that DTFs provide certain "market information" to the general public.[12] However, the Derivatives Committee has not determined what this "market information" will be.

The Working Group notes that the public dissemination of post-trade information is permitted to be delayed, but there is no requirement that would prevent DTFs from disseminating this information in real-time. Further, depending on what would constitute "market information," public dissemination of such information may hinder market participants' ability to effectively hedge. With this in mind, the Working Group is concerned that the proposed post-trade transparency requirements are insufficient to protect counterparties to a transaction since they may not ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions or otherwise fully execute their trading strategy.

Solution. The Working Group suggests that amendments be made to include a mandatory minimum time delay for public dissemination of data with respect to large trades. The Working Group also respectfully requests further guidance on what would qualify as "market information," and cautions that depending on the scope of what would qualify as

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[9] As noted in Consultation Paper 92-401, "post-trade transparency" in the context of OTC derivatives refers to "the dissemination of price and volume information, other than to the executing parties, on completed transactions." Consultation Paper 92-401 at 40.

[10] *Id*. at 41.

[11] *Id*.

[12] *Id*. at 41-42.

"market information," a mandatory minimum time delay for public dissemination of such information may also be appropriate.

G. The Proposed Approach Regarding Foreign-Based DTFs Should Be Amended.

In Consultation Paper 92-401, the Derivatives Committee recognizes that "the Canadian OTC derivatives market comprises a relatively small share of the global market and a substantial portion of transactions entered into by Canadian market participants involve foreign counterparties."[13] Given these realities, it is critical that the DTF regulatory framework does not impose unnecessary regulatory or economic burdens on foreign market participants, as this may cause them to exit the Canadian OTC derivatives market. In addition, it is critical that the DTF regulatory framework does not limit Canadian entities' access to foreign derivatives markets. With this in mind, the Working Group is concerned about the approach contemplated in the proposals regarding foreign-based DTFs set forth in Consultation Paper 92-401.

Evidence of the cross-border consequences of a rigid trading facility framework and mandatory platform-execution paradigm can be seen in the global market for interest rate swaps. A recent study by the International Swaps and Derivatives Association ("**ISDA**") found that after the CFTC's SEF rules came into force, European dealers became reluctant to trade Euro-denominated interest rate swaps with U.S. counterparties.[14] That reluctance grew even more acute after the CFTC's first mandatory trade execution requirements came into force.[15]

The absence of a streamlined framework for substituted compliance or equivalency determinations indicates that foreign-based DTFs may be subject to unnecessary economic and regulatory burdens if they provide access to Canadian entities. For example, Consultation Paper 92-401 contemplates that foreign-based DTFs could seek exemptions on a case-by-case basis if the foreign-based DTF is able to demonstrate to Canadian regulators that the regulation and oversight in its home jurisdiction is comparable.[16] Stated differently, each foreign-based DTF seeking an exemption would be required to demonstrate regulatory comparability of its home jurisdiction – even if another foreign-based DTF from the same home jurisdiction already successfully demonstrated the regulatory comparability. Not only would this impose unnecessary burdens, but it creates the potential for inconsistent determinations regarding comparability.

Further, Consultation Paper 92-401 proposes that foreign-based DTFs would still be subject to reporting obligations to Canadian securities regulators with respect to services

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13 *Id*. at 3.

14 *See* ISDA Research Note, *Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-Year 2014 Update* at 6 (July 24, 2014), *available at* http://www2.isda.org/attachment/NjY0NQ==/Fragmentation%20study%20FINAL.pdf.

15 *Id*.

16 *See* Consultation Paper at 46.

provided to local counterparties *even if its home jurisdiction is determined to be comparable*.[17] This duplicative reporting obligation may be unnecessary if Canadian regulators can arrange access to that information from the DTF's home country regulator.

Solution. The Working Group respectfully requests that the DTF regulatory framework includes a reasonable framework for substituted compliance or equivalency determinations and provides other necessary compliance relief in order to avoid imposing unnecessary burdens on foreign market participants.

III. CONCLUSION.

The Working Group appreciates this opportunity to provide comments on Consultation Paper 92-401 and respectfully requests that the comments set forth herein are considered during the drafting process.

If you have any questions, please contact the undersigned.

Respectfully submitted,
/s/ R. Michael Sweeney, Jr.
R. Michael Sweeney, Jr.
Alexander S. Holtan
Blair Paige Scott

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[17] *Id*.

Canadian Market
Infrastructure Committee

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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
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March 30, 2015

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators ("CSA") Consultation Paper 92-401: Derivatives Trading Facilities ("DTF") (the "Consultation Paper")

INTRODUCTION

The Canadian Market Infrastructure Committee ("**CMIC**")[1] welcomes the opportunity to comment on the Consultation Paper.[2]

[1] CMIC was established in 2010, in response to a request from public authorities, to represent the consolidated views of certain Canadian market participants on proposed regulatory changes. The members of CMIC who are responsible for this letter are: Bank of Montreal, Bank of Tokyo-Mitsubishi UFJ (Canada), Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Canadian Imperial Bank of Commerce, Deutsche Bank A.G., Canada Branch, Fédération des Caisses Desjardins du Québec, HSBC Bank Canada, JPMorgan Chase Bank, N.A., Toronto Branch, Manulife Financial Corporation, National Bank of Canada, OMERS Administration Corporation, Ontario Teachers' Pension Plan Board, Public Sector Pension Investment Board, Royal Bank of Canada, Sun Life Financial, The Bank of Nova Scotia, and The Toronto-Dominion Bank. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian over-the-counter ("**OTC**") derivatives market. The membership of CMIC has been intentionally designed to present the views of both the 'buy' side and the 'sell' side of the Canadian OTC derivatives market, including both domestic and foreign owned banks operating in

CMIC supports the efforts of the CSA to implement Canada's G20 commitment to mandate the trading of suitable OTC derivatives on exchanges or electronic trading platforms. The Consultation Paper sets out detailed background information on DTFs and related concepts, which was very useful in our consideration of the issues.

General Comments

As a preliminary point, while acknowledging Canada's G20 commitment, CMIC submits that it is critical to recognize the unique nature of the Canadian market, including its relatively small size and its limited liquidity, such that mandatory trading on DTFs may not be warranted, or may only need very limited scope. Mandating DTFs in Canada may, as a result, not be necessary. Taking such an approach in Canada is not inconsistent with Canada's G20 commitment to reporting and clearing of derivatives. However, if regulators believe that mandating DTFs is required, please see our answers to your questions below.

CMIC also submits it is important for regulators to consider developing an approach for foreign DTFs, such as Swap Execution Facilities ("**SEFs**") and Organized Trading Facilities ("**OTFs**"), that is built on substituted compliance with foreign jurisdictions, thereby creating an incentive for such foreign DTFs to service the Canadian market. Establishing bespoke regulation in Canada could well cause foreign DTFs to choose not to participate in the Canadian market, which would be harmful for maintaining access to global market liquidity by Canadian market participants.

In addition, as mentioned in our previous response letters, CMIC submits that the goal of harmonization among all provinces (including harmonization of the effective date), as well as with global derivatives regulation, is of utmost importance. Given the small size of the Canadian OTC derivatives market as compared to the global market, Canadian DTF rules should not conflict with global rules or place undue burdens on foreign DTFs, as that would put Canadian market participants at a competitive disadvantage. Certainly, Canadian DTF rules should not limit or restrict the ability of a DTF to comply with the SEF rules under the Dodd-Frank Act or the OTF rules under the European Market Infrastructure Regulation.

Another aspect of harmonization that CMIC supports is harmonization of DTF rules relating to governance with existing securities laws relating to alternative trading systems. As they are both trading facilities, the governance of each should be substantially similar.

It is also CMIC's view that the DTF rules should remain as flexible as possible, in particular with respect to execution methods, in order to easily adjust to changes over time in a product's liquidity. In particular, there should not be any uniquely Canadian rules that would impede trading on a foreign platform at the same time without compromising flexibility or harmonization with global protocols. It is important for Canadian rules to recognize the comparatively smaller Canadian market and the far more limited liquidity available in Canadian products.

All of these four concepts are elaborated upon below in our responses to the questions.

Canada. As it has in all of its submissions, this letter reflects the consensus of views within CMIC's membership about the proper Canadian regulatory regime for the OTC derivatives market.

[2] Canadian Securities Administrators, "CSA Consultation Paper 92-401 – Derivatives Trading Facilities" (2015), online: BCSC <https://www.bcsc.bc.ca/Securities_Law/Policies/Policy9/PDF/92-401__CSA_Consultation_Paper___January_29__2015/>.

Responses to Questions in the Consultation Paper

Definition of "Derivatives Trading Facility"

1. Is the DTF category appropriately defined? If not, what changes are needed and why?

CMIC Response: CMIC is of the view that the definition should be amended by referring to "…a trading facility, platform or market...". This would align the definition more closely with the definition of a SEF under the Dodd-Frank Act and, in our view, provide greater clarity. In addition, we suggest adding at the end of the definition, "and for greater certainty, does not include a single dealer platform."

2. Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

CMIC Response: It is CMIC's view that DTF operators should be allowed a degree of discretion over the execution of transactions, whether or not the transactions are mandated to trade on a DTF, provided that such discretion is exercised in a manner consistent with the proposed best execution duty as discussed in our response to Question 8 below. In CMIC's view, the following are examples of types of discretion that should be permitted for DTFs (provided that each client approves such discretion for its trades): when to place an order, which participants to contact for a request for quote ("**RFQ**"), which client orders or RFQs are matched with other client orders or quotes, order and timing of matching and how a trade is executed. Giving a DTF operator such discretions will provide flexibility in execution methods and also allow the DTF to source liquidity for a particular type of transaction.

Permitted Execution Methods

3. Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

CMIC Response: The description of permitted execution methods for a DTF are, in CMIC's view, suitable for DTFs currently offering trading in OTC derivatives. However, we would hope and expect DTFs themselves to provide more insight in their answers to this question.

4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

CMIC Response: CMIC recommends that the CSA should not prescribe minimum trading functionality. Limiting trading to execution methods comparable to those used in the futures market, such as an order book system, rather than allowing for a variety of execution methods, is unlikely to be suited to the liquidity characteristics of the Canadian market and could attract high-frequency or predatory trading. CMIC strongly believes that a wide variety of execution methods be permitted, whether the transaction is mandated or not. As noted in Commodity Futures Trading Commission ("**CFTC**") Commissioner J. Christopher Giancarlo's White Paper[3], "A swap product's particular liquidity characteristics determine the execution technology and methodology, which can change over time" and therefore he suggests that this "liquidity continuum" necessitates flexible execution methods.[4] CMIC supports Mr. Giancarlo's view on this point.

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[3] J. Christopher Giancarlo, "Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank" (2015), online: CFTC <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

[4] Giancarlo, *supra* note 3 at 26.

Regulatory Authorization of DTF

5. Is the proposed regulatory framework for DTFs appropriate?

<u>*CMIC Response*</u>*:* CMIC believes that DTFs are better-suited to respond to this question. However, to the extent that a Canadian uses a foreign DTF, that foreign DTF should not be required to register in Canada and comply with the proposed regulatory framework, provided such foreign DTF is subject to equivalent oversight in an approved jurisdiction. Allowing such an exemption on a jurisdiction-by-jurisdiction basis, rather than on an individual DTF basis, is the most efficient regulatory approach as it avoids the necessity of having every foreign DTF apply for an exemption. This is necessary in order for Canadian market participants to continue to have access to foreign DTFs and liquidity. CMIC anticipates that imposing such duplicate regulatory requirements may well cause foreign DTFs to restrict access to the Canadian market or actually disengage from the Canadian market.

6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

<u>*CMIC Response*</u>*:* CMIC believes that DTFs are better-suited to respond to this question. However, to the extent that dealer requirements apply in the case of discretion, such requirements should not apply to a foreign DTF if the foreign DTF is subject to equivalent oversight in an approved jurisdiction.

7. To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?

<u>*CMIC Response*</u>*:* It is CMIC's view that requiring a DTF that exercises discretion to only do so in a separate affiliated entity is not necessary. CMIC submits that customary firewalls and internal conflict of interest policies should be sufficient measures to avoid conflicts of interest relating to the exercise of discretion.

8. What factors are relevant in defining the proposed best execution duty?

<u>*CMIC Response*</u>*:* CMIC recommends that the way in which the best execution duty is defined under National Instrument 23-101 *Trading Rules* is an appropriate way in which to define such duty for purposes of DTFs exercising discretion.

Organizational and Governance Requirements

9. Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

<u>*CMIC Response*</u>*:* CMIC does not believe that it is appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared. If this were allowed, then a DTF could effectively establish a mandatory clearing policy. CMIC submits that it is inappropriate for a DTF to establish clearing policy and suggests that this duty rests with the regulators and not with DTFs.

10. Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

<u>CMIC Response</u>: CMIC believes that a DTF should allow participant access to whichever clearing agency or trade repository ("**TR**") such participant chooses. A DTF merely facilitates the transaction and should be limited to that role. Allowing a DTF to require transactions executed on its facility to be cleared through a particular agency would restrict the ability for market participants to use certain DTFs, if these DTFs don't provide clearing capabilities to central clearing counterparties where they are clients or members. Such an approach could easily lead to decreased trading flexibility and increased operational costs of doing business.

11. Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

<u>CMIC Response</u>: It is appropriate to allow a DTF to establish standards that must be met prior to a participant being allowed to trade on the platform. Examples of such standards include a requirement that a participant must have the minimum technical capability to trade electronically, and that a participant cannot engage in fraudulent or manipulative trading practices. Therefore, CMIC believes that it is appropriate for a DTF to have the ability to limit access. However, such standards should not include the credit worthiness of a participant. Ultimately, a DTF is not taking on the credit exposure of its participants and therefore a DTF should not limit access to participants based on credit worthiness.

12. Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

<u>CMIC Response</u>: CMIC believes that DTFs are better-suited to respond to this question.

13. Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

<u>CMIC Response</u>: CMIC believes it is appropriate that a DTF that does not exercise discretion be permitted to perform its regulatory and surveillance functions itself, provided it does not trade on its own behalf. Often, the DTF is in the best position to perform this function.

14. Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

<u>CMIC Response</u>: CMIC agrees with this proposal. DTFs have access to all market data and trading information and it would be a conflict of interest for them to be engaging in proprietary trading within the same entity that has access to such information. Appropriate walls together with separation by legal entity should be required.

15. How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

<u>CMIC Response</u>: CMIC believes that the methodology and frequency of calculation of financial resources are matters that are best left to DTFs to provide commentary. However, we note that the Giancarlo White Paper[5] points out that requiring a DTF to have financial resources in an amount that exceeds the total amount which would enable a DTF to cover operating costs for a one year period calculated on a rolling basis is inappropriate. This is the standard applicable to clearing agencies, and it is appropriate in the clearing context given the impact on the market if a clearing agency were to fail. However, if a DTF were to fail, there would not be a material impact on the market assuming there is more than one DTF for the particular products traded by the failed DTF. Giancarlo thus

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[5] Giancarlo, *supra* note 3 at 46.

argues that DTFs should be required to only hold financial resources sufficient to conduct an orderly wind-down of its operations, a view with which CMIC agrees.

Pre-trade Transparency

16. Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

CMIC Response: CMIC supports the CSA's goal of promoting pre-trade transparency and acknowledges the important benefits that may be realized through the disclosure of order information, including enhanced price discovery. At the same time, CMIC endorses the CSA's observation that enhanced pre-trade transparency may not actually achieve enhanced price discovery and agrees that it would be inappropriate to impose pre-trade transparency requirements for products that do not have sufficient liquidity to be mandated to trade on a DTF.

CMIC notes that the benefits of pre-trade transparency are generally associated with the order book model of execution, in which offers to purchase and sell derivatives products are made visible to all market participants with access to the order book. For liquid products traded via an order book, market makers will generally be willing to post offers to purchase and sell products on a continuous basis. The order book therefore assists with price discovery, insofar as it is possible for market participants to look at the order book and obtain an accurate sense of the current market price before they choose to interact with a particular market maker.

For illiquid product markets traded via an order book, however, the order book model may not always facilitate price discovery. Market makers will generally be less willing to post offers to purchase and sell securities on a continuous basis, and to the extent that such offers are posted, they will generally contain wider spreads in order to protect the market maker from downside risk. This means that the offers displayed in the order book may not reflect the best prices that a market maker is willing or able to provide, and market participants may need to look outside of the order book in order to find those prices.

While CMIC does not believe it would be appropriate for the CSA to require that bespoke or illiquid products be executed over a DTF, CMIC nevertheless supports the right of market participants to execute such products over a DTF on a voluntary basis. In these circumstances, however, CMIC does not believe that a DTF should be required to satisfy any particular disclosure requirements in order to enhance pre-trade transparency. As discussed above, mandatory pre-trade transparency would likely force a DTF into adopting an order book model that may not be appropriate given the illiquid nature of the product.

Rather, CMIC believes that market participants should be afforded the flexibility to select a DTF, execution model, and attendant levels of pre-trade transparency that are compatible with their particular circumstances. CMIC notes that this flexible approach is generally consistent with the CFTC rules, which do not impose any pre-trade transparency requirements for so-called "permitted transactions", which are not required to be executed using a SEF.

Post-trade Transparency

17. Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

CMIC Response: CMIC also supports the CSA's efforts to promote post-trade transparency. However, CMIC has serious reservations around certain of the proposed measures to promote post-trade transparency, particularly the requirement for DTFs to make real-time public reports.

Under the CSA proposal, a DTF would be required to "report to the public transactions executed on the DTF in as close to real-time as technically feasible". CMIC notes that the CSA proposal is generally silent on the rationale for requiring a DTF to make real-time public reports, which is not at all obvious given that such reports will already be provided by a TR. Moreover, the CSA proposal is generally unclear on what type of information a DTF would be required to report to the public, and whether this would include the creation data reported to a TR by a reporting counterparty under OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* ("**TR Rule**") (or the corresponding rule in other provinces), or a subset of the creation data reported to the public by a TR under the TR Rule, or alternatively some other set of information. CMIC submits that in order for market participants to properly evaluate the appropriateness of such public reports by a DTF, the CSA should provide greater clarity as to the type of information that the CSA contemplates a DTF disclosing.

To the extent that the CSA envisions a DTF reporting all or some of the creation data that is reported to a TR by a reporting counterparty, CMIC submits that such a reporting obligation should be harmonized to the fullest possible extent with public dissemination requirements applicable to TRs starting July 29, 2016. Further, CMIC submits that such a reporting obligation is not appropriate, as it does not appear to consider the mechanics of the clearing process or the separate reporting obligations of a clearing agency under the TR Rule. CMIC notes that a swap that is accepted for clearing – typically referred to as the "alpha" swap – is terminated immediately and replaced with two new swaps – usually known as the "beta" and "gamma" swaps. After the alpha swap has been terminated and replaced by beta and gamma swaps, the clearing agency becomes responsible for reporting these swaps in accordance with the reporting counterparty hierarchy in the TR Rule.

Because alpha swaps are terminated and replaced by beta and gamma swaps that are subject to full reporting by the clearing agency, CMIC submits that neither the DTF nor counterparties should be responsible for any reporting obligations in respect of alpha swaps. CMIC submits that there is little to no value in having DTFs report creation data for alpha swaps, whether through a TR or to the public directly, since they are almost immediately superseded by cleared swaps that are reported by the clearing agency. Requiring DTFs to make additional reports to the public would present negligible benefits with respect to post-trade transparency, as these reports would contain substantially the same information as the reports made by the clearing agency in respect of the gamma and beta trades.

In contrast to the minimal benefits provided by requiring a DTF to provide public reports, the costs of providing such reports would likely be high. This is highlighted by the experience of SEFs in complying with the reporting requirements in the U.S. Under CFTC rules, SEFs share responsibility for reporting alpha trades with Swap Dealers ("**SDs**")/Major Swap Participants ("**MSPs**"), with SEFs responsible for reporting the initial creation data and SDs/MSPs responsible for reporting the continuation data. These shared reporting rules have proven extremely challenging for SEFs to comply with, as they require a SEFs to report data that does not relate to execution, and thus is often outside of a SEF's possession. Moreover, SEFs and SDs/MSPs will frequently be connected to different Swap Data Repositories ("**SDRs**"), and thus will be incapable of sending data to the same location. This leads to issues of "orphaned" data, whereby part of a transaction may be reported to one SDR, and another part of the transaction may be reported to another SDR.

In order to avoid some of the difficulties that have arisen under the CFTC rules, CMIC submits that it is important that a single party be responsible for reporting a single swap transaction. For a transaction that is executed over a DTF and is subject to the clearing requirement, CMIC believes that the sole reporting party should be the clearing agency. Under CMIC's suggested approach, there would not be a public report in respect of an alpha transaction; rather, a clearing agency would report the resulting beta and gamma transactions once the alpha transaction had been taken up for clearing. For an uncleared bilateral transaction that is not subject to a clearing requirement and that is executed over a DTF, CMIC submits that one of the counterparties to the transaction should be responsible for reporting, as determined by the reporting counterparty hierarchy under the TR Rule.

CMIC notes that such an approach is generally consistent with the reporting processes contemplated under the TR Rule, and thus will be able to leverage existing reporting infrastructures developed to comply with that rule.

18. What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

CMIC Response: To the extent the CSA believes that additional public reports by a DTF are necessary, then CMIC strongly believes that such reports should be made indirectly through a TR, rather than directly by a DTF. Because there may ultimately be a number of different DTFs operating in the Canadian marketplace, requiring DTFs to disclose information to the public directly would mean that information would be fragmented across a number of venues, frustrating the ability of regulators and market participants to quickly and easily gain a complete view of the market. In addition, requiring DTFs to disclose information to the public directly may impair the quality of data, insofar as different DTFs may have different standards and practices for reporting.

19. & 20. When should deferred publication of trade information be permitted? Are there circumstances other than block trades? Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

CMIC Response: As suggested in its response letter to CSA Staff Notice 91-302 *Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting*, CMIC is strongly of the view that the CSA's public reporting rules should provide for delays in the disclosure of large notional or "block" transactions. Disclosure of block transactions on an immediate or real-time basis may have a negative impact on the proper functioning of the market by impeding the ability of a dealer to hedge its risk exposures. For trades in illiquid products, a dealer will often require more time than T+1 to hedge its risk exposures. If the details of a transaction are disseminated to the public prior to a dealer having completed its hedge, the dealer may face increased costs in executing the hedge, since market participants can potentially trade against the dealer's position. These higher costs may either get passed on to end users in the form of wider spreads, or may deter dealers from participating in such transactions altogether, reducing liquidity in already illiquid product markets. Similarly, for trades in illiquid products, buy-side participants may seek to execute a large position by spreading the trade across multiple dealers. If details of a transaction are disseminated to the public prior to the buy-side participant having completed its trades, the buy-side participant may face increased costs in executing its trades since market participants can potentially trade against the buy-side participant's position.

CMIC submits that it is necessary for the CSA to adopt rules providing for delays in disclosure, comparable to those found in the U.S. Under CFTC rules, counterparties to transactions with notional values above certain minimum block sizes set by the CFTC will be permitted delays in reporting their transactions to the public. Formulating the appropriate thresholds for Canada can only be done after a significant study of trade reporting data in Canada.

21. What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the U.S. CFTC rules in 17 CFR 16.01).

CMIC Response: In addition to real-time public reports, the CSA proposal suggests that DTFs would be required to provide "certain market information, to be determined by the Committee, to the general public at no charge on a delayed basis". The CSA proposal indicates that a similar requirement exists under CFTC rules, where a SEF/Designated Contract Market ("**DCM**") is required to make public "timely information on price, trading volume, and other trading data on swaps". The required elements for publication by a SEF/DCM are set forth in 17 CFR 16.01.

As in the case of real-time public reporting, CMIC notes that the CSA proposal is generally silent on the rationale for requiring a DTF to separately publish information to the public on a delayed basis, when such information would presumably be available from a TR on a real-time basis. Again, the CSA proposal provides little colour on the information that would be published by the DTF on a delayed basis, making it difficult for market participants to evaluate the need for such reporting.

To the extent the CSA has patterned this requirement on the corresponding CFTC rules, CMIC submits that the CFTC rules may not, in this instance, provide an appropriate comparator. CMIC notes that there has been a longstanding requirement for DCMs to report such information under CFTC rules, and it is possible that the CFTC expanded this requirement to SEFs in order to minimize differences in treatment between SEFs and DCMs. Because the CSA regime does not contain a direct analogue to DCMs, CMIC does not believe that the consistency rationale would be applicable in the Canadian marketplace. Accordingly, CMIC strongly urges that the CSA consider deleting the requirement.

Provided the CSA determines that public reporting by a DTF on a delayed basis is necessary, CMIC believes that the information required to be reported by DTFs should be the same information as is required under the CFTC rules. Aligning the CSA's disclosure requirements with the CFTC rules is in keeping with the general principle of harmonization, and would provide market participants with access to consistent data across the Canadian and U.S. regimes, facilitating comparison and analysis. It may also reduce the likelihood of certain manipulative trading practices, including the reverse engineering of a market participant's positions, which may occur in the event there are gaps between the Canadian and U.S. disclosure requirements.

22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

CMIC Response: With respect to disclosure of transactional information to a DTF's participants, CMIC does not believe that a DTF should be required to report information to its participants. On the contrary, CMIC suggests that the CSA adopt similar rules to those promulgated by the CFTC, which circumscribe the ability of a SEF to disclose transactional information to its participants.

Under CFTC Rules, a SEF is prohibited from disclosing transactional information to its participants *prior to* having reported that information to an SDR for dissemination to the public. Notwithstanding this prohibition, a SEF is permitted to make such information available to its participants *at the same time* as it reports to an SDR, provided that: (i) disclosure is made to the SEF's participants only; (ii) the participants are given advance notice of such disclosure; and (iii) the disclosure is non-discriminatory (i.e. disclosure is made to all of the SEF's participants). The prohibition against disclosure prior to reporting to an SDR is often referred to as the "embargo rule", and is intended to ensure that swap transaction and pricing data is disseminated uniformly and not in a manner that creates unfair competitive advantages for particular market participants.

As concerns regarding unfair competitive advantages and trading practices are equally salient in the Canadian marketplace, CMIC submits that a similar restriction on disclosure prior to public dissemination should be adopted. A requirement to send swap transaction and pricing data (for certainty, excluding information that may identify parties) to a DTF's participants simultaneously with the TR releasing such information pursuant to the TR's public disclosure obligations will reduce potential inequities between market participants, and will incentivize faster reporting to TRs. Notwithstanding that CMIC supports circumscribing a DTF's right to disclose information to its participants, it strongly believes that DTFs should be permitted to make such disclosure. Allowing the DTF's participants to see last trade information will generally enhance post-trade transparency and the price discovery process, and may potentially have positive effects from a liquidity perspective.

Trading Mandate

23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

<u>CMIC Response</u>*:* In CMIC's view, the CSA's proposed criteria for determining whether a derivative will be subject to a DTF trading mandate are appropriate. CMIC urges the CSA to consider the relative weighting of the criteria and suggests that some factors should be given more weight than others. For example, whether a derivative is liquid may be a more important factor than whether a derivative is trading on a SEF. Furthermore, each aspect of the criteria should be viewed as a separate determination. Whether a trade is mandated for clearing or not is separate and apart from a determination as to whether such trade should be required to go through a DTF, where a range of appropriate exemptions should be available. (See our answers to Question 25 below). To this end, CMIC submits that any class of derivatives required to be executed over DTFs must be first subject to an applicable clearing obligation as a condition precedent, regardless of the determinations made against the remaining criteria for that class of derivative.

Most importantly, CMIC endorses the co-operative consultative process with all Canadian regulators (noted by the CSA in Section 10(a) of the Consultation Paper) as being particularly valuable in the determination of which trades should be mandated for trading on DTFs.

24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

<u>CMIC Response</u>*:* As mentioned in response to Question 23, CMIC submits that any class of derivatives required to be executed over DTFs must be first subject to an applicable clearing obligation as a condition precedent, regardless of the determinations made against the remaining criteria for that class of derivative. It is therefore very difficult for CMIC to comment on this without knowing which derivatives will be mandated for clearing. Further, there is very limited trade information available to determine liquidity. It is CMIC's view that this can only be determined once a significant amount of trade reporting data is available to the regulators and then studied to determine liquidity. Moreover, CMIC believes that since, for the time being, the regulators alone are able to see the aggregate trade reporting data, only the regulators are in a position to identify which derivatives should be mandated.

25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

CMIC Response: . With regard to the first part of this question, please see our response under Question 24. Also, CMIC submits that, to learn from problems encountered in other jurisdictions, Package Transactions should not be subject to mandatory trading on a DTF. A Package Transaction refers to a transaction involving two or more instruments:

- executed between two (or more) counterparties;
- priced or quoted as one economic transaction with simultaneous execution of all components;
- having at least one component that is subject to the DTF execution requirement; and
- where the execution of each component is contingent upon the execution of all other components.

A Package Transaction, as described above, includes at least one component which, on a standalone basis, would be subject to mandatory DTF execution. We submit that, when included as an integral part of a Package Transaction, such component (and the Package Transaction as a whole) should not be subject to mandatory execution on a DTF. Taking our recommended approach should not be an impediment to foreign platforms seeking to be recognized, or seeking an exemption from recognition, in Canada if Package Transactions are treated differently under foreign rules applicable on such foreign platforms.

Imposing the DTF execution requirement on individual components which are part of a Package Transaction would result in increased costs and risks to market participants. Trading the components of a Packaged Transaction separately and on different venues (i.e. partly on and partly off a DTF) can result in higher costs and greater risks due to timing differences, with the possibility of the market moving between the execution of each component, and differences in transaction specifications, mode of execution, clearing/settlement workflows and relative liquidity, as compared to simultaneous execution using a single execution method.

If a component of a Package Transaction is required to be separately executed on a DTF, the increased cost and risk could render the transaction uneconomic. This negative outcome is not outweighed by price transparency considerations, since the pricing of a component traded as part of a Package Transaction may not be comparable to the pricing of the same type of transaction on a standalone basis.

With respect to the categories of market participants that should be exempt from a trading mandate, it is CMC's view that an end-user exemption should be available, and that the exemption should align with the end-user exemptions under the mandatory clearing rule. In addition, CMIC supports an inter-affiliate exemption from mandatory trading on a DTF. Subjecting inter-affiliate OTC derivatives to mandatory DTF execution requirements would impose unnecessary costs and impede the efficient transfer and management of risks among affiliates, without any discernible benefits. Execution through an RFQ system would not be efficient for inter-affiliate transactions, since RFQ recipients affiliated with the requestor could not be counted toward the minimum number of recipients, while execution through an order book would not ensure that the affiliates' trading interest is matched. The benefits of DTF execution in terms of promoting price discovery are not compelling in the case of inter-affiliate trades, since competitive pricing is not necessarily a primary objective in inter-affiliate transactions.

26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

CMIC Response: As mentioned in our response to Question 24, it is CMIC's view that the regulators alone should determine which derivatives should be required to trade on a DTF and therefore we do not believe that a DTF should have the power to make such determination. CMIC notes that DTFs will always have the ability to provide commentary on proposed trading mandates along with the rest of the public. Further, we note the "made available to trade" ("**MAT**") determination process under CFTC rules (whereby a SEF may submit a MAT determination for products to be mandatorily traded on a SEF and the CFTC may only deny the submission it if is inconsistent with the Commodity Exchange Act or CFTC regulations) has come under criticism. As noted in the Giancarlo White Paper,[6] the MAT process is problematic because it may force swaps to trade through a limited number of execution methods even where those swaps lack the liquidity needed to support such trading. Moreover, in the U.S., because the MAT process is controlled by SEFs, a relatively new SEF could gain a first-mover advantage by forcing a particular product to trade through restrictive methods of execution on the SEF. In other words, the decision of one platform could bind the entire market.[7]

27. What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

CMIC Response: CMIC does not believe that the CSA should be prescriptive in requiring pre-trade transparency requirements. It is CMIC's view that imposing pre-trade requirements would reduce liquidity and reduce flexibility with respect to execution methods.

28. For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

CMIC Response: CMIC submits that such thresholds will need to be determined in conjunction with public dissemination requirements applicable to TRs starting July 29, 2016. A thoughtful review based on a proper analysis of Canadian market data over an extended period of time is necessary to determine the appropriate approach to public dissemination of trade information for the Canadian market. This analysis of Canadian market data can be done only by the regulators, as they alone have access to market-wide data via the TR. Further, this type of analysis will require the assessment of competitively sensitive data, such as block trade data and participant concentrations. Once regulators have performed this analysis after a sufficient period of reliable data is available through trade reporting and determined an approach to public dissemination of trade information, market participants should be consulted. It is CMIC's view that firms acting as market makers would be negatively impacted by regulators adopting in Canada the same thresholds and caps that exist under CFTC rules, given that most instruments in Canada are not as liquid as in the U.S. Market makers would be negatively impacted if the data could be manipulated to conclude that a specific transaction had been executed. This would impair the ability to manage risk which would adversely affect market liquidity, widen bid-offer spreads, reduce efficiency or make the trade not viable. End users looking for hedging solutions would be adversely impacted as a result.

29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

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[6] Giancarlo, *supra* note 3 at 29.

[7] Giancarlo, *supra* note 3 at 30.

CMIC Response: As mentioned, it is CMIC's view that the CSA should adopt a flexible approach to execution methods. As noted in the Giancarlo White Paper,[8] the markets would be best served by not limiting trading to specific execution methods. Providing flexibility will allow markets to develop "rationally and organically"[9] as a result of specific product characteristics and liquidity profiles. Further, it would allow execution methods to be tailored to the liquidity characteristics of the specific swap product.

30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

CMIC Response: It is CMIC's view that the CSA should consider including the concept of clearing certainty within their DTF rules to allow for greater market access, impartial access and usage of the platform. Market participants executing Intended to be Cleared ("**ITBC**") swaps on a DTF should not be exposed to unnecessary market risk as a result of processing latency outside of their direct control or credit breaches at the clearing agency or their clearing broker.

The CFTC brought much clarity to the marketplace through the issuance of a number of policy statements, such as clearing agencies are required to accept or reject trades submitted for clearing within 10 seconds and that any ITBC swaps that are executed on a SEF and that are not accepted for clearing should be void ab initio (as if it never existed). The CFTC required SEFs to have rules to this effect.

Clearing certainty requires the necessary Straight-Through Processing ("**STP**") framework and the operational framework to resolve rejected ITBC trades due to operational errors. The absence of this framework introduces risk into the system. The necessary STP framework should include a pre-trade credit check to ensure that a bona fide trade is executed on a DTF, an executed trade on a DTF should be sent electronically to the clearing agency and the clearing agency response in turn should accept or reject the trade within 10 seconds. There are some cases where STP may not be feasible (trades executed off-DTF) that are then subsequently entered on the DTF, or package trades where one component is on a DTF and another leg is executed off-DTF, requires careful consideration within this framework. An operational framework that does not deal with trades that are rejected from clearing due to clerical or operational reasons creates additional market and execution risk, if there is no opportunity to re-submit the trade. After a market participant executes a swap, the participant hedges its risk with other swaps. If the swap is declared void and the participant has no opportunity to resubmit, the participant will not be correctly hedged and left with facing unwanted market direction and/or execution risk.

General

31. Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the U.S. and the E.U. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

CMIC Response: The Canadian market, relative to the global market, is very small with limited liquidity. It is CMIC 's view that the regulators should evaluate the Canadian OTC derivatives market over a period of time after a sufficient period of receiving reliable trade reporting data so that the regulators can carefully consider whether DTF rules are necessary in Canada and what those rules should be. If this is the case, we do not believe it is economical nor beneficial to take the time to

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[8] *Ibid* at 31.

[9] Ibid.

develop DTF rules if there will not be any trades with sufficient liquidity to be mandated to trade on a DTF. It would be unfortunate and counterproductive to formulate DTF rules in Canada that deter foreign SEFs from participating in the Canadian market.

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CMIC welcomes the opportunity to discuss this response with you. The views expressed in this letter are the views of the following members of CMIC:

Bank of Montreal
Bank of Tokyo-Mitsubishi UFJ (Canada)
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Deutsche Bank A.G., Canada Branch
Fédération des Caisses Desjardins du Québec
HSBC Bank Canada
JPMorgan Chase Bank, N.A., Toronto Branch
Manulife Financial Corporation
National Bank of Canada
OMERS Administration Corporation
Ontario Teachers' Pension Plan Board
Public Sector Pension Investment Board
Royal Bank of Canada
Sun Life Financial
The Bank of Nova Scotia
The Toronto-Dominion Bank

Comité de l'infrastructure du marché canadien

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Commission des valeurs mobilières du Manitoba
Commission des services financiers et des services aux consommateurs du Nouveau-Brunswick
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Le 30 mars 2015

Objet : Document de consultation 92-401 des Autorités canadiennes en valeurs mobilières (« ACVM ») : Plateformes de négociation de dérivés (« PND ») (le « document de consultation »)

INTRODUCTION

Le Comité de l'infrastructure du marché canadien (Canadian Market Infrastructure Committee) (« **CMIC** »)[1] se réjouit de l'occasion qui lui est donnée de présenter des observations sur le document de consultation.[2]

[1] Le CMIC a été créé en 2010, en réponse à une demande des pouvoirs publics, pour représenter les points de vue consolidés de certains participants au marché canadien sur les changements proposés à la réglementation. Les membres du CMIC responsables de la présente lettre sont : la Banque de Montréal, Bank of Tokyo-Mitsubishi UFJ (Canada), la Caisse de dépôt et placement du Québec, l'Office d'investissement du Régime de pensions du Canada, la Banque Canadienne Impériale de Commerce, la succursale canadienne de Deutsche Bank A.G., la Fédération des Caisses Desjardins du Québec, la Banque HSBC Canada, la succursale de Toronto de JPMorgan Chase Bank, N.A., Société Financière Manuvie, la Banque Nationale du Canada, OMERS Administration Corporation, le Régime de retraite des enseignantes et des enseignants de l'Ontario, l'Office d'investissement des régimes de pensions du secteur public, la Banque Royale du Canada, Financière Sun Life, La Banque de Nouvelle-Écosse et La Banque Toronto-Dominion. Le CMIC apporte une voix unique dans le dialogue concernant le cadre approprié de réglementation du marché des dérivés de gré à gré au Canada. La composition du CMIC a été volontairement établie pour présenter les points de vue aussi bien du côté « achat » que du côté « vente » du marché canadien des dérivés de gré à gré, y compris les banques nationales et étrangères actives au Canada. À l'instar de tous ses mémoires, la présente lettre se veut l'opinion générale de tous les membres du CMIC quant au cadre approprié de réglementation du marché des dérivés de gré à gré au Canada.

[2] Autorités canadiennes en valeurs mobilières « Document de consultation 92-401 des ACVM – Plateformes de négociation de dérivés » (2015). Disponible à l'adresse suivante : http://www.lautorite.qc.ca/files//pdf/consultations/derives/mars-2015/2015janv29-92-401-consultation-fr.pdf.

Le CMIC appuie les ACVM dans les efforts qu'elles déploient pour honorer l'engagement que le Canada a pris dans le cadre du G20 voulant que les dérivés de gré à gré réguliers doivent être échangés sur des bourses ou des plateformes de négociation électronique. Le document de consultation, qui donne de l'information générale détaillée sur les PND et les notions correspondantes, a été fort utile dans le cadre de notre examen des questions.

Commentaires généraux

D'abord, reconnaissant l'engagement du Canada dans le cadre du G20, le CMIC soutient qu'il est primordial de reconnaître le caractère unique du marché canadien, notamment sa taille relativement modeste et sa liquidité limitée, à tel point que la négociation obligatoire sur des PND n'est peut-être pas justifiée ou ne devrait peut-être s'appliquer que de façon très limitée. L'obligation de négocier sur des PND au Canada n'est donc peut-être pas nécessaire. Une telle position au Canada n'est pas contraire à l'engagement que le Canada a pris dans le cadre du G20 quant à la déclaration et à la compensation de dérivés. Si toutefois les autorités de réglementation estiment qu'il est nécessaire d'établir une obligation de négociation sur des PND, nous vous invitons à lire ci-après nos réponses à vos questions.

Le CMIC soutient en outre qu'il est important que les autorités de réglementation trouvent une solution pour les PND étrangères, comme les plateformes d'exécution de swaps (« **PES** ») et les systèmes organisés de négociation (« **SON** »), qui repose sur une conformité substitutive à l'égard des territoires étrangers, encourageant ainsi les PND étrangères à offrir leurs services sur le marché canadien. L'adoption d'une réglementation proprement canadienne pourrait bien pousser les PND étrangères à choisir de ne pas participer au marché canadien, privant ainsi les participants au marché canadien d'un accès à la liquidité du marché mondial.

De plus, comme nous l'avons mentionné dans nos mémoires antérieurs, le CMIC soutient que l'harmonisation entre toutes les provinces (y compris l'harmonisation de la date d'effet), et avec les règles mondiales sur les dérivés est primordiale. Compte tenu de la taille relativement modeste du marché des dérivés de gré à gré canadien par rapport au marché mondial, le régime de PND canadien ne doit pas être incompatible avec les règles mondiales ni imposer un fardeau indu aux PND étrangères, ce qui placerait les participants au marché canadien dans une position désavantageuse sur le plan de la concurrence. Le régime de PND canadien ne doit bien sûr pas limiter ni restreindre la capacité d'une PND de se conformer aux règles de PES aux termes de la loi intitulée *Dodd-Frank Act* ou aux règles des SON aux termes de l'European Market Infrastructure Regulation.

Un autre aspect de l'harmonisation auquel le CMIC souscrit est l'harmonisation des règles de gouvernance des PND avec la législation en valeurs mobilières existante relative aux systèmes de négociation parallèle. S'agissant dans les deux cas de systèmes de négociation, leurs règles de gouvernance devraient être en substance analogues.

Le CMIC est aussi d'avis que le régime de PND doit rester aussi souple que possible, notamment en ce qui a trait aux méthodes d'exécution, de manière à ce qu'il puisse aisément s'ajuster aux variations de liquidité d'un produit au fil du temps. On ne saurait notamment avoir des règles exclusivement canadiennes qui entraveraient la négociation sur une plateforme étrangère, d'une part, sans, d'autre part, compromettre la souplesse ou l'harmonisation à l'égard des protocoles mondiaux. Les règles canadiennes doivent impérativement tenir compte de la taille relativement modeste du marché canadien et de la liquidité beaucoup plus limitée des produits canadiens.

Ces quatre notions sont plus amplement décrites ci-après dans nos réponses à vos questions.

Réponses aux questions du document de consultation

Définition de « plateforme de négociation de dérivés »

Question 1 : La catégorie de PND est-elle correctement définie? Sinon, quels changements faut-il y apporter et pour quelles raisons?

Réponse du CMIC : Le CMIC est d'avis que la définition doit être ainsi modifiée « ... un système, une plateforme ou un marché de négociation... ». La définition correspondrait alors plus étroitement à la définition d'une PES au sens de la loi intitulée *Dodd-Frank Act* et serait, à notre avis, plus claire. Nous proposons en outre d'ajouter à la fin de la définition, « et à l'exclusion des plateformes exploitées par un courtier unique ».

Question 2 : Convient-il d'accorder aux exploitants de PND un certain pouvoir discrétionnaire sur l'exécution des opérations? Motivez votre réponse. Le cas échéant, le pouvoir discrétionnaire devrait-il n'être accordé que pour la négociation de produits qui ne sont pas visés par l'obligation de négociation sur une PND?

Réponse du CMIC : Le CMIC est d'avis que les exploitants de PND doivent avoir un certain pouvoir discrétionnaire sur l'exécution des opérations, qu'elles doivent ou non être négociées sur une PND, pour peu que ce pouvoir discrétionnaire soit exercé de manière conforme à l'obligation de meilleure exécution proposée dont il est question dans notre réponse à la question 8 ci-après. Le CMIC estime que les exploitants de PND doivent avoir un certain pouvoir discrétionnaire (pourvu que chaque client approuve ce pouvoir discrétionnaire pour ses opérations) dans les cas suivants : pour fixer le moment de la saisie des ordres d'un participant, déterminer les participants auxquels communiquer les demandes de cotation, déterminer les ordres ou les demandes de cotation qui sont appariés avec d'autres ordres ou cotations et établir l'ordre et le moment de l'appariement et la méthode d'exécution. Donner ces pouvoirs discrétionnaires aux exploitants de PND leur donnera une plus grande marge de manœuvre quant aux méthodes d'exécution et leur permettra de chercher un marché plus liquide pour un type d'opérations en particulier.

Méthodes d'exécution autorisées

Question 3 : La description des méthodes d'exécution autorisées pour une PND convient-elle aux plateformes qui permettent actuellement ou qui envisagent de permettre la négociation de dérivés de gré à gré?

Réponse du CMIC : La description des méthodes d'exécution autorisées pour une PND convient, de l'avis du CMIC, aux PND qui permettent actuellement la négociation de dérivés de gré à gré. Toutefois, nous espérons et nous nous attendons à ce que les PND fassent elles-mêmes une analyse plus approfondie dans leur réponse à la présente question.

Question 4 : Veuillez commenter les modes d'exécution exigés. Faudrait-il prescrire une fonctionnalité de négociation minimale pour l'ensemble des PND?

Réponse du CMIC : Le CMIC recommande aux ACVM de ne pas prescrire une fonctionnalité de négociation minimale. Restreindre la négociation à des méthodes d'exécution comparables à celles utilisées sur le marché des contrats à terme, comme un registre des ordres, plutôt que d'autoriser diverses méthodes d'exécution, ne convient probablement pas compte tenu des caractéristiques de liquidité du marché canadien et pourrait ouvrir la voie à des opérations à haute fréquence ou abusives. Le CMIC croit fermement qu'un large éventail de méthodes d'exécution devrait être permis, qu'il y ait ou non obligation de négociation. Comme le souligne dans son livre blanc[3] le commissaire J. Christopher Giancarlo de la Commodity Futures Trading Commission (« **CFTC** »), « les caractéristiques de liquidité particulières d'un produit de swap déterminent la technologie et la méthodologie d'exécution, qui peuvent évoluer ». C'est pourquoi il propose que ce « continuum de liquidité » nécessite des méthodes d'exécution variables[4], et le CMIC appuie ce point de vue.

[3] J. Christopher Giancarlo, "Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank" (2015), online: CFTC <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

[4] Giancarlo, *supra*, note 3 à la p. 26.

Autorisation réglementaire des PND

Question 5 : Le cadre réglementaire proposé pour les PND est-il approprié?

Réponse du CMIC : Le CMIC est d'avis que les PND sont les mieux placées pour répondre à cette question. Toutefois, dans la mesure où un Canadien utilise une PND étrangère, cette PND étrangère ne devrait pas être tenue de s'inscrire au Canada et de se conformer au cadre réglementaire proposé, dans la mesure où cette PND étrangère est assujettie à un cadre de surveillance équivalent dans un territoire approuvé. Permettre une telle dispense en fonction de chaque territoire plutôt qu'en fonction de chaque PND, serait la solution réglementaire la plus efficace, car elle dégage les PND étrangères de l'obligation de faire leur propre demande de dispense. Les participants au marché canadien ne seraient pas ainsi privés de l'accès à des PND étrangères et à la liquidité du marché mondial. Le CMIC craint qu'une telle multiplication des exigences réglementaires puisse bien inciter les PND étrangères à restreindre l'accès au marché canadien ou à se retirer tout à fait du marché canadien.

Question 6 : Convient-il d'imposer des obligations applicables aux courtiers aux PND dont l'exploitant exerce un pouvoir discrétionnaire sur l'exécution des opérations? Veuillez fournir des explications. Dans l'affirmative, faudrait-il obliger ces PND à s'inscrire comme courtiers ou leur imposer seulement certaines des obligations des courtiers? Lesquelles?

Réponse du CMIC : Le CMIC est d'avis que les PND sont les mieux placées pour répondre à cette question. Toutefois, dans la mesure où les obligations des courtiers s'appliquent dans le cas de l'exercice d'un pouvoir discrétionnaire, ces obligations ne devraient pas s'appliquer aux PND étrangères si elles sont assujetties à un cadre de surveillance équivalent dans un territoire approuvé.

Question 7 : Compte tenu des conflits d'intérêts, les PND qui exercent un pouvoir discrétionnaire sur l'exécution des opérations devraient-elles être tenues d'exercer cette fonctionnalité dans une société distincte du même groupe? Motivez votre réponse.

Réponse du CMIC : Le CMIC est d'avis qu'il n'est pas nécessaire d'obliger les PND qui exercent un pouvoir discrétionnaire à ne le faire que dans le cadre d'une société distincte du même groupe. Le CMIC soutient que les pare-feu usuels et les politiques en matière de conflits d'intérêts internes devraient constituer des mesures suffisantes pour éviter les conflits d'intérêts quant à l'exercice d'un pouvoir discrétionnaire.

Question 8 : Quels facteurs sont pertinents pour définir l'obligation de meilleure exécution proposée?

Réponse du CMIC : Le CMIC recommande que la définition de l'obligation de meilleure exécution au sens du *Règlement 23-101 sur les règles de négociation* est une définition appropriée de cette obligation aux fins de l'exercice d'un pouvoir discrétionnaire des PND.

Obligations organisationnelles et de gouvernance

Question 9 : Convient-il de permettre aux PND d'exiger la compensation de toutes les opérations qui y sont exécutées et qui peuvent être compensées?

Réponse du CMIC : Le CMIC estime qu'il n'est pas approprié de permettre aux PND d'exiger la compensation de toutes les opérations qui y sont exécutées et qui peuvent être compensées. Si on devait le leur permettre, les PND pourraient alors effectivement établir une politique de compensation obligatoire. Le CMIC soutient qu'il n'est pas approprié que des PND établissent une politique de compensation et estime qu'il revient aux autorités de réglementation de le faire et non pas aux PND.

Question 10 : Convient-il d'autoriser les PND à exiger que les opérations qui y sont exécutées soient compensées par une chambre de compensation en particulier ou déclarées à un référentiel central en particulier?

Réponse du CMIC : Le CMIC estime que les PND devraient permettre aux participants de choisir la chambre de compensation ou le référentiel central (« **RC** ») de leur choix. Les PND ne font que faciliter l'opération et devraient être limitées à ce rôle. Autoriser une PND à rendre obligatoire la compensation des opérations exécutées sur sa plateforme par une chambre de compensation en particulier restreindrait la capacité des participants au marché d'utiliser certaines PND, si ces PND n'offrent pas de services de compensation aux contreparties centrales dont elles sont clients ou membres. Une telle solution pourrait facilement mener à une perte de souplesse de négociation et à une augmentation des coûts opérationnels pour faire des affaires.

Question 11 : Convient-il que les PND qui exercent un pouvoir discrétionnaire sur l'exécution des opérations soient autorisées à restreindre l'accès à leur plateforme? Dans l'affirmative, pour quels motifs?

Réponse du CMIC : Il est approprié de permettre aux PND d'établir des normes à respecter avant qu'un participant ne soit autorisé à y faire exécuter des opérations. Les normes possibles comprennent, notamment une obligation de compétence technique minimale des participants pour exécuter des opérations par voie électronique et une obligation pour les participants de ne pas se livrer à des pratiques de négociation frauduleuses ou manipulatoires. C'est pourquoi le CMIC estime qu'il est approprié que les PND aient la possibilité de limiter l'accès à leur plateforme. Ces normes ne devraient toutefois pas inclure une norme de solvabilité d'un participant. Les PND ne sont en définitive pas exposées au risque d'insolvabilité de leurs participants et ne devraient donc pas limiter l'accès aux participants en fonction de considérations de solvabilité.

Question 12 : Les obligations organisationnelles et de gouvernance sont-elles appropriées? Le comité devrait-il envisager d'autres obligations organisationnelles et de gouvernance?

Réponse du CMIC : Le CMIC est d'avis que les PND sont les mieux placées pour répondre à cette question.

Question 13 : Convient-il que les PND qui n'exercent pas de pouvoir discrétionnaire sur l'exécution soient autorisées à se charger de leurs fonctions de réglementation et surveillance ou faudrait-il les obliger à engager un fournisseur de services de réglementation à cette fin dans tous les cas? Veuillez fournir des explications.

Réponse du CMIC : Le CMIC estime qu'il est approprié d'autoriser les PND qui n'exercent pas de pouvoir discrétionnaire à se charger de leurs fonctions de réglementation et de surveillance, à la condition qu'elles n'exécutent pas des opérations pour leur propre compte. Souvent, les PND sont les mieux placées pour se charger de ces fonctions.

Question 14 : Approuvez-vous la proposition d'interdire aux exploitants de PND de conclure des opérations sur leur plateforme pour compte propre? Veuillez fournir des explications.

Réponse du CMIC : Le CMIC est d'accord avec cette proposition. Les exploitants de PND ont accès à l'ensemble des données du marché et de l'information sur les opérations et ils se placeraient en position de conflit d'intérêts s'ils exécutaient des opérations pour compte propre au sein de la même entité qui a accès à cette information. Des murs appropriés et des séparations entre les entités juridiques devraient être exigés.

Question 15 : Comment évaluer la suffisance des ressources financières d'une PND? Veuillez commenter la méthodologie et la fréquence du calcul.

Réponse du CMIC : Le CMIC estime que les PND sont les mieux placées pour commenter la méthodologie et la fréquence du calcul de leurs ressources financières. Nous vous référons toutefois au livre blanc[5] de M. Giancarlo selon lequel il serait inapproprié d'obliger les PND à avoir des ressources financières d'un montant supérieur au montant total dont elles ont besoin pour couvrir les charges d'exploitation pour une période continue d'une année. Il s'agit de la norme applicable aux chambres de compensation, et elle est appropriée dans le cadre de la compensation compte tenu des répercussions que la défaillance d'une chambre de compensation pourrait avoir sur le marché. Toutefois, la défaillance d'une PND n'aurait que des répercussions négligeables sur le marché dans l'hypothèse où il existe plus d'une PND pour les produits visés négociés sur la PND défaillante. C'est pourquoi M. Giancarlo fait valoir que les PND ne devraient être tenues de détenir que les ressources financières suffisantes pour procéder à une réduction progressive ordonnée de leurs opérations, avis que partage le CMIC.

[5] Giancarlo, *supra*, note 3 à la p. 46.

Transparence avant les opérations

Question 16 : Les obligations de transparence avant les opérations devraient-elles s'appliquer aux dérivés de gré à gré qui sont négociés sur des PND, mais ne sont pas visés par l'obligation de l'être? Dans l'affirmative, quelles obligations devraient s'appliquer et faudrait-il prévoit des dispenses?

Réponse du CMIC : Le CMIC souscrit à l'objectif des ACVM de promouvoir la transparence avant les opérations et reconnaît les grands avantages de la divulgation d'information sur les ordres, notamment une amélioration de la formation des cours. Le CMIC partage par ailleurs l'avis des ACVM selon lequel une transparence avant les opérations plus rigoureuse peut ne pas aboutir à une réelle amélioration de la formation des cours, et convient qu'il serait inapproprié d'imposer des obligations de transparence avant les opérations pour que des produits ayant une liquidité insuffisante soient obligés de négocier sur une PND.

Le CMIC souligne que les avantages de la transparence avant les opérations sont en général associés à un modèle d'exécution fondé sur un registre des ordres auquel tous les participants au marché y ayant accès peuvent voir les offres d'achat et de vente de dérivés. Pour les produits liquides négociés selon un registre des ordres, les teneurs de marché seront en général disposés à afficher des offres d'achat et de vente de produits en continu. Le registre des ordres contribue ainsi à la formation des cours, dans la mesure où les participants au marché peuvent consulter le registre des ordres et se faire une bonne idée des cours en vigueur avant de choisir un teneur de marché en particulier.

En revanche, pour les produits non liquides négociés selon un registre des ordres, ce modèle d'exécution peut dans certains cas ne pas contribuer à la formation des cours. Les teneurs de marché seront en général moins disposés à afficher des offres d'achat et de vente de titres en continu, et si de telles offres sont affichées, elles contiendront en général de plus larges écarts visant à protéger le teneur de marché contre le risque de perte en cas de baisse. Autrement dit, les offres affichées dans un registre des ordres peuvent ne pas rendre compte des meilleurs cours qu'un teneur de marché veut ou peut offrir, et les participants au marché peuvent alors être obligés de chercher ces cours ailleurs que dans le registre des ordres.

Même si le CMIC estime qu'il ne serait pas approprié que les ACVM imposent une obligation de négociation sur une PND pour des produits non liquides ou sur mesure, le CMIC défend néanmoins le droit des participants au marché de choisir de faire exécuter ou non ces produits sur une PND. Dans ces circonstances toutefois, le CMIC ne croit pas qu'il faille imposer aux PND des obligations d'information particulières visant à améliorer la transparence avant les opérations. Comme il est indiqué ci-dessus, la transparence avant les opérations obligatoire obligerait vraisemblablement les PND à adopter un modèle fondé sur un registre des ordres qui peut ne pas être approprié en raison de la nature non liquide du produit.

Le CMIC est plutôt d'avis que les participants au marché doivent avoir la faculté de choisir une PND, un modèle d'exécution et des niveaux corollaires de transparence avant les opérations selon leur situation particulière. Le CMIC soutient que cette formule variable est généralement conforme aux règles de la CFTC, qui n'imposent pas d'obligations de transparence avant les opérations pour les opérations dites « autorisées », qui ne doivent pas obligatoirement être exécutées sur une PES.

Transparence après les opérations

Question 17 : Les obligations de transparence après les opérations proposées (qui comprennent la déclaration des opérations en temps réel ainsi que la déclaration quotidienne au public de certaines données) conviennent-elles aux PND?

Réponse du CMIC : Le CMIC soutient également les efforts des ACVM pour une meilleure transparence après les opérations. Le CMIC a toutefois de sérieuses réserves quant à certaines mesures proposées à cet égard, notamment l'obligation pour les PND de produire des rapports publics en temps réel.

Selon la proposition des ACVM, les PND seraient tenues « de déclarer au public les opérations exécutées sur leur plateforme en temps réel, dans la mesure où les moyens techniques le permettent ». Le CMIC observe que la proposition des ACVM est généralement muette quant au fondement de l'obligation pour les PND de produire des rapports publics en temps réel, chose d'autant plus incompréhensible que ces rapports seront déjà produits par un RC. La proposition des ACVM n'est en général pas non plus explicite quant au type d'information que les PND seraient tenues de déclarer au public, ni quant à savoir si cette obligation comprendrait les données à communiquer à l'exécution à un RC par une contrepartie déclarante aux termes du *Règlement 91-507 sur les référentiels centraux et la déclaration de données sur les dérivés* (le « **Règlement sur les RC** ») de l'Autorité des marchés financiers (ou le règlement correspondant dans les autres provinces), ou un sous-ensemble des données à communiquer à l'exécution au public par un RC aux termes du Règlement sur les RC, ou encore un autre ensemble de données. Le CMIC soutient que les ACVM doivent être plus explicites quant au type d'information que devraient contenir les rapports publics des PND afin que les participants au marché puissent en évaluer adéquatement le caractère approprié.

Si les ACVM sont d'avis que les PND doivent déclarer la totalité ou une partie des données à communiquer à l'exécution à un RC par une contrepartie déclarante, le CMIC soutient qu'une telle obligation d'information devrait autant que possible être harmonisée aux obligations de diffusion publique applicables aux RC à partir du 29 juillet 2016. Le CMIC soutient en outre qu'une telle obligation d'information n'est pas appropriée puisqu'elle ne semble pas tenir compte des rouages du processus de compensation ni des obligations d'information distincte d'une chambre de compensation aux termes du Règlement sur les RC. Le CMIC souligne qu'un swap qui est accepté aux fins de compensation – généralement appelé un swap « alpha » – est immédiatement annulé et remplacé par deux nouveaux swaps – habituellement appelés swaps « bêta » et « gamma ». Une fois le swap alpha annulé et remplacé par des swaps bêta et gamma, la chambre de compensation devient responsable de la divulgation de ces swaps conformément à la hiérarchie de contrepartie déclarante du Règlement sur les RC.

Étant donné que les swaps alpha sont annulés et remplacés par des swaps bêta et gamma entièrement assujettis aux obligations d'information de la chambre de compensation, le CMIC soutient que ni les PND, ni les contreparties ne devraient être assujetties à des obligations d'information à l'égard des swaps alpha. Le CMIC soutient qu'il n'y a pas ou pratiquement pas d'avantage à obliger les PND à déclarer des données à communiquer à l'exécution à l'égard de swaps alpha, que ce soit par l'entremise d'un RC ou directement au public, puisqu'ils sont presque immédiatement remplacés par des swaps compensés qui sont déclarés par la chambre de compensation. Obliger les PND à rendre publics d'autres rapports ne contribuerait pratiquement pas à la transparence après les opérations, ces rapports contenant essentiellement la même information que les rapports de la chambre de compensation à l'égard des swaps gamma et bêta.

Comparativement aux avantages minimes que procurerait une obligation des PND à produire des rapports publics, le coût de ces rapports serait quant à lui vraisemblablement élevé, comme en font foi les résultats de l'imposition d'une telle obligation d'information des PES aux États-Unis. En vertu des règles de la CFTC, les PES partagent la responsabilité de déclarer les opérations alpha avec des courtiers en swaps (« **CS** »)/principaux participants au marché des swaps (« **PPMS** »), les PES étant responsables de la déclaration des données à communiquer à l'exécution initiales et les CS/PPMS étant responsables de la déclaration de l'information continue. Les PES ont éprouvé énormément de difficultés à se conformer à ces règles de partage de l'obligation d'information, les PES étant tenues de déclarer des données qui ne se rapportent pas à l'exécution que les PES n'ont bien souvent pas en leur possession. Les PES et CS/PPMS seront par ailleurs souvent connectés à différents référentiels centraux de swaps (« **RCS** »), et seront par conséquent incapables d'envoyer des données au même endroit, soulevant ainsi le problème des données dites « orphelines » c'est-à-dire qu'une partie d'une opération peut être déclarée à un RCS, tandis qu'une autre partie de l'opération peut être déclarée à un autre RCS.

Afin d'éviter certaines des difficultés qu'ont soulevées les règles de la CFTC, le CMIC souligne l'importance de n'avoir qu'une seule partie responsable de la déclaration d'une même opération de swap. Pour une opération qui est exécutée sur une PND et qui est assujettie à l'obligation de compensation, le CMIC estime que la seule partie chargée de la déclaration devrait être la chambre de compensation. Selon la formule proposée par le CMIC, il n'y aurait aucune obligation de produire un rapport public à l'égard d'une opération alpha; il reviendrait plutôt à la chambre de compensation de déclarer les opérations bêta et gamma en résultant une fois l'opération alpha acceptée aux fins de compensation. Dans le cas d'une opération bilatérale non compensée qui n'est pas assujettie à une obligation de compensation et qui est exécutée sur une PND, le CMIC soutient que l'une des contreparties à l'opération devrait être chargée de sa déclaration, selon la hiérarchie de contrepartie déclarante du Règlement sur les RC.

Le CMIC fait valoir qu'une telle formule est généralement conforme aux processus de déclaration envisagés dans le Règlement sur les RC, et pourra donc aisément s'appliquer dans le cadre des systèmes d'information existants créés pour l'application de ce règlement.

Question 18 : Quelle est la meilleure méthode pour déclarer publiquement en temps réel les opérations exécutées sur une PND (p. ex., directement par la PND, par le truchement de référentiels centraux ou d'une autre façon)? Quels sont les avantages et les inconvénients de ces options?

Réponse du CMIC : Dans la mesure où les ACVM estiment que les PND doivent produire d'autres rapports publics, le CMIC croit alors fermement que ces rapports doivent être produits indirectement par le truchement de RC, plutôt que directement par les PND. Étant donné que le marché canadien peut, à terme, compter de nombreuses PND différentes, les obliger à déclarer de l'information directement au public donnerait lieu à une dispersion de l'information qui empêcherait les autorités de réglementation et les participants au marché de se faire rapidement et facilement une idée complète du marché. Obliger les PND à divulguer de l'information directement au public peut en outre compromettre la qualité des données, dans la mesure où différentes PND peuvent avoir différentes normes et pratiques en matière de déclaration.

Questions 19 et 20 : Dans quelles circonstances faudrait-il permettre de différer la publication de l'information sur les opérations? En existe-t-il d'autres que les opérations de bloc? En supposant que le report de la publication de l'information sur les opérations soit autorisé pour les opérations de bloc, de quels critères faudrait-il tenir compte pour déterminer la taille minimale des opérations?

Réponse du CMIC : Comme il l'a indiqué dans son mémoire relatif à l'avis 91-302 du personnel des ACVM, *Mise à jour – Modèle de règles sur la détermination des produits dérivés et Modèle de règles sur les répertoires des opérations et la déclaration de données sur les produits dérivés*, le CMIC croit fermement que les règles des ACVM quant à l'information du public doivent prévoir des délais pour la divulgation d'opérations notionnelles ou « de bloc » importantes. La divulgation instantanée ou en temps réel d'opérations de bloc peut nuire au fonctionnement adéquat du marché, la capacité d'un courtier de couvrir son exposition au risque étant ainsi compromise. Pour les opérations sur des produits non liquides, un courtier aura souvent besoin d'un délai plus long que celui de la date d'opération plus un jour pour couvrir son exposition au risque. Si les détails d'une opération sont diffusés au public avant qu'un courtier n'ait pu mettre au point sa couverture, il peut être exposé à une augmentation des coûts d'exécution de l'opération de couverture, les participants au marché pouvant potentiellement effectuer des opérations contre la position du courtier. Ces coûts supplémentaires peuvent soit être transférés aux utilisateurs finaux sous la forme de plus larges écarts, soit décourager des courtiers de participer à ces opérations, réduisant ainsi la liquidité dans des marchés de produits déjà non liquides. De même, dans le cas d'opérations sur des produits non liquides, les participants côté acheteur peuvent chercher à exécuter une position large en étalant l'opération entre plusieurs courtiers. Si les détails d'une opération sont diffusés au public avant que le participant côté acheteur n'ait mené à terme ses opérations, le participant côté acheteur pourrait devoir engager des frais supplémentaires dans l'exécution de ses opérations puisque les participants au marché peuvent potentiellement négocier contre la position du participant côté acheteur.

Le CMIC est d'avis que les ACVM doivent adopter des règles qui prévoient des délais quant à la déclaration d'information comparables à ceux appliqués aux États-Unis. Aux termes des règles de la CFTC, les contreparties aux opérations dont les valeurs notionnelles sont supérieures aux tailles minimales des opérations de bloc fixées par la CFTC disposeront de délais pour rendre publiques leurs opérations. Il faudra étudier en profondeur les données sur les déclarations des opérations au Canada pour formuler les limites appropriées pour le marché canadien.

Question 21 : Quels renseignements sur le marché les PND devraient-elles être tenues de fournir au public sans frais, et à quel moment? Veuillez indiquer aussi précisément que possible les éléments de données, le niveau de détail et le moment (cf. les règles de la CFTC [États-Unis] dans 17 CFR 16.01).

Réponse du CMIC : En plus des rapports publics en temps réel, la proposition des ACVM laisse entendre que les PND devraient être tenues « de rendre publics certains renseignements sur le marché que le comité déterminera, sans frais, dans un certain délai ». Selon la proposition des ACVM, les règles de la CFTC prévoient une obligation analogue selon laquelle les PES/marchés de contrats désignés (« **MCD** ») sont tenus de rendre publique « de l'information à jour sur les cours, le volume des opérations et d'autres données sur les opérations de swap ». Les renseignements que les PES/MCD doivent rendre publics sont indiqués dans 17 CFR 16.01.

Comme dans le cas de la déclaration publique en temps réel, le CMIC fait valoir que la proposition des ACVM est en général muette quant au fondement de l'obligation pour les PND de rendre de l'information publique séparément dans un certain délai, alors que cette information pourrait vraisemblablement être obtenue d'un RC en temps réel. Les ACVM ne sont encore ici pas très explicites quant à l'information que les PND devraient rendre publique dans un certain délai, les participants au marché ne pouvant ainsi pas facilement évaluer la nécessité d'une telle obligation d'information.

Dans la mesure où les ACVM ont calqué cette obligation sur l'obligation correspondante des règles de la CFCT, le CMIC soutient que les règles de la CFTC ne sont peut-être pas, en l'occurrence, la meilleure référence de comparaison. Le CMIC souligne que les MCD sont depuis longtemps tenus de déclarer cette information en vertu des règles de la CFTC, et qu'il est possible que la CFTC étende cette obligation aux PES afin de minimiser les différences dans le traitement entre les PES et les MCD. Comme le régime des ACVM ne comporte pas de pendants directs aux MCD, le CMIC ne croit pas que des considérations d'uniformisation s'appliquent au marché canadien. C'est pourquoi le CMIC recommande fortement aux ACVM d'envisager le retrait de cette obligation.

Dans la mesure où les ACVM établissent que les PND doivent rendre publique de l'information dans un certain délai, le CMIC estime que l'information que les PND seraient tenues de rendre publique doit correspondre à celle prescrite par les règles de la CFTC. L'harmonisation des obligations d'information des ACVM avec les règles de la CFTC s'inscrit dans le principe général d'harmonisation, et mettrait à la disposition des participants au marché des données uniformes sous les régimes canadiens et américains, en facilitant ainsi la comparaison et l'analyse. Cette uniformisation pourrait en outre contribuer à réduire les pratiques de négociation manipulatrices, notamment la rétroingénierie des positions d'un participant au marché possible lorsqu'il existe des divergences entre les obligations d'information canadiennes et américaines.

Question 22 : Outre la déclaration de l'information sur les opérations à un référentiel central, les PND devraient-elles être tenues de diffuser l'information directement auprès de tous leurs participants ou seulement auprès des contreparties aux opérations? Un minimum d'information après les opérations, moins détaillée que celle qui est fournie aux contreparties, devrait-elle être diffusée auprès de tous les participants? Veuillez préciser.

Réponse du CMIC : En ce qui a trait à la déclaration d'information transactionnelle aux participants à une PND, le CMIC est d'avis que les PND ne devraient pas être tenues de déclarer de l'information à leurs participants. Le CMIC propose au contraire que les ACVM adoptent des règles analogues à celles promulguées par la CFTC, qui limitent la capacité des PES de divulguer de l'information transactionnelle à leurs participants.

Aux termes des règles de la CFTC, il est interdit aux PES de divulguer de l'information transactionnelle à leurs participants *avant* d'avoir déclaré cette information à un RCS pour diffusion publique. Par dérogation à cette interdiction, les PES sont autorisées à mettre cette information à la disposition de leurs participants *en même temps* que leur déclaration à un RCS, à la condition : i) que l'information ne soit déclarée qu'aux participants à la PES; ii) que les participants en aient reçu un avis préalable; et iii) que l'information soit déclarée sans distinction (c.-à-d. qu'elle soit déclarée à tous les participants à la PES). Cette interdiction de déclaration avant la déclaration à un RCS est souvent appelée la « règle d'embargo », et vise à ce que les données sur l'opération de swap et les cours soient diffusées uniformément et non d'une manière qui procure des avantages concurrentiels injustes à certains participants au marché.

Les avantages concurrentiels et pratiques en matière d'opérations injustes étant des questions également préoccupantes dans le marché canadien, le CMIC soutient qu'une restriction analogue quant à la déclaration d'information avant sa diffusion publique devrait être adoptée. Une obligation d'envoyer des données sur l'opération de swap et les cours (exclusion faite de l'information permettant d'identifier les parties) aux participants d'une PND en même temps que la publication de cette information par le RC conformément aux obligations d'information du public du RC réduira les iniquités potentielles entre les participants au marché et contribuera à en accélérer la déclaration aux RC. Bien que le CMIC recommande de limiter le droit des PND de déclarer de l'information à leurs participants, il croit fermement que les PND devraient être autorisées à le faire. Permettre aux participants à une PND de voir les dernières informations sur les opérations contribuera en général à améliorer la transparence après les opérations et le processus de formation des cours, et pourrait potentiellement avoir des effets positifs en ce qui a trait à la liquidité.

Obligation de négociation

Question 23 : Les critères proposés pour établir si un dérivé sera visé par l'obligation de négociation sur une PND sont-ils appropriés? Faudrait-il envisager d'autres critères?

<u>*Réponse du CMIC*</u> : De l'avis du CMIC, les critères que proposent les ACVM pour déterminer si un dérivé sera visé par l'obligation de négociation sur une PND sont appropriés. Le CMIC recommande fortement aux ACVM d'envisager la pondération relative des critères et propose d'accorder plus d'importance à certains facteurs qu'à d'autres. Par exemple, la question de savoir si un dérivé est liquide peut être un facteur plus important que la question de savoir s'il est négocié sur une PES. De plus, chaque aspect des critères doit être envisagé comme une décision distincte. La question de savoir si une opération doit ou non être compensée est distincte et séparée d'une décision quant à savoir si cette opération doit ou non être négociée sur une PND, si une série de dispenses appropriées sont offertes. (Voir nos réponses à la question 25 ci-après). À cette fin, le CMIC soutient qu'une catégorie de dérivés visée par une obligation d'exécution sur des PND doit d'abord, à titre de condition préalable, être visée par une obligation de compensation applicable, peu importe les décisions prises en fonction des autres critères pour cette catégorie de dérivés.

Le CMIC soutient tout particulièrement le processus de consultation coopératif de l'ensemble des autorités de réglementation canadiennes (dont parlent les ACVM à l'article 10a) du document de consultation) pour déterminer quelles opérations devraient être visées par une obligation de négociation sur une PND.

Question 24 : Existe-t-il des dérivés de gré à gré dont il faudrait considérer qu'ils se prêtent à l'obligation de négociation sur une PND? Existe-t-il des catégories de dérivés de gré à gré pour lesquelles cette obligation nuirait aux participants au marché?

<u>*Réponse du CMIC*</u> : Comme il est indiqué dans la réponse à la question 23, le CMIC soutient qu'une catégorie de dérivés visée par une obligation d'exécution sur des PND doit d'abord à titre de condition préalable être assujettie à une obligation de compensation applicable, peu importe les décisions prises en fonction des autres critères pour cette catégorie de dérivés. Le CMIC peut donc difficilement faire des observations sur cette question sans connaître quels dérivés seront visés par une obligation de compensation. On ne dispose par ailleurs que de très peu d'information pour déterminer le niveau de liquidité. De l'avis du CMIC, le niveau de liquidité ne peut être établi que lorsque les autorités de réglementation auront à leur disposition et étudié suffisamment de données à cette fin. Par ailleurs, étant donné que les autorités de réglementation seules sont en mesure de voir l'ensemble des données sur les opérations, le CMIC estime, au stade actuel, que seules les autorités de réglementation sont en position d'établir quels dérivés se prêtent à l'obligation de négociation.

Question 25 : Existe-t-il des situations dans lesquelles on devrait permettre qu'un produit visé par l'obligation de négociation exclusive sur une PND puisse être négocié sur une autre plateforme? Faudrait-il dispenser certaines catégories de participants au marché de l'obligation de négociation?

<u>*Réponse du CMIC*</u> : En ce qui a trait à la première partie de la présente question, nous vous prions de vous reporter à notre réponse à la question 24. Le CMIC soutient par ailleurs que, tirant des leçons des problèmes qu'ont connus d'autres territoires, les opérations intégrées (au sens de *Package Transactions*) ne devraient pas être visées par une obligation de négociation sur une PND. Une opération intégrée s'entend d'une opération visant au moins deux instruments :

– exécutés entre au moins deux contreparties;
– affichés à un prix ou cotés en tant qu'une seule opération économique dont toutes les composantes sont exécutées simultanément;
– dont au moins une des composantes est visée par une obligation d'exécution sur une PND; et
– dont l'exécution de chaque composante est conditionnelle à l'exécution de toutes les autres composantes.

Une opération intégrée, telle qu'elle est décrite ci-dessus, comprend au moins une composante qui, seule, serait visée par une obligation d'exécution sur une PND. Le CMIC soutient que, lorsqu'elle fait partie intégrante d'une opération intégrée, cette composante (et l'opération intégrée dans son ensemble) ne devrait pas être visée par une obligation d'exécution sur une PND. La formule que nous recommandons ne devrait pas être un obstacle pour les plateformes étrangères qui souhaitent obtenir une reconnaissance ou une dispense de reconnaissance au Canada si les opérations intégrées sont traitées différemment en vertu des règles étrangères applicables sur ces plateformes étrangères.

Imposer une obligation d'exécution sur une PND pour chaque composante faisant partie d'une opération intégrée exposerait les participants au marché à des coûts et à des risques accrus. La négociation des composantes d'une opération intégrée séparément et sur différentes plateformes (c.-à-d. en partie sur une PND et en partie sur une autre plateforme) peut entraîner des coûts et des risques accrus en raison du décalage dans l'exécution des opérations, le marché pouvant prendre une autre direction entre l'exécution de chaque composante, et en raison des différences entre les détails de l'opération, du mode d'exécution, des flux d'opérations à compenser/régler et de la liquidité relative, comparativement à une exécution simultanée au moyen d'une même méthode d'exécution.

Si une composante d'une opération intégrée doit être exécutée séparément sur une PND, l'opération pourrait devenir non rentable en raison des coûts et des risques accrus. Cet aspect négatif n'est pas compensé par des considérations de transparence quant à la formation des cours, puisque la formation des cours d'une composante négociée dans le cadre d'une opération intégrée peut ne pas être comparable à la formation des cours du même type d'opération séparément.

En ce qui a trait aux catégories de participants au marché qui devraient être dispensés d'une obligation de négociation, le CMIC est d'avis qu'une dispense de l'utilisateur final devrait être offerte, et que la dispense devrai être harmonisée avec les dispenses de l'utilisateur final aux termes des règles de compensation obligatoires. Le CMIC appuie en outre une dispense de l'obligation de négociation sur une PND pour une opération entre membres du même groupe. Assujettir les opérations sur dérivés hors-cote entre membres du même groupe à l'obligation de négociation sur une PND imposerait des coûts inutiles et nuirait au transfert et à la gestion efficaces des risques entre les membres du même groupe, sans aucun avantage notable. L'exécution par le truchement d'un système de demandes de cotation ne serait pas efficace pour des opérations entre membres du même groupe, puisque les destinataires de la demande de cotation membres du groupe du demandeur ne pourraient être comptabilisés dans le calcul du nombre minimal de destinataires, tandis que l'exécution par le truchement d'un registre des ordres ne garantirait pas un appariement des intérêts des membres du même groupe dans l'opération. Les avantages de l'exécution sur une PND quant à la formation des cours ne sont pas probants dans le cas des opérations entre membres du même groupe, puisqu'une formation des cours concurrentielle n'est pas nécessairement un objectif principal des opérations entre membres du même groupe.

Question 26 : Faudrait-il mandater officiellement les PND pour débuter le processus visant à décider qu'une catégorie de dérivés de gré à gré est visée par l'obligation de négociation exclusive sur une PND, comme c'est le cas des PES dans le processus de « décision d'admissibilité » décrit à la page 21?

Réponse du CMIC : Comme nous l'avons indiqué dans notre réponse à la question 24, le CMIC est d'avis qu'il revient aux autorités de réglementation seules de déterminer quels dérivés doivent être visés par une obligation de négociation sur une PND et c'est pourquoi nous ne croyons pas que les PND devraient être habilitées à le faire. Le CMIC observe que les PND, de même que le public en général, auront toujours la possibilité de faire des observations sur quelque obligation de négociation proposée. Le CMIC fait en outre valoir que le processus décisionnel dont fait l'objet un dérivé aux termes des règles de la CFTC et visant à le « rendre admissible à la négociation » (une « **décision d'admissibilité** ») (qui permet à une PES de soumettre une demande de décision d'admissibilité de produits à une obligation de négociation sur une PES, la CFTC ne pouvant refuser la demande que si elle est contraire à la loi intitulée *Commodity Exchange Act* ou aux règlements de la CFTC) ne fait pas l'unanimité. Comme l'indique M. Giancarlo dans son livre blanc[6], le processus menant à une décision d'admissibilité pose problème parce qu'il peut soumettre des swaps à une obligation de négociation au moyen d'un nombre limité de méthodes d'exécution, même si ces swaps n'ont pas la liquidité nécessaire pour appuyer une telle opération. De plus, aux États-Unis, comme le processus menant à une décision d'admissibilité est contrôlé par les PES, une PES relativement nouvelle pourrait obtenir un avantage de premier arrivé et obliger qu'un produit en particulier soit négocié au moyen de

[6] Giancarlo, *supra*, note 3 à la p. 29.

méthodes d'exécution restrictives sur le PES. Autrement dit, la décision d'une plateforme pourrait lier l'ensemble du marché.[7]

Question 27 : Quelles obligations d'information avant les opérations conviennent aux dérivés de gré à gré visés par l'obligation de négociation sur une PND? Quelle information les PND devraient-elles être tenues de publier au sujet des dérivés de gré à gré visés par cette obligation? Veuillez fournir des précisions en ce qui concerne la méthode d'exécution (p. ex., registre des ordres, demande de cotation, etc.).

Réponse du CMIC : Le CMIC est d'avis que les ACVM ne devraient pas être normatives et prescrire des obligations de transparence avant les opérations. Le CMIC est d'avis qu'imposer des obligations avant les opérations réduirait la liquidité et la faculté de choisir des méthodes d'exécution.

Question 28 : Comment fixer un seuil convenable pour dispenser les ordres et cotations importants des obligations de transparence avant les opérations ou permettre de modifier l'information à fournir?

Réponse du CMIC : Le CMIC soutient que ces seuils devront être établis conjointement avec les obligations de diffusion publique applicables aux RC à partir du 29 juillet 2016. Un examen réfléchi fondé sur une analyse appropriée des données du marché canadien sur une période prolongée est nécessaire pour déterminer la meilleure formule pour la diffusion publique de l'information sur les opérations pour le marché canadien. L'analyse des données sur le marché canadien ne peut être faite que par les autorités de réglementation étant donné qu'elles seules ont à leur disposition des données sur l'ensemble du marché dans les RC. De plus, ce type d'analyse exigera l'appréciation de données confidentielles du point de vue de la concurrence, comme des données sur des opérations de bloc et des concentrations de participants. Lorsque les autorités de réglementation auront fait cette analyse fondée sur des données fiables recueillies sur une période de temps suffisante dans le cadre de la déclaration d'information sur les opérations, et établi une démarche quant à la diffusion publique de l'information sur les opérations, une consultation des participants au marché devrait alors être organisée. Le CMIC est d'avis que des entreprises faisant office de teneurs de marché seraient défavorisées si les autorités de réglementation devaient adopter au Canada les mêmes planchers et plafonds que ceux prévus par les règles de la CFTC, étant donné que la plupart des instruments au Canada ne sont pas aussi liquides que ceux aux États-Unis. Les teneurs de marché seraient défavorisés si les données pouvaient être manipulées de manière à conclure qu'une opération en particulier a été exécutée. La capacité de gestion du risque en serait compromise, ce qui nuirait à la liquidité du marché, creuserait les écarts entre les cours acheteurs/vendeurs, réduirait l'efficacité et rendrait l'opération non viable. Les utilisateurs finaux à la recherche de solutions de couverture en subiraient les contrecoups.

Question 29 : Convient-il de limiter la négociation de dérivés de gré à gré visés par l'obligation de négociation sur une PND à certaines méthodes d'exécution autorisées, par exemple, un registre des ordres ou un système de demande de cotisation combiné à un registre des ordres? Motivez votre réponse. Dans l'affirmative, quels modes d'exécution faudrait-il autoriser pour les produits visés par cette obligation? D'autres méthodes d'exécution permettent-elles d'atteindre un niveau satisfaisant de transparence avant les opérations? Quels autres facteurs devraient être pris en compte?

Réponse du CMIC : Comme nous l'avons indiqué, le CMIC est d'avis que les ACVM devraient adopter une solution variable quant aux méthodes d'exécution. Selon le livre blanc[8] de M. Giancarlo, les marchés seraient mieux servis si l'exécution des opérations n'est pas limitée à seulement certaines méthodes. Une certaine flexibilité permettra un développement « rationnel et organique »[9] des marchés en fonction de caractéristiques et de profils de liquidité de produits spécifiques. Les méthodes d'exécution pourraient par ailleurs être adaptées à des caractéristiques de liquidité d'un produit de swap en particulier.

Question 30 : À quelles autres obligations les PND devraient-elles être assujetties en ce qui concerne la négociation de produits visés par l'obligation de négociation sur une PND?

Réponse du CMIC : Le CMIC est d'avis que les ACVM doivent inclure dans leurs règles relatives aux PND la notion de compensation garantie permettant un meilleur accès au marché et un accès et un usage impartiaux

[7] Giancarlo, *supra*, note 3 à la p. 30.

[8] *Ibid*, p. 31.

[9] *Ibid*.

de la plateforme. Les participants au marché qui exécutent des swaps censés être compensés sur une PND ne devraient pas être exposés à un risque lié au marché inutile en raison d'un délai d'attente indépendant de leur volonté directe ou de défaillances de crédit au niveau de la chambre de compensation ou de leur courtier en compensation.

La CFTC a largement clarifié la situation sur le marché en publiant un certain nombre d'instructions générales, les chambres de compensation étant tenues d'accepter ou de rejeter des opérations soumises à des fins de compensation dans les dix secondes et les swaps censés être compensés qui sont exécutés sur une PES et qui ne sont pas acceptés à des fins de compensation étant nuls ab initio (comme s'ils n'avaient jamais existé). La CFTC exige que les PES aient des règles à cet effet.

La compensation garantie exige le cadre de traitement direct (« **TD** ») et le cadre opérationnel nécessaire au règlement des opérations censées être compensées rejetées en raison d'erreurs opérationnelles. L'absence de ce cadre introduit un risque dans le système. Le cadre TD nécessaire doit comprendre des vérifications de solvabilité avant l'opération afin de veiller à ce qu'une opération de bonne foi soit exécutée sur une PND, à ce qu'une opération exécutée sur une PND soit envoyée électroniquement à la chambre de compensation et à ce que la chambre de compensation accepte ou rejette l'opération dans les dix secondes. Dans certains cas, le TD est impossible, notamment dans le cas d'opérations exécutées hors-PND qui sont alors ultérieurement saisies sur la PND, ou des opérations intégrées dont une composante est sur une PND et l'autre est exécutée hors-PND, qui doivent être examinées attentivement dans ce cadre. Un cadre opérationnel qui ne traite pas des opérations qui sont rejetées aux fins de compensation en raison d'erreurs d'écritures ou d'erreurs opérationnelles crée un autre risque lié au marché et à l'exécution, s'il n'est pas possible de resoumettre l'opération. Après qu'un participant au marché exécute un swap, le participant couvre son risque avec d'autres swaps. Si le swap est déclaré nul et que le participant ne peut le resoumettre, le participant ne sera pas adéquatement couvert et sera exposé à un risque non voulu quant à l'orientation du marché et/ou à l'exécution.

Généralités

Question 31 : Veuillez décrire les caractéristiques particulières des marchés de dérivés de gré à gré du Canada dont le Comité devrait tenir compte et qui pourraient justifier une divergence entre les règles canadiennes et celles en vigueur aux États-Unis et dans l'UE, notamment en ce qui concerne les obligations de transparence et de négociation. Veuillez indiquer les conséquences particulières de ces caractéristiques.

Réponse du CMIC :

Le marché canadien, comparativement au marché mondial, est très petit et offre une liquidité limitée. Le CMIC est d'avis que les autorités de réglementation devraient évaluer le marché des dérivés de gré à gré du Canada sur une période lui permettant de recevoir suffisamment de données fiables tirées des déclarations d'opérations et leur permettant d'évaluer rigoureusement s'il est nécessaire d'établir ou non des règles relatives aux PND au Canada et quelles devraient être ces règles. Le cas échéant, le CMIC ne croit pas qu'il soit économique ni avantageux de perdre du temps à élaborer des règles relatives aux PND si aucune opération ne sera suffisamment liquide pour être assujettie à une obligation de négociation sur une PND. Il serait malheureux et contre-productif de formuler des règles relatives aux PND au Canada qui découragent des PES étrangères de participer au marché canadien.

****

Le CMIC se réjouit de la possibilité de discuter de la présente réponse avec des représentants des ACVM. Les points de vue exprimés dans la présente lettre sont ceux des membres du CMIC indiqués ci-dessous :

Banque de Montréal
Bank of Tokyo-Mitsubishi UFJ (Canada)
Caisse de dépôt et placement du Québec
L'Office d'investissement du Régime de pensions du Canada
Banque Canadienne Impériale de Commerce
Succursale canadienne de Deutsche Bank A.G.
La Fédération des Caisses Desjardins du Québec
Banque HSBC Canada
Succursale de Toronto de JPMorgan Chase Bank, N.A.
Société Financière Manuvie
Banque Nationale du Canada
OMERS Administration Corporation
Régime de retraite des enseignantes et des enseignants de l'Ontario
L'Office d'investissement des régimes de pensions du secteur public
Banque Royale du Canada
Financière Sun Life
La Banque de Nouvelle-Écosse
La Banque Toronto-Dominion

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March 30, 2015

SENT BY ELECTRONIC MAIL

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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
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Dear Sirs/Mesdames:

I Introduction

CanDeal.ca Inc. **(CanDeal)** is Canada's leading online marketplace for Canadian dollar-denominated (CAD$) debt securities and CAD$ interest rate swaps **(IRS)** (www.candeal.com). CanDeal's institutional dealer-to-client request for quote **(RFQ)** marketplace provides online access to the largest pool of liquidity for CAD$ government bonds, money market instruments and CAD$ IRS. As a regulated alternative trading system **(ATS)**, CanDeal has offered fixed income and money market trading on an electronic marketplace for over a decade. Since 2011, CanDeal has also offered CAD$ IRS. CanDeal has developed fixed income trading protocols and technologies which support increased liquidity, transparency and lower risk for over-the-counter **(OTC)** markets.

CanDeal appreciates the opportunity to provide feedback on the consultation paper (**Consultation Paper**) addressing the Derivatives Trading Facility (**DTF**).

II Interpretation

In this comment letter:

CAD$ IRS means CAD$-denominated IRS.

Canadian CAD$ IRS means CAD$ IRS transactions to which one or both counterparties are Canadian.

Canadian IRD means IRD transactions to which one or both counterparties are Canadian (regardless of currency type).

Canadian IRS means IRS transactions to which one or both counterparties are Canadian (regardless of currency).

Committee means the CSA Derivatives Committee.

FRA means forward rate agreement.

IRD means interest rate derivative, collectively FRAs, IRS and interest rate options.

SEF means a swap execution facility.

US CAD$ IRS means CAD IRS transactions to which one or both counterparties are US persons.

III **<u>Executive Summary</u>**

CanDeal supports the creation in Canada of the DTF as a multilateral marketplace category for the trading of OTC derivatives. CanDeal also supports the Committee's recommendation that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF. CanDeal submits, however, that the introduction of a new marketplace for the multilateral trading of OTC derivatives must be accompanied by a concurrent obligation to trade appropriate derivative instruments on that marketplace. Available evidence supports the proposition that in the absence of a trading requirement, the proposed DTF will not be adopted by buy-side or other market participants.

If a trading obligation does not operate concurrently with the introduction of DTF trading, Canada will cede control of the market for multilateral trading of liquid derivative instruments to which one or both counterparties are Canadian (including in particular in CAD$ IRS) to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners**.** In addition to exporting this important sector of the Canadian capital markets, a further unintended consequence of inaction on the part of the Committee will be ceding control and regulation over a significant portion of the Government of Canada bond market to foreign regulators. The healthy operation of the Government of Canada bond market is a critical component of our Canadian financial infrastructure and essential to the funding capabilities of corporate Canada and all levels of government. The Canadian Securities Administrators (**CSA**), Bank of Canada and Canadian market leaders must not lose sight of the instrinsic, packaged nature of trading CAD$ IRS with Government of Canada bonds, and the distinct risks associated with ceding foreign regulatory control of liquidity protocols over these critically important segments of the Canadian marketplace.

The SEF framework will also be the only option available to Canadian buy-side and sell-side participants transacting in made-available-to-trade (**MAT**) derivatives with US persons. The Committee should therefore include in its recommendations a regulatory framework for DTFs that is comparable to that applicable to SEFs with respect to derivatives subject to MAT determinations in order to enable Canadian participants to use DTFs to execute cross-border transactions with US persons in MAT derivatives on the basis of substituted compliance.

Respectfully, CanDeal does not support the Committee's position regarding the need for further evidence of market size or liquidity as there is sufficient proof in a number of classes of CAD$ IRS to warrant the imposition of a trading requirement in respect of such classes at this time. CanDeal has included information in this comment letter relating to liquidity in CAD$ IRS that it believes will be of assistance to the Committee.

CanDeal submits that the Committee should clearly articulate the proposed standards for pre-trade and post-trade transparency that will apply to transactions required to be executed exclusively on DTFs. The Committee should also clearly define the execution methods that will be permitted in respect of such transactions. The Committee should include a comprehensive proposal in respect of the test for liquidity that will apply to determine whether a derivative instrument or class of derivative instrument will be subject to the requirement to trade exclusively on a DTF. In CanDeal's submission, it is neither necessary nor desirable to prescribe requirements in respect of pre-trade transparency or execution methods that would apply in the absence of a trading obligation.

IV <u>CanDeal Response to Questions</u>

Although CanDeal's comments will address a number of areas, we have re-ordered the sequencing of questions on which comment has been solicited by the Committee in order to address the topic of mandatory trading first. We believe the issue of mandatory trading is fundamental and influences the approach to be taken to other major issues.

Question 23: Trading Obligation

1. The Committee has previously released for comment a consultation paper and rule that will require the mandatory clearing of OTC derivatives. CSA member jurisdictions have also implemented or will implement rules requiring the reporting of OTC derivatives transactions to trade repositories. Accordingly, the CSA has taken steps to mandate the clearing and reporting of OTC derivatives transactions, in line with Canada's G20 commitment.

2. From a policy perspective, of the three principal elements of G20 reform (electronic trading, clearing and reporting), the most important is trading in that the supply chain of information begins with the electronic trade. It is the trade that triggers events related to reporting and clearing. It is the electronic trade that facilitates efficient reporting and efficient clearing; an electronic trade is effectively a matched trade and therefore acceptable as such for a central clearing party (CCP) (some, if not all require or at least prefer a matched trade prior to 'entry' into the CCP). Also, risk mitigation begins at the point of the trade, and the electronic trade is by far more risk compliant than a telephonic trade in terms of internal risk transparency, timeliness and error reduction.

3. With respect to the trading component of the G20 commitment, the Committee recommends in the Consultation Paper "that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF". The Committee also recommends factors that the CSA consider in determining whether to require a class of OTC derivatives to be traded exclusively on a DTF. Notwithstanding this statement of general principle, the Committee adds that it does not have "sufficient data with respect to liquidity levels in the OTC derivatives market in Canada to be able to assess whether the introduction of mandatory DTF trading for a particular class of OTC derivatives would be appropriate". The Committee goes on to state that it will not be in a position to recommend *any* OTC derivatives as suitable for mandatory trading until after trade reporting and clearing obligations have

been in effect for a period of time. The Committee further stipulates that even once sufficient information is in hand to make a determination, none shall be made until "consultation with other Canadian authorities and with the public" are completed. As will be set out in more detail below, CanDeal respectfully disagrees that there is insufficient data to assess whether mandatory trading is appropriate and submits that the introduction of a new trading venue for the multilateral platform trading of OTC derivatives must be accompanied by the concurrent imposition of an obligation to trade appropriate derivative instruments on that venue.

4. The Consultation Paper does not propose that a mandatory trading obligation accompany the creation of the DTF structure. Instead, the Committee proposes a DTF structure that is premised on the absence of a trading obligation in the first instance, with enhancement of certain standards relating to pre- and post-trade transparency and trade execution only when a trading obligation is eventually imposed.

5. In both the US and the EU, the implementation of a legislated trading obligation has driven the creation of new trading entities, not the other way around. Indeed, the trading obligation in both jurisdictions applies not only to the new categories of venues (swap execution facilities (**SEF**s) and organized trading facilities (**OTF**s) that have been created as a consequence of the trading obligation) but to existing trading venues (i.e. designated contract markets (**DCM**s) in the US, and regulated markets (**RM**s) and multilateral trading facilities (**MTF**s) in the EU). Both jurisdictions began implementation of the G20 commitment to move trading of standardized OTC derivatives onto organized platforms by requiring that sufficiently liquid OTC derivatives be traded on regulated multilateral platforms. Both jurisdictions have created new venues and their associated structures to the extent that implementation of the trading requirement has required that new trading venues be created. Simply stated, a trading obligation is the raison d'etre for such venues. Such venues have then been structured to define the parameters of the mandatory trading obligation on such platforms.

6. The purpose of a trading obligation is to increase transparency in the derivatives market, to improve the efficiency of the market by facilitating better price discovery and trade cycle processes, and to reduce risk. It is in this context that mandatory trading and associated pre-trade transparency and trade execution requirements have been prescribed. Neither of the US or EU regulators have created an entity that is to function in the absence of a trading obligation applicable to specified classes of derivatives.

7. Instead of the approach that regulators in the US and EU have taken, the recommendations in the Consultation Paper largely preserve the status quo in terms of OTC derivatives trading in Canada, at least until the specified preconditions for the imposition of a mandatory trading obligation have been satisfied. In the interim, participants will focus on satisfying foreign regulatory requirements where, for example, accessing a US person market-maker or market-taker is advantageous. Cross-border IRS transactions where at least one counterparty is a US person will gravitate to foreign-regulated electronic trading venues as an add-on where IRS subject to a MAT determination are trading. With no timetable for the imposition of such an obligation for any derivative instrument, market participants are unlikely to take any action to alter current domestic trading behaviours in anticipation of a Canadian change. The Committee's proposal leaves non-transparent single-dealer bilateral trading intact and Canada lagging.

8. In terms of what effect such a decision will have on Canadians and the Canadian OTC derivatives market, we believe that broadly speaking there will be four general impacts:

   A. In the absence of a trading requirement, the DTF framework will not be adopted by buy-side or other market participants.

B. The SEF framework will be the only option available to Canadians transacting in MAT derivatives with US persons.

C. Canada will cede control of the Canadian IRS market to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners.

D. A dangerous precedent will be set for the inevitable migration to mandatory electronic trading of all applicable OTC debt and deriviatives products.

These four impacts are discussed in more detail in paragraphs A to D below. Paragraph E discusses the existing evidence that the Canadian CAD$ IRS market is sufficiently liquid to support a trading obligation.

<u>A. In the absence of a trading obligation, the DTF framework will not be adopted</u>

9. In the absence of a trading obligation requiring Canadian participants to trade certain classes of derivatives on DTFs, existing Canadian bilateral trading facilities and relationships will be unaffected by the CSA proposals. There will be little reason for Canadian participants to abandon their current opaque bilateral trading methods and practices which are substandard in terms of risk mitigation, price discovery and transparency. It should be recalled that these characteristics are some of the very factors that contributed to the financial crisis. History has already demonstrated that OTC derivatives market participants prefer, in the absence of being required to do otherwise, to transact bilaterally and non-transparently for a variety of reasons. Nothing in the CSA proposals will provoke a positive change from the opaque telephonic market dynamic for OTC derivatives transactions to which one or both counterparties are Canadian, as there is no incentive for change in the absence of a requirement to change; whereas other jurisdictions have addressed their G20 commitments in order to mitigate risks and advance the public interest in stable financial markets.

10. The reason that the US and EU have not created new trading entities that are to function in the absence of a trading obligation is that the creation of such entities simply would not make sense in the absence of such an obligation. The derivatives market has not organically embraced multilateral trading, as has been the case from the early days in equities markets and commodity markets. The derivatives market instead organically developed around an OTC trading model where bilateral dealer-to-client trading became the norm.

11. The transition of OTC derivatives to electronic multilateral trading platforms is not a case of "if you build it, they will come". Experience in the US and EU demonstrates clearly that participants will avoid more transparent, multilateral trading of derivatives unless it is required. Indeed, since the advent of the trading obligation in the US for MAT derivatives on SEFs, liquidity has fragmented into virtually watertight EU and US blocs as EU participants refuse to deal with US persons for fear of exposure to US SEF rules. This liquidity fragmentation is a direct result of the EU having lagged behind the US in imposing its corresponding trading obligation. EU market participants have changed their behaviour in order to avoid having to transact on SEFs, dealing more exclusively with other EU participants in EUR IRS in order to avoid dealing with US persons and the SEF trading mandate. The EU trading obligation is not scheduled to come into effect until early 2017 and EU market participants have shown that they will avoid the stiffer rules regarding pre-trade transparency and multilateral trading until it is forced on them

by EU regulators. The CFTC even offered no-action relief to EU MTFs that were prepared to adopt rules similar to US SEF rules, and no EU MTF applied to the CFTC under the relief.[1]

B. The SEF framework will be the only option available to Canadians trading MAT derivatives

12. The Bank for International Settlements' triennial survey of IRS for 2013 indicates that more than 75% of Canadian IRS trading is cross-border in nature[2] and that almost 50% of Canadian IRD trading is denominated in currency types, classes of which are included in the existing MAT derivatives list[3]. Canadian market participants who deal with US persons in MAT IRS are required to trade such derivatives on SEFs, there being no regulatory equivalent to a SEF in Canada. The CFTC has opened the door to substituted compliance in the case of SEFs by offering no-action relief to MTFs that adopt certain of the standards applicable to SEFs. Under the current proposals, the Committee is not proposing a comparable regulatory framework for a Canadian trading platform that would enable Canadian participants to use the domestic platform to enter into cross-border transactions with US persons in MAT derivatives on the basis of substituted compliance. Consequently, the Committee proposal would cede the cross-border market in MAT IRS to SEFs.

13. Of equal importance as a practical matter is that Canadian counterparties to MAT derivatives will have no incentive to use a DTF for such transactions in the absence of a regulatory requirement to trade such instruments on DTFs. By failing to enact the equivalent in Canada of the trading requirement in the US for MAT derivatives, Canadian counterparties to such transactions would continue to be required to trade through SEFs, thus driving potential Canadian business exclusively to non-Canadian platforms

14. The current proposals thus consign any multilateral Canadian platforms for the multilateral trading of liquid vanilla derivatives to also-ran status. Lacking the ability to serve Canadian participants for their cross-border transactions in mandated classes of derivatives, such platforms would essentially be empty storefronts. In proposing a DTF without a concurrent trading mandate, the Committee would create a shell without a purpose by exporting MAT derivatives trading by Canadians to US markets.

15. Given the factors stated above, any delay in imposing a trading requirement in respect of suitable classes of derivatives in Canada will seriously prejudice any Canadian trading venue operator or start-up entity that wishes to enter the multilateral derivatives trading space.

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[1] According to an ISDA study released in July 2014, the average volume of EUR IRS transacted between European dealers as a percentage of total EUR IRS volume increased from 75% in September 2013, before mandatory SEF trading, to 93% by May 2014 after the MAT determinations for SEFs came into effect. The average cross-border volume of EUR IRS transacted between European and US dealers as a percentage of total EUR IRS volume decreased from 25% in September 2013 to 6% by May 2014. Whereas the market for EUR IRS has a more global character and is thus more prone to fragmentation, the market for USD IRS is US-centric: Gyntelberg and Upper, *The OTC interest rate derivatives market in 2013*, BIS Quarterly Review, December 2013 at pp. 75-76. Accordingly, SEFs are USD-centric liquidity pools, with USD IRS trades accounting for over 80% of IRS volume traded on these platforms in December 2014: Clarus Financial, *December Volumes in Interest Rate Swaps*, January 5, 2015. Nevertheless, trading volume in EUR IRS on SEFs decreased from from 13% before the MAT determinations came into effect to only 4% in December 2014.

[2] Bank for International Settlements, *Triennial Central Bank Survey, Interest rate derivatives market turnover in 2013*, December 2013 (**BIS Report**), at p 16.

[3] BIS Report, pp. 8-13.

<u>C. Canada will cede control of the Canadian IRS market to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners.</u>

16. Experience with SEFs to date does show, however, that once mandatory trading forces participants onto a multilateral platform, those participants will execute transactions in other liquid swaps on the platform even if not subject to a trading mandate because their workflow has been designed around compliance with the rules of the platform. Data from the USA demonstrates that US persons have come to execute CAD$ IRS on SEFs in significant volumes even though such instruments are not subject to mandatory SEF trading. The compliance effort required by a mandatory trading obligation appears to "magnetize" transactions in other swaps for which liquidity is available to the platform.

17. If there is no mandatory trading obligation in Canada for CAD$ IRS, the moment US regulators decide to make classes of CAD$ derivatives MAT, the market in such classes of instruments will be ceded to foreign marketplaces and regulators. Canadian regulators will be forced to follow suit and introduce mandatory trading but, from a practical perspective, the market will already have been ceded to first-mover foreign entities who have been developing an active market in CAD$ IRS for some time. The introduction of viable DTF participants at such a point will be unlikely to gain traction.

18. The Committee proposal would also cede the cross-border market in sufficiently liquid classes of derivatives as determined by EU regulators and to which Canadian participants are counterparties to the MTFs and OTFs on which trading of such derivatives classes by EU participants will soon be mandatory.

<u>D. A dangerous precedent will be set for the inevitable migration to mandatory electronic trading of all applicable OTC debt and derivatives products.</u>

19. As a significant portion of Government of Canada bond secondary market activity is intrinsically linked to CAD$ IRS trading as 'Swap Spread versus Government of Canada Bond' trades, the Canadian marketplace for cash bonds will be influenced by the rules and regulations governing the IRS trading platforms. Hence, as the SEF model is either adopted by or forced upon Canadians as no substituted compliance alternative exists, the SEF rules will influence the trading and liquidity protocols governing a significant portion of the Canadian Government debt markets. By way of illustration, when a participant executes a swap trade in a MAT derivative against a cash bond ('Swap Spread versus Bond' trade), the two sides of the trade are packaged and executed simultaneously, thereby eliminating risk. Under SEF rules, a trade must go to a minimum of three dealers; as a consequence of which, the cash bond is subject to the same protocol.

20. The healthy operation of the Government of Canada bond market is a critical component of Canadian financial infrastructure and essential to the funding capabilities of corporate Canada and all levels of government. This market—which is similar to the IRS markets in Canada, being cross-border in nature—has begun to adopt electronic trading and it seems only a matter of time before either domestic or foreign regulators consider mandatory electronic trading in the OTC cash markets (see ESMA discussion paper). Ceding control of the derivatives markets at this point sets a dangerous precedent with unintended consequences in the OTC cash markets.

E. The Canadian CAD$ IRS Market is Sufficiently Liquid to Support a Trading Obligation

21. The trading of US dollar-denominated (**USD**) derivatives subject to MAT determinations on SEFs since the advent of mandatory trading in February 2014 has irrefutably established the viability of multilateral trading of MAT derivative classes, including classes of USD IRS and USD credit default swaps (**CDS**). US market participants have clearly adopted SEF trading and its benefits of risk mitigation, transparency, price discovery, and deep pools of liquidity. Data shows that while approximately $1 trillion a month in USD IRS was traded on-SEF in the first months after the MAT determinations came into effect, a significant pick-up of more than 40% in volume occurred from September onwards with approximately $1.5 trillion traded per month and record on-SEF volumes recorded in each of September, October and December.[4] Indeed, the success of SEFs in increasing buy-side trading of standardized derivatives shows that liquidity has in fact formed around these marketplaces.[5]

22. It is not only USD derivatives that are sufficiently liquid for mandatory multilateral trading. Existing data available to Canadian regulators demonstrates that there is sufficient liquidity in certain classes of CAD$ IRS to warrant a trading requirement in respect of such classes. This data is examined in detail in Appendix A to this comment letter. The Canadian CAD$ IRD market ($4 trillion in volume traded annually) is approximately half the size of the CAD$ bond market in terms of secondary market turnover. When considering the entire Canadian IRD market ($8.5 trillion in volume traded annually), it is equal in size to the CAD$ bond market in terms of secondary market turnover. [6]

23. CanDeal, which executed approximately $2.4 trillion in volume in 2014, has proven that its multilateral bond ATS can deliver risk mitigation, transparency, price discovery, and deep pools of liquidity even with a much smaller market size than that which exists for Canadian CAD$ IRD.

24. US swap data repository (**SDR**) data shows that CAD$ IRS are transacted in significant volumes on SEFs using multilateral execution methods. These include both fixed-floating and overnight index swaps (**OIS**) categories. The data shows that more than 50% of US CAD$ IRS transaction volume trades on SEFs[7]. This data is significant because the US CAD$ IRS market is virtually the same size as, in fact is even slightly smaller than, the Canadian CAD$ IRS market[8]. The existence of liquidity in the US CAD$ IRS market is therefore a sure indicator of liquidity in the Canadian CAD$ IRS market. By this measure, approximately 50% of the Canadian CAD$ IRS market by notional volume is sufficiently liquid to support the imposition of a trading obligation in Canada in respect of the instruments that comprise such volume.

25. The evidence of Canadian CAD$ IRS liquidity that may be gleaned from the US data is even stronger than this, however. US CAD$ IRS transactions are reported to US SDRs because US persons are counterparties to them. However, the other counterparty to many of these transactions is Canadian. That is because much of the volume in CAD$ IRS is cross-border. According to the BIS Report, 83% of CAD$ IRS transactions with buy-side participants were cross-border during the study period. In addition, the BIS data shows that more than 90% of cross-border CAD$ IRS transactions were executed in the US, i.e. with a US counterparty. This shows that many on-SEF US CAD$ IRS transactions are also Canadian CAD$ IRS transactions and that much of the US liquidity in CAD$ IRS is supplied by Canadian dealers. The liquidity

[4] http://www.clarusft.com/a-review-of-2014-us-swap-volumes/
[5] http://www.clarusft.com/a-review-of-2014-us-swap-volumes/
[6] http://www.bis.org/publ/rpfxf13irt.pdf
[7] See Appendix A.
[8] *Ibid.*

demonstrated by SEF trading of CAD$ IRS is therefore liquidity to which a Canadian trading obligation should apply.

26. In addition to the US data, the European Securities and Markets Authority (**ESMA**) has determined there is a liquid market in various classes of CAD$ IRS cleared by EU CCPs. The liquid classes include: (i) 6-month to ten-year tenors of fixed-floating CAD$ IRS; and (ii) one- and two-year CAD$ OIS.[9]

27. In CanDeal's submission these findings support the conclusion that there is sufficient liquidity in these classes of CAD$ IRS to warrant the imposition of a trading requirement.

Question 16: Pre-Trade Transparency

28. CanDeal is in agreement with the position taken in the Consultation Paper that pre-trade transparency requirements should not apply to transactions in OTC Derivatives on DTFs which have not been mandated to be traded on DTFs. Such OTC Derivatives will continue to trade bilaterally (voice trades, single-dealer platform, etc.) without a pre-trade transparency requirement. To prescribe pre-trade transparency requirements would disadvantage DTFs and ensure that participants continue to favour bilateral trading methods ensuring minimal participation on the DTFs.

29. With respect to pre-trade transparency for those OTC Derivatives which are mandated to trade on DTF, CanDeal accepts that while a measure of pre-trade transparency is required, it should not come at the expense of liquidity or efficient pricing. CanDeal's RFQ platform is successful because it permits buy-side participants to choose which liquidity provider or providers it wishes to secure quotes from. A buy-side participant may choose to request a quote from some, but not all, liquidity providers—or indeed even only one liquidity provider—and responding quotes are known only to the requestor. In this way, a buy-side participant is enabled to make their own decision between the benefits of more pre-trade transparency (i.e. more dealers included in the RFQ) and the detrimental effect on pricing and investment strategy resulting from excessive exposure. The CSA must be careful to calibrate pre-trade transparency requirements in such a way as to not negatively impact liquidity or make products more expensive to buy-side participants.

30. The EU approach to pre-trade transparency, for example, calibrates requirements to take into account the differing characteristics of various trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems. Where an order book is used, the venue will be required to make public the aggregate number of orders and the volumes they represent at each price level, for at least the five best bid and offer price levels. Where an RFQ system is used, the bids and offers and attached volumes submitted by each responding entity must be made public, although the quotes are executable exclusively by the requesting participant. Where streaming quotes are provided, the best bid and offer by price of each market maker in that instrument, together with the volumes attached to those prices, must be published.

31. Where a voice trading system is used, the information that must be made public is the bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system. The definition does not incorporate the concept of exclusivity in either party to the transaction, so other participants can participate in the price formation process on the basis of this

[9] See Appendix A.

information. The proposed standards do not set out a specific period of time for which such information must rest on the system before the orginal parties may execute on it. The requirement to make public bids and offers implies that the operator of a voice trading system will need to make use of electronic means in order to comply with the pre-trade transparency requirement. Each of the pre-trade transparency requirements is qualified by the condition that the trading systems to which they apply bring together multiple third-party buying and selling interests.

32. The details of the proposed EU approach to pre-trade transparency as set set out above have not been included in the Consultation Paper. Footnote 77 of the Consultation Paper makes reference to "forthcoming" ESMA technical standards. However, the technical standards were in fact published for final consultation in ESMA's *Consultation paper on MiFID II/MiFIR*, December 19, 2014, at pp. 206-208 based on draft technical standards published in ESMA's *Discussion Paper MiFID II/MiFIR*, May 22, 2014 at pp. 148-154. A more detailed summary of the EU technical standards relating to pre-trade transparency is attached as Appendix B to this comment letter. A summary of the EU technical standards related the criteria for determining whether derivatives should be subject to the trading obligation is attached as Appendix C.

33. CanDeal notes that concerns have been expressed by EU participants to the proposals in relation to RFQs, particularly with respect to making responses to RFQs public. If a liquidity provider is obligated to publish a price quote publicly and then honour that price to subsequent clients, providers will become cautious and reluctant to provide quotes, resulting in widened bid-offer spreads.

34. The US approach to pre-trade transparency obviates those concerns by stipulating that quotes provided in response to an RFQ be known only to the requester. SEFs are not required to disclose responses to RFQs to all market participants. The SEF rules ensure an adequate level of pre-trade transparency by also requiring that a SEF provide the RFQ requester: (1) with any firm resting bid or offer in the same instrument from any of the SEF's order books at the same time as the first responsive bid or offer is received by the RFQ requester and (2) with the ability to execute against such firm resting bids or offers along with the responsive orders. The requester retains the discretion to decide whether to execute against the resting bids or offers or responsive orders. This communication requirement promotes pre-trade price transparency and the trading of swaps on SEFs, as the RFQ requester will have the ability to access competitive quotes and quote providers will be able to have their quotes viewed by the RFQ requester. The SEF rules do not impose a specific requirement that the identity of the RFQ requester be disclosed or anonymous. The rules also do not provide a specific requirement regarding the publishing of the "request" for a quote. However, a RFQ system must permit RFQ requesters the option to make an RFQ visible to the entire market.

35. In the Consultation Paper, the Committee summarizes the US approach to pre-trade transparency as follows:

> The US approach to pre-trade transparency is to (i) require SEFs to provide an order book on which market participants may make executable bids or offers which are displayed to all participants, (ii) require an RFQ to be disseminated to a minimum number of liquidity providers, and (iii) require dealers to "show" other market participants the terms of a prearranged order book trade between customers or between themselves and a customer through the 15-second rule.

36. The US therefore takes the approach that the components of the prescribed execution methods determine the level of pre-trade transparency associated with each method, whereas the EU approach is to specify the information that must be made public in the case of each of several defined execution methods. Although both approaches essentially solve the same problem albeit through different methods, in Candeal's view the US approach is to be preferred for several reasons. First, the pre-trade transparency regime in respect of MAT derivatives has been in operation for over a year and is therefore a known quantity. Participants have adapted to the rules and volume has steadily grown. Second, this form of pre-trade transparency has been the standard in electronic bond trading for over a decade in Canada and the US. Thirdly, the majority of derivatives trades in Canada are cross-border and by far the majority of those trades are with US persons. Canadian participants will in many cases therefore already be familiar with the US rules through being required to execute transactions in MAT derivatives with US persons on SEFs. Fourthly, uniformity of regulation will reduce the possibility of regulatory arbitrage and minimize evasion. Finally, DTFs will have a better chance of qualifying for substituted compliance in the US as SEFs to the extent that they wish to expand their offering to US persons so that transactions with such persons initiated by Canadian persons who deal with the DTF for CAD$ denominated derivatives may also be completed on DTFs.

37. The US approach to pre-trade transparency, particularly in the context of RFQ systems, also strikes an appropriate balance between efficient price formation and pre-trade information, on the one hand, and concerns about information leakage in the event that pre-trade information was to be more broadly disseminated (subject to CanDeal's comments about a dealer minimum to be addressed below in the execution methods section of this comment letter).

Question 3: Permitted Execution Methods

38. The Committee sets out a number of execution methods that would be "permitted" to be used by a DTF in the absence of the imposition of any trading requirement: Consultation Paper on pp. 818-19. These recommendations form part of the CSA's conceptual approach to the DTF as a trading entity that is intended to operate in the first instance in the absence of any trading obligation. DTF rules relating to pre- and post-trade transparency and trade execution would be enhanced only when a trading obligation was imposed. In CanDeal's submission, permitted execution methods should only apply where a trading mandate exists.

39. In both the US and the EU, execution methods are prescribed solely in connection with a mandatory trading obligation. Neither jurisdiction prescribes "permitted" execution methods to apply where derivatives are not subject to a trading obligation. In the US, derivatives transactions that are not required to be executed on a SEF may be transacted using "any method of execution". This enables traditional bilateral methods of execution to continue to be used for derivatives transactions that are not subject to the mandatory trading obligation. Similarly, under the EU proposals, transactions that are not required to be traded on multilateral platforms (RMs, MTFs or OTFs) are not subject to execution requirements.

Question 4: Required Execution Methods:

40. For the reasons given above, the Committee should recommend that execution methods for transactions executed on a DTF should be prescribed only for derivatives transactions that must be executed exclusively on a DTF. Such execution methods should be imposed either directly or through pre-trade transparency requirements that essentially dictate the parameters of the permissible

execution methods.[10] It is submitted that the Committee's discussion of "Permitted Execution Methods" should be replaced by a more prescriptive version of the discussion of execution methods that may apply after a trading obligation is imposed, under the heading "Enhanced requirements where derivatives are subject to a DTF-trading mandate" on pp. 828-829.

41. CanDeal would not object to a provision specifying that an order book be offered by a DTF as a minimum trading methodology. Experience during the first year of mandatory trading on SEFs indicates that while order books have not yet gained significant traction per se among dealer-to-client SEFs, the ability of a requesting participant under an RFQ to execute on any resting bids or offers on an order book or, at its option, a quote in response to the request enhances competitive pricing and improves pre-trade transparency and liquidity. The SEFs that have made the most significant gains in market share and transaction volume since the initiation of mandatory trading (Tradeweb, for example) still see that liquidity makers and takers prefer RFQ as their predominant execution method. Experience to date indicates that in the dealer-to-client space, RFQ remains the overwhelming choice for execution method despite the existence of an order book. Nevertheless, an order book operating in conjunction with an RFQ system may be a valuable tool for price discovery and pre-trade transparency, and recent data indicates that order book trading is slowly increasing on SEFs, particularly as SEF trading moves products toward greater standardization.

42. In CanDeal's view, an appropriately tailored RFQ system operating in conjunction with an order book should be a permissible method for executing transactions subject to the trading requirement. As to the components of such a system, CanDeal is of the view that the applicable requirements in the US, adjusted for each currency type, are suitable for adoption in the DTF framework. In order to address concerns about liquidity and potential information leakage in the smaller CAD$ IRS market, however, it would be appropriate to limit the dissemination requirement to at least two liquidity providers, except in the case of IRS covered by MAT determinations, which would remain at a minimum of three in order to permit DTFs to qualify for substituted compliance in the US.

43. For the same reason, the US provisions relating to prearranged transactions negotiated on a bilateral basis should also apply to the DTF execution regime. Such transactions in derivatives subject to mandatory trading on DTFs should be required to be displayed on a DTF's order book for a minimum period, either 15 seconds or such other period approved by regulators, prior to execution, in order to permit best price, pre-trade transparency and multilateral trading objectives to be achieved.

Question 17: Post-Trade Transparency

44. In CanDeal's view, the Committee should address post-trade transparency in relation to DTFs by reference to the requirements of the OSC Rule *Trade Repositories and Derivatives Data Reporting* (**TR Rule**). It is essential that the Committee not create asymmetrical requirements applicable to transactions not subject to a trading mandate and those required to be executed on DTFs. An asymmetrical reporting requirement will create an unlevel playing field as well as create uncertainty and thereby disadvantage DTFs. Participants would not choose to trade on a venue that imposes different

[10] In the EU, execution methods for derivatives subject to the trading obligation are prescribed through pre-trade transparency standards applicable to each execution method. In the US, the pre-trade transparency available in the case of a mandatory trade is a function of the prescribed execution method.

and more onerous rules and requirements than those applicable in their existing bilateral relationship and to incur the infrastructure costs that would be required to interact with such a platform.

45. The approach taken in the US in the case of SEFs illustrates the approach the Committee should take in Canada to the issue of post-trade transparency. While SEF structure, required execution methods and required pre-trade transparency are specified in the final SEF Rule, post-trade transparency requirements applicable to SEFs are governed by the CFTC's regulation that sets out the framework for the real-time public reporting of swap transaction and pricing data for all swap transactions. Under the real-time reporting rule, parties to a swap are responsible for reporting swap transaction information to the appropriate registered swap data repository in a timely manner, except in respect of swaps executed on a SEF pursuant to an obligation to do so. For such publicly reportable swap transactions executed on or pursuant to the rules of a SEF (or DCM), the parties satisfy their reporting obligation by executing the transaction on or pursuant to the rules of the facility. The SEF or DCM must then report the swap transaction and pricing data to the appropriate registered swap data repository for public dissemination. It is submitted that this is the approach the Committee should use in the case of DTFs.

46. In CanDeal's view, the considerations raised by the Committee in the Consultation Paper as to whether to require a DTF to disseminate the transaction data to the public directly, or require a DTF to report the transactions to a trade repository, and require the trade repository to disseminate the trade data to the public, do not arise. CanDeal notes that while the CSA refers to the US real-time reporting rule and MIFIR provisions regarding post-trade transparency, no reference is made to the TR Rule. It is submitted that questions of this nature ought to be decided in the setting of the TR Rule, and that requirements of DTFs should not differ from those applicable from dealers or counterparties subject to trade reporting requirements. To the extent that rules applicable to DTFs impose additional or more onerous requirements in relation to post-trade reporting, participants will avoid trading on DTFs to the extent possible. Participants would not want to trade on a platform that would result in differing reporting requirements if they chose to trade on it.

Question 18

47. This should be governed by the TR Rule, with emphasis that all market participants and entities required to report should be subject to the same obligations.

Question 19

48. Section 39(3) of the TR Rule provides for times lines in public dissemination of transaction data. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size. Having regard to the delays provided for in the TR Rule, it is not necessary to prescribe any rules regarding deferred publication of trade information for DTFs. Having said that, the timing of public dissemination for transactions executed on DTFs should be no earlier than the standard applicable to transactions to which a derivatives dealer is a counterparty, i.e. by the end of the day following the day on which the designated trade repository receives the data. It is essential that a level playing field among the various reporting entities be preserved in order to preserve DTF liquidity and minimize evasion.

Question 22

49. Again, this should be governed by the TR Rule. DTF rules should not be more onerous in terms of trade reporting than other derivatives transactions. The variable scope of pre-trade transparency depending on execution method reflects the appropriate balance of policy considerations in terms of the benefits of disclosure relative to the risks associated with information leakage and associated potentially abusive trading strategies such as front-running, painting the screen or pre-arranged trading.

Question 1: Definition of DTF

50. The proposed definition is too narrow as it encompasses a facility that operates an order book only. It is overly reliant on para. (a)(iii) of the definition of "marketplace" in National Instrument 21-101 *Marketplace Operation*, which is appropriate to the trading of equities on an order book but does not capture more non-traditional execution methods used in respect of derivatives transactions, such as voice RFQ. The proposed definition is inconsistent with the proposals in the paper regarding permitted execution methods and is further inconsistent with the definitions of similar multilateral trading facilities for derivatives in the US and EU. Compare the US SEF definition, which takes into account the predominant RFQ execution method as well as other execution methods that incorporate "any means of interstate commerce": "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce"; and the EU OTF definition: "a multilateral system… in which multiple third party buying and selling interests in [derivatives] are able to interact in the system in a way which results in a contract", which captures a broad range of execution methods and is expressly intended to capture all existing and foreseeably future ways in which derivatives transactions may be included. The key limiting factor applicable to the definition is the multilateral character of the facility. The definition in all other respects must be sufficiently broad to capture a wide range of trading methodologies and means of execution, including for example voice and email components.

Question 2: Discretion

51. In CanDeal's view, a DTF should be based exclusively on an agency model and not permit discretion on the part of the operator of the platform.

We thank you for the opportunity to comment on the Consultation Paper and would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact Aubrey Baillie [redacted] [redacted] [redacted] or Debra MacIntyre [redacted] [redacted] [redacted].

Yours very truly,

"Aubrey Baillie"

Aubrey Baillie
Chief Financial Officer & Chief Compliance Officer
CanDeal.ca Inc.

Appendix A—Liquidity Analysis of Canadian CAD$ IRS Market

There is a wealth of existing data available to the Committee from authoritative sources that supports the conclusion that there is liquidity in certain classes of Canadian CAD$ IRS sufficient to impose a trading obligation at this time in respect of such instruments.

The market for IRS is by far the largest segment within the global OTC derivatives market[11].

Some of the sources CanDeal reviewed that support these conclusions include:

(i) Bank for International Settlements, *Triennial Central Bank Survey, Interest rate derivatives market turnover in 2013*, December 2013 (**BIS Report**)[12];

(ii) Bank for International Settlements, *Triennial Central Bank Survey OTC interest rate derivatives turnover in April 2013: preliminary global results*, September 2013 (**Preliminary BIS Report**);

(iii) Gyntelberg and Upper, "The OTC interest rate derivatives market in 2013", *BIS Quarterly Review*, December 2013, pp. 69-82 (**Gyntelberg**).

(iv) Futures Industry Association *SEF Tracker, Issue #9, October-December 2014*, February 2015 (**FIA SEF Tracker**);

(v) Clarus Financial, *A Review of 2014 US Swap Volumes* (**2014 SEF Report**);

(vi) Clarus Financial, *January Volumes in Swaps*, February 4 2015 (**January 2015 SEF Report**);

(vii) Clarus Financial, *February 2015 Review: ICAP vs. Bloomberg*, March 3, 2015 (**February 2015 SEF Report**);

(viii) Clarus Financial, SDRview database, http://sdrview.clarusft.com/# (**SDRview**);

(ix) ESMA, *Consultation Paper MiFID II/MiFIR*, December 19, 2014 (**ESMA CP**);

(x) European Central Bank, OTC Derivatives and Post-Trading Infrastructures, September 2009 (**ECB Report**);

The data reviewed by CanDeal from these sources supports the following findings:

[11] ECB Report at p. 16.

[12] The BIS Report contains data concerning Canadian IRS and CAD$ IRS as of April 2013. Included in the BIS Report is detailed data on global, country-specific, currency-specific, and counterparty-specific turnover in IRD in April 2013. The BIS Report further segregates counterparty-specific data into domestic and cross-border volume by currency. The unit of measure in the BIS Report is average daily turnover, which may be annualized through simple extrapolation. The data is further broken down among the various classes of IRD, namely, IRS, FRA and IRS options.

1. The market for CAD$ IRS is undeniably large enough to sustain a liquid market. When one compares the known market for the two most standardized classes of IRS, fixed-floating and OIS, to other liquid markets in Canada, the answer seems obvious.

2. CAD$ IRS are transacted in significant volumes on SEFs using multilateral execution methods. These include both fixed-floating and OIS categories.

3. Canadian participants executed significant portions of their IRS trade volume in currencies which are included in the MAT list, as the BIS Report shows.

4. The demand for CAD$ IRS comes predominantly from the US and Canada, with smaller participation from EU participants, as the BIS Report shows.

5. European Securities and Markets Authority (**ESMA**) research has determined there is a liquid market in various classes of CAD$ IRS. The liquid classes include: (i) 6-month to ten-year tenors of fixed-floating CAD$ IRS; and (ii) one- and two-year CAD$ OIS.

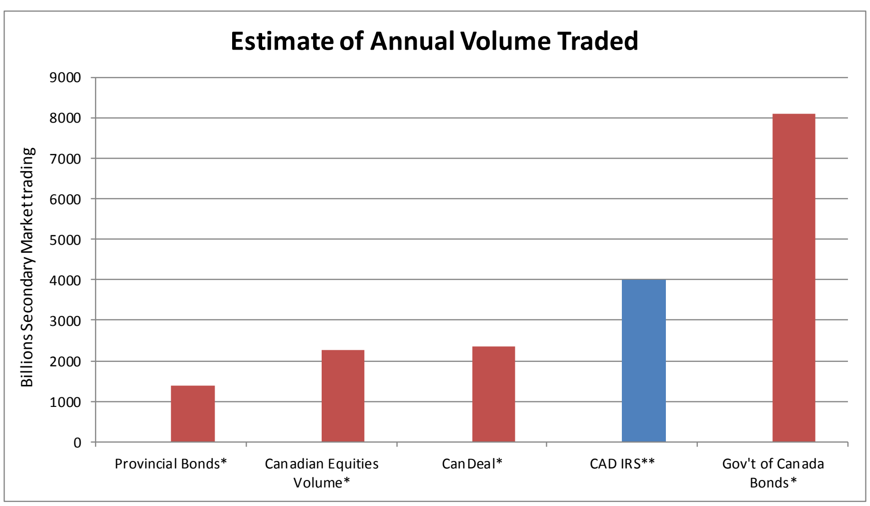
In CanDeal's submission these findings support the conclusion that there is sufficient liquidity in these classes of CAD$ IRS to warrant the imposition of a trading requirement in respect of such classes applicable to Canadian counterparties.

The basis for each of these findings is set out below.

1. The market for CAD$ IRS is undeniably large enough to sustain a liquid market.

A review of secondary market trading across a number of Canadian markets shows that the CAD$ IRS market is one of the largest markets by dollar volume in Canada (Figure 1).

Figure 1

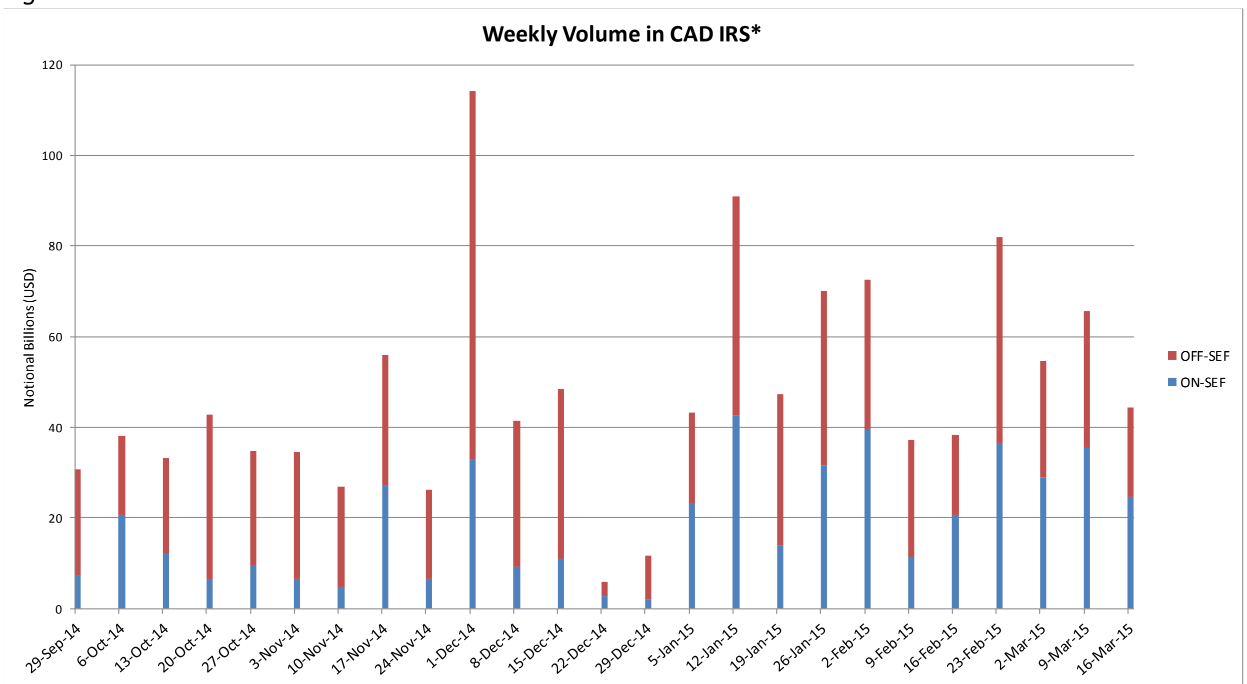


* Based on published actual 2014 volumes, various sources
** Annualized estimate based on CAD$ Fixed-Float IRS and OIS trade data collected from ESMA report on trades from March 1 - May 31, 2014.

2. CAD$ IRS are Transacted in Significant Volume on SEFs

US swap data depository (SDR) data sets out the current volume of CAD$ IRS transactions reported by US dealers to which one or both counterparties are US persons (**US CAD$ IRS**). According to the SDR data, $1.2 trillion was transacted in US CAD$ IRS during the past 6 months[13]. Of this total, $850 billion was in fixed-float IRS and $354 billion in OIS. Over that period $483 billion or 40% of that volume was executed on-SEF (Figure 2).

Figure 2



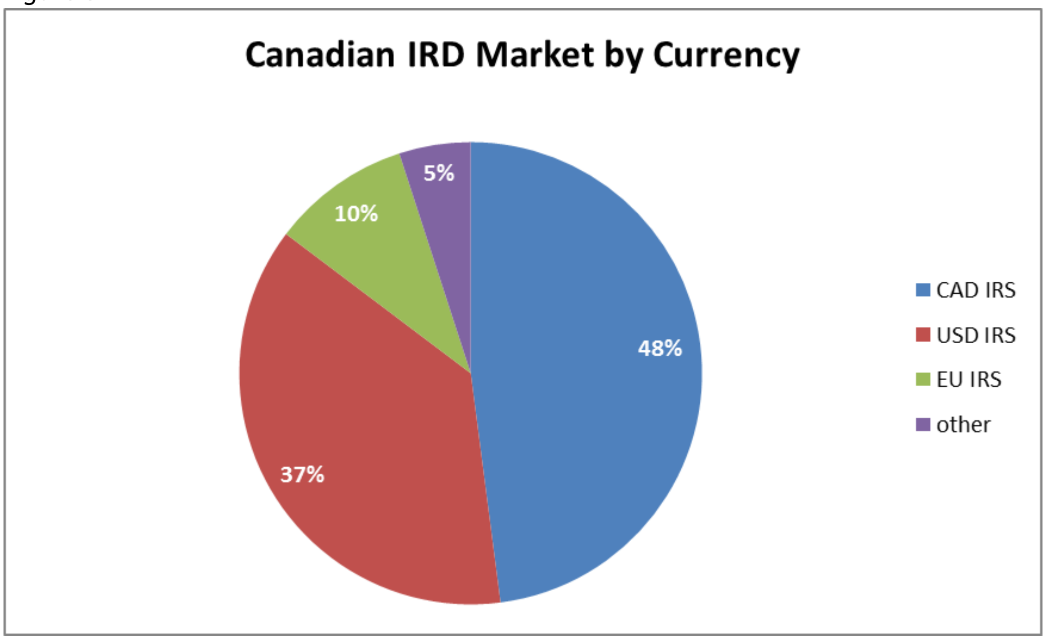
* CAD IRS SWAP: FixedFloat and CAD IRS SWAP: OIS. Source is Clarus SDR View application.

[13] The 126-trading-day period from October 1, 2014 to March 25, 2015.

3. Canadian participants executed significant portions of their IRD trade volume in currencies which are included in the MAT list

The BIS Report was based on one month of data (April 2013). This data states that 37% of IRD volumes executed by a Canadian (Canadian IRD) were denominated in USD, 10% of IRD volumes executed by Canadians were denominated in Euro and 3% were denominated in GBP. At the time the volume in these MAT currencies executed by Canadians was about $17 billion daily or over $4 trillion annualized (Figure 3).[14]

Figure 3



[14] BIS Report, pp. 8-10, 13.

4. The demand for CAD$ IRS comes predominantly from the US and Canada with smaller participation from EU participants, as the BIS Report shows

The US data is significant because the volume of US CAD$ IRS is virtually the same as, in fact even slightly smaller than, the size of the Canadian CAD$ IRS market. Accordingly, the existence of liquidity in the US CAD$ IRS market is a sure indicator of liquidity in the Canadian CAD$ IRS market. The US SDR data shows that more than 50% of US CAD$ IRS transaction volume is sufficiently liquid to trade on SEFs. Given that the Canadian CAD$ IRS market is the same size, or perhaps slightly larger, it follows that approximately 50% of Canadian CAD$ IRS volume is sufficiently liquid to support the imposition of a trading obligation in Canada in respect of the instruments that make up that volume.

The evidence of Canadian CAD$ IRS liquidity is in fact even stronger than that indicated by the above analysis would indicate. US CAD$ IRS transactions are reported to US SDRs because a US person is a counterparty to them.[15] However, the other counterparty to many of these transactions is Canadian. That is because much of the volume in CAD$ IRS is cross-border. According to the BIS Report, 83% of CAD$ IRS transactions with buy-side participants were cross-border during the study period[16]. In addition, 88% of Canadian IRS transactions with buy-side participants were cross-border.[17] This data suggests that much of the liquidity provided for US CAD$ IRS is from Canadian dealers. Many US CAD$ IRS transactions would also therefore be Canadian CAD$ IRS transactions. The liquidity indicated by SEF trading is therefore directly applicable to CAD$ IRS transactions to which a Canadian trading obligation would apply. It may therefore also be concluded that the US data in fact directly reflects the liquidity of Canadian CAD$ IRS.

[15] The data on US CAD$ IRS consists of transactions reported by US dealers under CFTC real-time swap reporting rules. The data does not include dealer-reported Canadian CAD$ IRS transactions as these are not yet subject to public dissemination.
[16] BIS Report, p. 2, "other financial institutions" breakdown between local and cross-border.
[17] BIS Report, p. 16, "other financial institutions" breakdown between local and cross-border.

5. EU Data Confirms Liquidity of Classes of CAD$ IRS

The ESMA CP contains extensive analysis as to whether a “liquid market” exists in IRS of nearly every class and currency based on data reported to trade repositories by EU CCPs (including by LCH.Clearnet, the global IRS clearing market leader. The volume of CAD$ IRS transactions included in the ESMA data (approximately $14 billion per day) represents more than half of the global CAD$ IRS volume of approximately $26.8 billion per day. Among the conclusions drawn by ESMA from this data set are the following[18]:

(i) there is a liquid market in 6-month to ten-year tenors of fixed-floating single-currency CAD$ IRS;.

						Criteria applied for liquidity classification	Min values across liquid classes
Num of trades per day						2.00	1.20
Notional Amount per day						100,000,000	76,167,945
FIXED TO FLOAT SINGLE CURRENCY SWAPS	Num of trades	Num of trades per day	Num of days traded	Notional Amount	Notional Amount per day	Liquidity Flag	Final Liquidity Flag
FIXED-FLOATING__CAD__2 years	1,368	21.05	65	172,222,033,191	2,649,569,741	Liquid	Liquid
FIXED-FLOATING__CAD__3 years	1,638	25.20	63	162,934,502,383	2,506,684,652	Liquid	Liquid
FIXED-FLOATING__CAD__4 years	1,037	15.95	63	87,376,711,838	1,344,257,105	Liquid	Liquid
FIXED-FLOATING__CAD__5 years	1,741	26.78	63	111,125,983,859	1,709,630,521	Liquid	Liquid
FIXED-FLOATING__CAD__6 years	2,193	33.74	64	116,948,924,404	1,799,214,222	Liquid	Liquid
FIXED-FLOATING__CAD__7 years	491	7.55	58	28,735,026,157	442,077,325	Liquid	Liquid
FIXED-FLOATING__CAD__8 years	341	5.25	59	24,592,149,074	378,340,755	Liquid	Liquid
FIXED-FLOATING__CAD__9 years	451	6.94	62	15,487,704,002	238,272,369	Liquid	Liquid
FIXED-FLOATING__CAD__10 years	1,104	16.98	61	25,665,969,552	394,861,070	Liquid	Liquid
FIXED-FLOATING__CAD__11 years	1,698	26.12	64	37,963,663,410	584,056,360	Liquid	Liquid
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FIXED-FLOATING__CAD__6 months	499	7.68	53	101,803,198,464	1,566,203,053	Liquid	Liquid
FIXED-FLOATING__CAD__1 year	719	11.06	64	108,972,568,520	1,676,501,054	Liquid	Liquid

(ii) and there is a liquid market in one- and two-year tenors of CAD$ OIS.

						Criteria applied for liquidity classification	Min values across liquid classes
Num of trades per day						1.00	0.58
Notional Amount per day						50,000,000	58,031,528
OIS SINGLE CURRENCY SWAPS	Num of trades	Num of trades per day	Num of days traded	Notional Amount	Notional Amount per day	Liquidity Flag	Final Liquidity Flag
OIS__AUD__1.5 months	47	0.72	11	14,793,308,660	227,589,364	Illiquid	Illiquid
OIS__AUD__3 months	79	1.22	16	22,837,989,511	351,353,685	Liquid	Illiquid
OIS__AUD__6 months	225	3.46	47	102,098,499,731	1,570,746,150	Liquid	Illiquid
OIS__AUD__1 year	390	6.00	53	218,232,960,861	3,357,430,167	Liquid	Illiquid
OIS__AUD__2 years	60	0.92	33	18,769,152,684	288,756,195	Illiquid	Illiquid
OIS__AUD__3 years	4	0.06	4	773,288,555	11,896,747	Illiquid	Illiquid
OIS__BRL__3 months	5	0.08	2	1,238,816,652	19,058,718	Illiquid	Illiquid
OIS__BRL__6 months	2	0.03	2	999,944,069	15,383,755	Illiquid	Illiquid
OIS__BRL__1 year	246	3.78	20	9,547,376,473	146,882,715	Liquid	Illiquid
OIS__BRL__2 years	79	1.22	30	4,608,934,438	70,906,684	Liquid	Illiquid
OIS__BRL__3 years	355	5.46	41	3,021,912,980	46,490,969	Illiquid	Illiquid
OIS__BRL__4 years	7	0.11	5	661,794,900	10,181,460	Illiquid	Illiquid
OIS__BRL__5 years	1	0.02	1	4,092,987	62,969	Illiquid	Illiquid
OIS__BRL__6 years	1	0.02	1	6,615,001	101,769	Illiquid	Illiquid
OIS__BRL__7 years	157	2.42	23	348,417,391	5,360,268	Illiquid	Illiquid
OIS__BRL__9 years	4	0.06	2	164,696,779	2,533,797	Illiquid	Illiquid
OIS__CAD__1.5 months	20	0.31	6	16,336,548,982	251,331,523	Illiquid	Illiquid
OIS__CAD__3 months	10	0.15	6	10,627,773,336	163,504,205	Illiquid	Illiquid
OIS__CAD__6 months	52	0.80	17	41,608,467,354	640,130,267	Illiquid	Illiquid
OIS__CAD__1 year	152	2.34	38	98,990,133,944	1,522,925,138	Liquid	Illiquid
OIS__CAD__2 years	135	2.08	40	40,279,958,093	619,691,663	Liquid	Illiquid

ESMA qualifies these findings by stating that, while the criteria for determining which classes of derivatives should be subject to the EU trading obligation should follow a similar approach to that used for the determination of whether a “liquid market” exists, the thresholds should not necessarily be the

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[18] ESMA CP, pp. 179-180, 195. Trade data collected from March 1 – May 31, 2014.

same.[19]. Nevertheless, the ESMA "liquid market" analysis is highly persuasive in determining whether there is sufficient liquidity in comparable classes of Canadian CAD$ IRS to support a trading obligation. This is because, of Canadian IRS transactions, $16.3 billion per day are CAD$ IRS, while the ESMA data covers approximately $14 billion in CAD$ IRS, or virtually the same volume.[20] Given that the notional volumes are nearly identical, the liquidity of the equivalent classes of Canadian CAD$ IRS is likely to be identical to the CAD$ IRS classes analyzed in the ESMA CP. In fact, a significant volume of Canadian CAD$ IRS is cleared by CCPs whose data was included in the ESMA analysis (e.g. LCH.Clearnet, recognized as a clearing agency by the OSC, AMF and other CSA jurisdictions, and of which all six major Canadian chartered banks are clearing members) and is thus directly reflected in the ESMA liquidity analysis.

[19] ESMA CP, pp. 337, 341.
[20] BIS Report, p. 8; ESMA CP, pp. 179-180, 191, 195, 199, 200, 204.

Appendix B: ESMA Technical Standards Relating to Pre-Trade Transparency

CanDeal provides the following summary of ESMA's *Consultation paper on MiFID II/MiFIR*, December 19, 2014, at pp. 206-208 (**EU Consultation Paper**) and the earlier technical standards proposals set out in ESMA's *Discussion Paper MiFID II/MiFIR*, May 22, 2014 at pp. 148-154 **(EU Discussion Paper)**.

The EU Consultation Paper summarizes the EU approach to pre-trade transparency as set out in the MIFIR text as follows:

> [T]he EU will require each regulated venue, including an OTF, to make public current bid and offer prices, and the depth of trading interests at those prices, for derivatives traded on its platform. An OTF must make this information available to the public on a continuous basis during normal trading hours; however, the requirement for public dissemination will not apply to hedging transactions. The range of bids and offers, and the depth of trading interest at those prices, to be made public for each class of financial instrument, including derivatives, is to be specified by ESMA in forthcoming technical regulations.
>
> Article 8(1) of MIFIR provides that the transparency requirements will also apply to actionable indications of interest. MIFIR further provides in Article 8(2) that the transparency requirements are to be calibrated by the trading system or protocol used by the trading venue in order to bring together multiple third-party buying and selling trading interests in a derivative. The different types of trading systems for which the requirements are to be calibrated include order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

In the EU Discussion and Consultation Papers, ESMA has taken the directive in the second paragraph above-quoted as the starting point for determining the appropriate level of pre-trade transparency. The same pre-trade transparency requirements, defined at the trading system level, are to apply equally to regulated markets, MTFs and OTFs. ESMA notes that in non-equities trading — often characterised by low and episodic trading activity – a variety of trading systems or protocols are commonly used and need to be defined. ESMA regards the definitions of RFQ and voice trading systems as key in determining the minimum amount of pre-trade information that must be offered. In the Consultation Paper, ESMA defines an RFQ system as:

> …[a] trading system where a quote or quotes are published in response to a request for a quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request.

ESMA regards the definition of RFQ as sufficiently broad to capture a variety of trading protocols sharing the same core characteristics. The definition would, for example, include request-for-stream systems whereby market makers provide continuous streaming of firm quotes to buy and sell financial instruments for a predefined period of time based upon the client's request.

ESMA defines a voice trading system as:

> [a] trading system where transactions between members are arranged through voice negotiation.

ESMA regards a voice trading system as a system where members or participants agree to conclude transactions on the basis of voice negotiation. Apart from the use of designated telephone lines, voice trading systems may include venues based on 'open outcry' trading floors. ESMA clarifies that in its view a voice trading system includes a system where technological assistance by way of, for example, texting, electronic chat rooms and instant messenger systems is employed in the negotiation and conclusion of transactions so long as the voice element is the essential or core part of the system.

A trading system that does not fall within the definition of RFQ or voice trading system and is of a hybrid or bespoke character falls into a further separate category for purposes of pre-trade transparency. ESMA has created this category to take into account the complexity of the non-equity markets and their possible evolution in the years to come.

Where a venue uses an order book, ESMA will require that the aggregate number of orders and the volumes they represent at each price level, for at least the five best bid and offer price levels, be made public.

Where streaming quotes are provided, the best bid and offer by price of each market maker in that instrument, together with the volumes attaching to those prices, must be published.

With respect to a RFQ system, the bids and offers and attaching volumes submitted by each responding entity must be made public. Although the quotes are executable exclusively by the requesting participant, the other participants see the quotes in real time.

In the case of a voice trading system, the information that must be made public is the bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system. Since the definition does not incorporate the concept of exclusivity in either party to the transaction, presumably other participants can participate in the price formation process on the basis of this information. The proposed standards do not set out a specific period of time for which such information must rest on the system before the orginal parties may execute on it.

The requirement to make public bids and offers implies that the operator of a voice trading system will need to make use of electronic means in order to comply with the pre-trade transparency requirement (i.e. to broadcast those bids and offers to the wider public and not only to the members or participants of the trading platform). However, use of electronic means does not imply that a hybrid system (as described above) is operated by a trading venue: the electronic means are used only to fulfil the pre-trade transparency requirements to the public.

Each of the foregoing pre-trade transparency requirements is qualified by the condition that the trading systems to which they apply be operated in line with the definition of the trading venues under MiFIR. In other words, the content of the requirements must be consistent with the fundamental characteristic of such multilateral trading venues that they bring together multiple third-party buying and selling interests.

ESMA goes on to prescribe technical standards that are to govern exceptions to the pre-trade transparency requirement. Although it is not necessary to go into any detail as to those in a comment letter, examples of situations in which exceptions will be available include block trades.

Appendix C: EU Criteria for determining whether derivatives should be subject to the trading obligation

Whether or not a class of derivatives subject to the clearing obligation should also be made subject to the trading venue will be determined by two main factors:

(a) The venue test: the class of derivatives must be admitted to trading or traded on at least one admissible trading venue; and
(b) The liquidity test: whether the derivatives are 'sufficiently liquid' and there is sufficient third party and selling interest.

ESMA has drafted technical standards to specify the criteria to be used in determining whether there is sufficient third-party buying and selling interest in a class of derivatives that the class is considered "sufficiently liquid" to trade on trading venues only.

MiFIR requires ESMA to consider a list of further criteria when making a determination regarding whether the class of derivatives (or subset) is "sufficiently liquid" to be subject to the trading obligation. In summary, these are: the average frequency and size of trades, the number and type of active market participants, the average size of spreads, the anticipated impact of the trading obligation on liquidity and the size of the transactions to which it should apply.

The definition of the liquidity test for the trading obligation is very similar to the definition of 'liquid market' for non-equities under the section of MIFIR relating to exemptions from pre-trade transparency requirements. ESMA proposes that the assessments for determining whether there is a 'liquid market' under the pre-trade transparency exemption and for the trading obligation should follow a similar approach but the thresholds should not necessarily be the same.

ESMA's preferred approach for calculating the average frequency of transactions criterion will be to set thresholds for both a minimum number of trades per day and a minimum number of days on which trading took place, over an 'assessment reference period', or specified period of time. ESMA considers that MiFIR does not intend to include portfolio compression and intragroup transactions within the scope of the trading obligation assessment or the transparency thresholds for exemptions.

ESMA's preferred approach for calculating the average size of transactions criterion will be the division of notional size by number of trading days during the specified period.

ESMA considers that the assessment reference period may need to vary depending on the class of derivatives. ESMA does not intend to introduce hard timeframes within its draft technical standards but allow maximum flexibility, noting that the assessment reference period will depend on both the class and the quantity and quality of data available for such classes.

ESMA will assess the criterion of number and type of active market participants by giving consideration to the number of members or participants of a trading venue involved in at least one transaction in a given market or where any member or participant of a trading venue has a contractual arrangement to provide liquidity in a financial instrument at least on one trading venue.
ESMA considers that the end-of-day spread provides a very limited snapshot as to average size of spreads. Therefore, ESMA proposes to use the average size of weighted spreads over different periods of time.

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30 March 2015

Re: Canadian Securities Administrators (CSA)
CSA Consultation Paper 92-401 – Derivatives Trading Facilities

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) welcomes the opportunity to comment on behalf of its members on the Consultation Paper issued by the Canadian Securities Administrators on the 29 January 2015.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 24 global FX market participants,[1] collectively representing more than 90% of the FX inter-dealer market.[2] Both the

[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays Capital, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, Nomura, RBC, RBS, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.
[2] According to Euromoney league tables

GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

Introduction

The FX market is the world's largest financial market. Effective and efficient exchange of currencies underpins the world's entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market, and the GFXD wishes to emphasise the desire of our members for globally co-ordinated regulation which we believe will be of benefit to both regulators and market participants alike.

The FX market is the basis of the global payments system. The volume of transactions is therefore very high and these transactions are often executed across geographical borders. As reported by the Bank of International Settlements in their Triennial Central Bank Survey: Foreign Exchange Turnover in April 2013[3] over 75% of the FX activity was executed by market participants across 5 global jurisdictions, hence the continued view from the GFXD that regulations should be harmonized at the global level. Cross border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated and transparent FX market. Canada presents a more granular harmonization challenge and we recommend that the CSA prioritises the harmonisation of legislation, both across provinces and at the international level.

Many of the current legislative and regulatory reforms will have a significant impact upon the operation of the global FX market and we feel it is vital that the potential consequences are fully understood and that new regulation improves efficiency and reduces risk, not vice versa. The GFXD welcomes the opportunity to set out its views in response to your consultation paper.

****

Q1. Is the DTF category appropriately defined? If not, what changes are needed and why?

We support the submission made by the International Swaps and Derivatives Association, Inc (ISDA).

Q2. Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

We support the submission made by ISDA.

Q3. Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

We acknowledge that the permitted execution methods outlined in the paper are only examples, rather than an exhaustive list. In order to prevent market disruption due to the application of conflicting regulatory obligations in one region versus another, we believe it is important that the final text recognises such challenges.

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[3] http://www.bis.org/publ/rpfx13fx.pdf

The FX derivative market is largely OTC, operating on a Request for Quote (RFQ) basis and on a discretionary execution basis, i.e., market participants choose with whom they trade with, rather than being 'directed' by a broker.

Request for Quote (RFQ)

In an RFQ system, the quote should be disclosed only to the requesting party, as the responding entities take on risk which would be increased if those quotes were seen by other responding entities and, more importantly, third parties. We believe that the exposure of a liquidity providers position to the market would have the following impacts: i) the provider might be unable to effectively hedge their position; ii) the costs of executing would be increased and these costs would be reflected in wider spreads to the client; and iii) the provider might decide to stop offering quotes in certain instruments should they be unable to effectively manage their subsequent position. It is therefore important that market makers on venues operating an RFQ protocol are not required to disclose pre-trade prices to other market makers (i.e., other price makers).

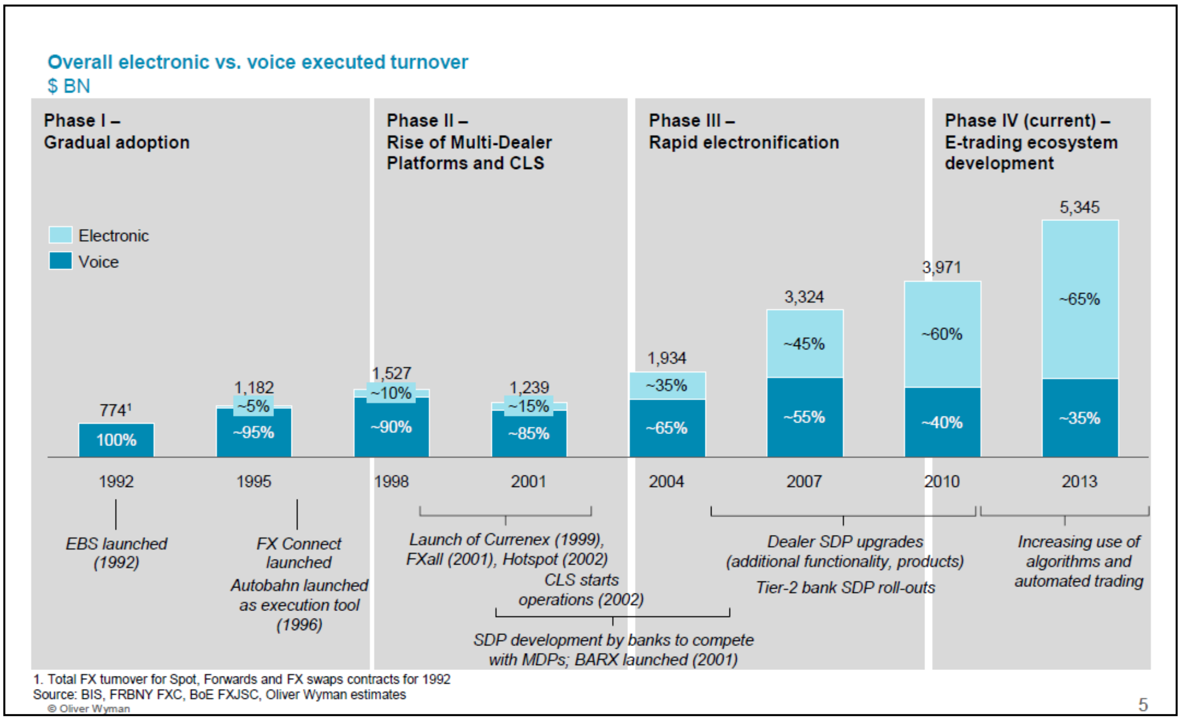
Request-for-stream (RFS)

The GFXD does not agree with the definition provided by the CSA. If the firm responds to the client with quotes, which are indicated as such (for a predefined period of time), the system would fall under the request for quote system notation. If the stream provided is indicative, we believe that RFS should not fall under the RFQ trading system notation. This is because the firm is not responding to the client with quotes but indicative prices.

Hybrid

We support the inclusion of hybrid system but note that for FX derivatives, the multi-multi venues typically operate though one model or another, either via voice or an electronic platform. However this may not the case for other derivative instruments. A recent study of the FX market by GFXD and Oliver Wyman showed that the FX market is ~65% electronic and ~35% voice traded, illustrated in Figure 1. We therefore agree with the CSA's inclusion of hybrid systems in the permitted execution methods.

Figure 1: Overall electronic v voice executed turnover in the Global FX market (Oliver Wyman)



Q4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

We support the submission made by ISDA.

Q5. Is the proposed regulatory framework for DTFs appropriate?

We support the submission made by ISDA.

Q6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

We support the submission made by ISDA.

Q7. To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?

We support the submission made by ISDA.

Q8. What factors are relevant in defining the proposed best execution duty?

We support the submission made by ISDA.

Q9. Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

We believe that it is not appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared.

We believe that this would amount to DFTs having the ability to establish a mandatory clearing requirement and we consider that such a determination should be made by the regulators following wider consultation with the market.

FX is a largely OTC market, and whilst parties execute via a platform, the platform itself is never a counterparty to the trade. The parties to the trade manage their risk, which is largely settlement risk[4], via a Credit Support Annex (CSA). It would therefore be inappropriate for a venue to determine whether a trade should instead be cleared - the choice of whether or not to clear, and through which CCP, should remain with the counterparties to the trade, who carry the risk.

As previously mentioned, the FX market is cross-border and global in nature. Trading obligations and clearing mandates should be globally aligned and we note that deliverable FX forwards and FX swaps, following the 2012 US Treasury exemption[5], are currently excluded from the definition of "swaps" in the Commodity Exchange Act in order to exclude these transaction types from the application of SEF rules and clearing obligations within the US. In addition to these harmonization challenges, physically settled FX instruments also present other challenges, noticeably the role the CCP plays in ensuring the correct funds are paid to the correct party at the correct time. The GFXD conducted a study[6] to size the liquidity shortfall that represented the minimum, baseline capabilities CCPs must demonstrate for converting funds, same day, into the currencies which its other (non-failing) clearing firms were expecting to receive on that date in satisfaction of the FMI Principles "cover 2" liquidity requirement. The study, which analysed 5 years of FX option trade information of 22 global banks, showed that the gross shortfall amounted to $161bn (equivalent) per day across 17 currencies.

NDFs have been voluntary cleared within the FX market for several years, but cleared volumes are believed to be 0.5-4% of the FX NDF market (itself 3-4% of the global FX market). ESMA summarised in their recent response[7] to their FX NDF Clearing Consultation, that they did not support the extension of a mandatory clearing obligation of FX NDFs in Europe due to the lack of global harmonization of clearing mandates, the lack of client clearing solutions and the limited number of CCPs offering FX NDF clearing.

Q10. Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

We support the submission made by ISDA.

Q11. Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

We support the submission made by ISDA.

4 http://www.bis.org/publ/bcbs229.pdf
5 US Exemption at http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf; GFXD views at http://gfma.org/correspondence/item.aspx?id=479
6 http://gfma.org/Initiatives/Foreign-Exchange-%28FX%29/FX-Options-Clearing/
7 http://www.esma.europa.eu/system/files/2015-esma-234_-_feedback_statement_on_the_clearing_obligation_of_non_deliverable_forward.pdf

Q12. Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

We support the submission made by ISDA.

Q13. Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

We support the submission made by ISDA.

Q14. Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

We support the submission made by ISDA.

Q15. How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

We support the submission made by ISDA.

Q16. Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

We do not believe that pre-trade transparency requirements should apply to OTC derivatives which trade on DTFs but have not been mandated to be traded on DTFs. Only instruments subject to the trading mandate are sufficiently liquid so that pre-trade transparency requirements would not cause the unwarranted exposure of a liquidity provider's position to the market.

Furthermore, we believe that the trading mandate itself should only be considered for instruments already subject to a clearing mandate and are thus by default deemed liquid.

The FX market is largely OTC and is ~65% electronically traded, with ~30% of volume conducted on multi-dealer platforms[8]. This already provides the market a high degree of transparency, even for instruments that are not subject to a trading mandate. Requiring additional transparency for instruments which are voluntarily traded on venue would be detrimental, as these would be instruments that have not been subject to a liquidity assessment. For instance, the inclusion of footnote 88 within the CFTCs SEF trading rules (17 CFR part 37) requires permitted (i.e., non-mandated) instruments, such as FX NDFs, that are traded on a multi-multi basis in the US (by a US person) to be traded on SEF and therefore required to comply with the SEF rules. Due to well published challenges with the legal certainty of transactions executed on SEF, a large percentage of the market has moved trading away from the SEF environment and executed away from the US, as reported by ISDA[9]. It should also be noted that the CFTC has issued no-action-relief (14-108)[10] to help the market work through these challenges.

8 According to analysis conducted by Oliver Wyman

9 http://www2.isda.org/functional-areas/research/research-notes/ (Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-year 2014 Update)

10 http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-108.pdf

Additionally, in a market such as the Canadian FX market, with relatively few participants and comparatively low trading volumes in relation to the global market, greater thought must be given to the effect of pre-trade transparency requirements, as the impact of publication will be much greater. For example, in an RFQ system where multiple quotes were required to be shown, it is highly likely that the number of quotes published could equate to a number equal to a significant percentage of the market makers in the Canadian markets. As such, the calibration of what is required to be published needs to be carefully considered.

We would therefore recommend that pre-trade transparency is restricted to derivatives that are subject to the trading mandate only, consideration for which should in turn be limited to those derivatives subject to a clearing mandate.

Finally, it is critical that any trading mandates have suitable mechanisms built into them to allow for the suspension of obligations in times of market stress. This suspension of requirements would protect market liquidity and stability until such a time as normal market levels resume.

Q17. Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

As we have previously mentioned, the FX market is global in nature and transacts across borders. As such, any efforts to implement regulatory transparency obligations needs to be considered with other jurisdictions in mind. It would not be appropriate for information to be made publically available in one jurisdiction before another. This would allow market sensitive information to be determined and will impact the ability of market participants to hedge positions.

For instance, the GFXD supports the CFTCs use of block-trade rounding/notional capping in order to prevent illiquid positions being published, thus aiding market makers in managing their risks, yet we note that such an approach has not been leveraged in Europe under MiFID. Given that MiFID goes live in January 2017, we are not yet able to assess the market impacts of such regulatory discrepancies in the publication of trade data and respectfully suggest that the CSA is be sensitive to the specific characteristics of the FX market during finalisation of transparency rules.

We are also concerned that the CSA does not appear to consider in this consultation the post trade transparency obligations under rules 91-507 and 96-101. We suggest that any DTF transparency obligations should not duplicate the obligations from other Canadian regulations.

Q18. What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

We support the submission made by ISDA.

Q19. When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

The GFXD believes that there are circumstances in which deferred publication of trade information should be permitted. In addition to large/block trades, trades in illiquid instruments should also be granted a deferral.

An effective deferral regime addresses the risks of pre and post trade transparency, ensuring that market makers facilitating transactions by committing capital have sufficient time to hedge and unwind their risk. For instance, in the Mergers and Acquisitions (M&A) world, information relating to deal-contingent trades could be made public before they are executed. These transactions are usually large in size and would inform the markets of the potential or conclusion of an M&A trade, allowing the market to trade ahead of the conclusion of the deal.

The length of deferral period may depend on the nature of the trade. For example, trades that are both large and illiquid should be granted a longer publication deferral. In the recent submission to ESMA in response to the December 2014 MiFID consultation paper, both AFME and ISDA recommended that there should be a 12 week deferral for those trades which would expose market makers to undue risk.

Whatever determination is made, the size and liquidity thresholds and length of deferrals should be reasonable, reviewed annually and applied consistently across provinces to prevent exposure of positions or regulatory arbitrage.

Q20. Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

We support the submission made by ISDA.

Q21. What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

In order to prevent regulatory arbitrage and to ensure that the public has access to globally consistent data, we would encourage the CSA to consider the approaches of the US and Europe and align the reportable data fields and schedules where possible.

We are concerned by the inclusion of the phrase "although not required to, a DTF would not be prohibited from disseminating real-time data". Consistency of reporting across the market is highly important and the publication of data should not be determined by individual institutions, especially those with commercial objectives.

We would also encourage the CSA to ensure that any requirements for public dissemination of information under trading mandate rules to not contradict or duplicate similar obligations already in force under trade reporting.

Q22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

We support the submission made by ISDA.

Q23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

Whilst we generally support the criteria proposed, we are finding that it is a challenge to implement these criteria in practice. Specifically, our experiences with the MiFID consultations in Europe demonstrate that is a very complex exercise to define liquidity and more specifically measure it.

Liquidity has different meanings for different market participants, typically determined on their ability to make markets. It is a subjective term.

We suggest that the CSA leverages its international network and the experiences of peers in other global jurisdictions in order to help frame a liquidity proposal on an instrument by instrument basis.

We believe that the experiences in Europe would provide a helpful guide especially given that some of the measures proposed, such as the number of market participants, are incredibly difficult to quantify. We also suggest that any liquidity definitions need to be flexible enough to accommodate real-time events that impact the liquidity of the market (e.g., geo-political events) and must include a process for suspension of transparency obligations in the event of market disruption. This would be particularly important to the Canadian market, due to its smaller size relative to other jurisdictions – it would be challenging for market makers to meet their obligations during a period of market stress.

Q24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

We do not believe that there are currently any classes of FX OTC derivatives which should be considered suitable for mandatory trading on a DTF, and believe that any trading obligation should be assessed on an instrument by instrument basis. Currently there are no mandatory trading obligations applied to FX instruments in any other global jurisdiction.

We support the view that a trading obligation should only apply to those instruments that are suitable for the mandatory clearing obligation, and as such would like to draw reference to our response to CSA paper 91-406 (June 2012), as there are a number of characteristics which still apply and set the FX market apart in terms of the effects of mandatory clearing:

1. Mandatory clearing is predominately concerned with reducing market risk. For FX, the predominant risk is settlement risk. Following extensive study of settlement risk by the central banks as a source of systemic risk for the FX market and therefore the global financial markets, the FX market went to considerable lengths to address this risk, ultimately leading to the creation of CLS Bank (CLS) in 2002. CLS' settlement system today eliminates virtually all settlement risk to its participants. Additionally, CLS' activities are subject to a cooperative oversight protocol arrangement among 22 central banks whose currencies are settled.

2. Canadian market regulators should take into account the systemic relevance of the relevant market in order to help ensure that the application of a clearing obligation would not result in undue risk being assumed by the market and overall financial system. Size should be measured not only in terms of volume, but also values. Unique characteristics of the derivative product, e.g. the physically delivery aspect to FX forwards, FX swaps and FX options, must also be taken into consideration.

    - <u>FX is at the heart of all international commerce</u>. Corporations and investors regularly participate in the market for real operational needs: to reduce risk by hedging currency exposures; to convert their returns from international investments into domestic currencies; and to make cross-border investments and raise finance outside home markets. The FX market, which is the world's largest financial market, is a central component of the global payment system. It also underpins other financial markets and the global economy generally. The Bank for International Settlements estimated that average daily market turnover in FX increased to $5.3 trillion in April 2013, up from $4trillion in April 2010.[11]

- FX markets are different from other derivative markets. The majority of FX trades are simple exchanges of currency. There are no contingent outcomes for FX forwards and swaps (cash flows are known at the outset of the trade) and they are overwhelmingly short-term in nature. For example, latest analysis conducted by Oliver Wyman of the BIS 2010 survey and the FXJSC/FXC figures (both collected in April 2010), estimates the following global maturity profile for FX forward and swap trades:

  - Up to 7 days maturity = 68.0% of daily traded volumes;
  - 7 days – 1 month = 13.3%; and
  - 1 month – 6 month = 16.2%

  This evidences a global FX forwards and swaps daily traded market total of 81.3% under 1 month maturity and 97.5% under 6 months, with 1.5% maturity between 6 months and 1 year and only 1% over 1 year. And unlike other OTC derivatives which are typically settled on a net, cash-settled basis, FX forwards and FX swaps are typically physically settled by delivery of the underlying currency.

- FX faces different and specific risks when considering counterparty credit risk. In FX forwards and swaps market, the main counterparty risk is settlement risk, not mark-to-market risk (settlement risk is the risk that one counterparty does not deliver their side of the currency exchange while the other counterparty has delivered their side). Unlike most derivatives markets where trades are settled financially, the FX market is currently predominantly physical, i.e., trades settle via exchange of currencies. For FX instruments with maturity less than 6 months: 94% of max loss exposure is settlement risk; mark-to-market risk is only a residual risk (6%).[12]

- CCPs are designed to mitigate "mark-to-market" risk – not settlement risk. In FX markets, the residual mark-to market risk is today mitigated through credit support annexes (CSAs).

- Mandatory clearing in FX markets could have unintended consequences whilst addressing a disproportionately low residual credit risk exposure. The rules of the Canadian market regulators should specifically recognize that in some classes of OTC derivatives, such as FX, the CCP clearing mandate/solution may not be the optimal solution for dealing with the predominant risk for that market, such as settlement risk. Key unintended consequences of mandating clearing for FX forwards and FX swaps include potentially undermining the efforts that have been made in addressing settlement risk to date; creating a single point of failure where none exists today; and increasing costs and risk for corporate and buy-side end-users of FX.

In addition, it is worth noting that the US Treasury has issued a determination to exempt FX forwards and swaps from the definition of a 'swap'[13]. The determination recognises the different

[11] http://www.bis.org/publ/rpfx13fx.pdf
[12] According to analysis conducted by Oliver Wyman
[13] US Exemption at http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf; GFXD views at http://gfma.org/correspondence/item.aspx?id=479

characteristics of FX instruments and the way the market functions at present. We support this determination, and urge the CSA to implement a similar determination in the interests of global regulatory harmonisation.

Q25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

We believe that there are certain situations which require an exemption from a trading mandate and note that such examples should be considered by Canadian authorities in order to promote global harmonization of regulatory obligations.

For example, these could include, but are not limited to:

1. Intra-group transactions;
2. Transactions involving a non-financial counterparty whose positions do not meet a specified clearing threshold – i.e., relating to those transactions for instance defined under EMIR Article 10 "which are not objectively measurable as reducing risks directly related to the commercial activity or treasury financing of the non-financial counterparty or of that group";
3. Illiquid trades in instruments that have been determined as liquid, such as 'block trades'; and
4. Package transactions.

Q26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

We do not believe that a DTF should have sole discretion as to determining what is appropriate to be mandated to be traded on a DTF. We believe that it may be appropriate for a DFT to put forward a class of OTC derivatives for consideration by the regulator for a trading mandate. However, the ultimate decision should be made by the regulators following wider consultation with the market and not based on the commercial considerations of a DTF.

As the FX market is the basis of the global payments system, the volumes of transactions is very high, and are often executed across geographical borders. Allowing DTFs to specify that a class of OTC derivatives should be mandated to trade exclusively on a DTF would result in a lack of global harmonisation in mandatory trading obligations. This in turn could lead to trading in these instruments moving away from Canadian markets. For instance, the inclusion of footnote 88 within the CFTCs SEF trading rules (17 CFR part 37), required permitted instruments (e.g., FX NDF) that are traded on a multi-multi basis in the US (by a US person) to be traded on SEF. Due to well published challenges with the legal certainty of transactions executed on SEF, large percentages of the market have moved trading away from the SEF environment and executed away from the US.

Q27. What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

FX derivatives are largely traded using an RFQ model and we believe that this would be the primary execution model for those instruments included in the mandatory trading obligation. We too share the concerns noted by the CSA in the consultation paper with respect to the content of pre-trade transparency obligations for instruments executed via RFQ.

Whilst a solution offered in the consultation leans towards a process where the RFQ is sent to a number of dealers, we would be concerned with the impact of this given the comparatively small number of market makers in the Canadian FX markets. For example, if multiple quotes were required to be shown, this might equate to information that would reveal the positions of a high proportion of Canadian market makers and as previously discussed may lead to a reduction in the number of participants wanting to make markets in certain instruments, reducing liquidity.

An alternative proposal may be to publish the average bids and offers for each RFQ and attaching a volume band – this was the final proposal included in our recent response to ESMA on their December 2014 MiFID consultation. Or, as mentioned with reference to the US SEF rules, RFQ and the existence of an order-book may also provide the required transparency.

Q28. For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

We support the submission made by ISDA.

Q29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

We support the submission made by ISDA.

Q30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

We support the submission made by ISDA.

Q31. Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

We do not believe that there are specific Canadian market characteristics that would require a divergence between the US and European regulatory obligations.

****

We appreciate the opportunity to share our views on this consultation paper issued by Canadian Securities Administrators. Please do not hesitate to contact Fiona McKane on [redacted] or Andrew Harvey on [redacted] should you wish to discuss any of the above.

Yours sincerely,

[redacted]

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

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March 30, 2015

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Re: CSA Consultation Paper 92-401 – Derivatives Trading Facilities

The Investment Industry Association of Canada ("IIAC") appreciates the opportunity to provide comments on CSA Consultation Paper 92-401 – Derivatives Trading Facilities (the "Paper"). Our comments reflect the views of the IIAC Derivatives Committee which is comprised of senior professionals with responsibilities for derivatives markets activities and compliance for dealer members of the Investment Industry Regulatory Organization ("IIROC").

The IIAC is the professional association for the securities industry, representing close to 150 investment dealers regulated by IIROC. Our mandate is to promote efficient, fair and competitive capital markets for Canada and to assist our member firms across the country.

Our comments pertain exclusively to products offered by IIROC registered IIAC members and are not meant to reflect the views of their non IIROC affiliates dealing in other products.

IIAC members participate in the over-the-counter (OTC) derivatives market, primarily in contracts for differences (CFDs) and foreign exchange (FX). IIAC members offer CFDs and FX contracts ("IIROC Regulated OTC Derivatives") primarily to retail investors in Canada, an activity which is subject to strict terms and conditions of their registration, including capital, segregation, supervisory, reporting and proficiency requirements and benefits from protection of client assets through the Canadian Investor Protection Fund ("CIPF").

IIROC Regulated OTC Derivatives are traded on single-dealer platforms of a handful of IIAC members that offer full transparency, client documentation and reporting and a complete audit trail to regulators for surveillance purposes. Despite the fact that, in many cases, their dealer also offers access to listed products that provide the same exposure, clients often prefer to trade on CFDs and FX on their dealer's platform for a variety of reasons.

IIAC members also occasionally offer bespoke OTC derivatives contracts to high net worth and institutional clients. Although they originate from IIROC dealer member clients, these transactions will often be effected in an account opened for the client with a non-IIROC banking affiliate.

General Comments

The IIAC has argued in past submissions to members of the Canadian Securities Administrators ("CSA") that IIROC Regulated OTC Derivatives should be excluded from the scope of the CSA's OTC derivatives reform initiative. We have engaged discussions with IIROC on that subject. Meanwhile, we will continue to comment proposed rules and consultation papers as they are published.

We note that the "…proposed definition (of a derivatives trading facility ("DTF")) is not intended to capture…single-dealer platforms." And that "A participant providing trading services to its clients via a single-dealer platform would instead be subject to dealer registration requirements." We are supportive of this approach as our members are already subject to registration requirements as noted above.

Answers to selected questions from the consultation paper

As our comments pertain to IIROC Regulated Derivatives traded on single-dealer platforms which the definition of DTF does not intend to capture, we will address the specific questions in the paper only to the extent that our answers provide relevant information to members of the CSA.

Question 1: Is the DTF category appropriately defined? If not, what changes are needed and why?

From the point of view of our members' activities, we believe the DTF category is appropriately defined in that it does not capture single dealer platforms.

Question 23: Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

We believe the proposed criteria are appropriate. However, in considering "…whether the class of derivative is…mandated to be traded on a regulated venue in other jurisdictions…" the CSA should take into consideration differences in regulatory structure. In particular, the absence of a self-regulatory organisation in certain jurisdictions may lead to a different approach to contracts offered on single-dealer platforms.

Question 24: Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

Consistent with our above comments, we believe a mandatory trading obligation of IIROC Regulated OTC Derivatives would be detrimental to market participants. IIROC Regulated OTC Derivatives are bilateral in nature, with the dealer continuously quoting a two-sided market for clients to execute online. Transactions are conducted between dealer and client on a principal basis under strict IIROC rules in accounts that benefit from CIPF protection.

In practice, trading on a DTF would require a CCP in order to clear transactions executed against orders represented by a dealer other than the client's. This would bring no benefit to clients who currently trade on tight and visible spreads. However, the cost of building and maintaining the required trading, market data and clearing infrastructure would clearly harm the regulated industry's competitiveness against unregulated entities.

We welcome the opportunity for an ongoing dialogue with the CSA on this important initiative and would be pleased to discuss this submission should you have any questions.

Best regards,

[redacted]

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RE: CSA Staff Notices 92-401 *Derivatives Trading Facilities*

SaskEnergy Incorporated ("SaskEnergy") and TransGas Limited ("TransGas") welcome the opportunity to comment on CSA Staff Notice 92-401.

About SaskEnergy and TransGas

SaskEnergy is a Saskatchewan Crown Corporation and operates as a natural gas distribution utility. TransGas is a wholly owned subsidiary of SaskEnergy and operates primarily as a natural gas transmission and storage utility.

SaskEnergy serves in excess of 380,000 customers in approximately 93% of Saskatchewan's communities.

CSA Executive Summary

The executive summary to CSA Staff Notice 92-401 provides in part as follows:

> "Any DTF, regardless of whether it offers trading in OTC derivatives that are mandated to be traded on a DTF, would require an authorization from the securities regulatory authority in each jurisdiction in which it operates, or an exemption from such requirement.
> . . .
> DTFs generally would be regulated similarly to an exchange. For example, all DTFs would be required to have rules governing the conduct of participants, designed to ensure compliance with applicable legislation, prevent fraud and manipulative acts and practices, and promote just and equitable principles of trade.
>
> . . . In determining whether to require a class of OTC derivatives to be traded exclusively on a DTF, the Committee recommends that the CSA consider factors including whether the class of OTC derivatives is: subject to a clearing mandate, sufficiently liquid and standardized, subject to a similar trading mandate in other jurisdictions, or already trading through the facilities of a DTF or foreign trading platform.

Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

Canada is likely not unique, but the number of provincial regulatory regimes and disparate resources and interests of different provinces could create a challenge.

Moreover, based on our extremely limited experience with existing trading platforms, we have some concern that DTFs will be motivated to obtain authorization, or an exemption order, from security regulatory authorities in all provinces, in the same way and in a timely way.

A particular province might have to have a differing regulatory regime, or a delayed regulatory regime, simply out of necessity. Alternatively, it may have to defer to the decisions made solely in another province, where different factors are in play, so as to encourage DTFs to apply and to diligently work through the application or exemption process.

In terms of mandatory trading on a DTF, one might even foresee disparate treatment of commodity derivatives, for example, from province to province simply because no DTF is available.

If DTFs become the norm, a province without a DTF or with a slightly different regime, may have liquidity issues for its consumers.

Derivatives trading provides a real public benefit to gas consumers in Saskatchewan. It is a key component in reducing gas price volatility for residential and small commercial users, for example.

A working trading regime in natural gas and natural gas derivatives existed prior to this regulation. Where any doubt exists that the benefits of the new regulatory regime will not warrant its cost, or any uncertainty as to the effect on the Canadian market as a whole, SaskEnergy would argue for some caution, some care, and potentially a narrower scope initially.

Anything that can be done to ensure that DTF proponents apply in all participating provinces would be helpful.

SaskEnergy and TransGas are thankful for the opportunity to provide these comments, and we hope they are of some assistance.

Respectfully submitted,

SASKENERGY INCORPORATED

[redacted]

Terry D. Jordan
Senior Legal Counsel

TJ/lh

cc: Mark H. J. Guillet, Vice President, General Counsel & Corporate Secretary
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March 30, 2015

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Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

RE: Canadian Securities Administrators ("CSA") – Consultation Paper 92-401 – Derivative Trading Facilities

Dear Sirs/Mesdames:

TMX Group Limited ("**TMX Group**") welcomes the opportunity to comment on CSA Consultation Paper 92-401 (the "**Consultation Paper**")[1] regarding Derivative Trading Facilities ("**DTFs**") and is pleased that,

[1] References to the Consultation Paper throughout this letter refer to the version published on the OSC website - (2015), 38 OSCB 801. Online at: https://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20150129_92-401_derivatives-trading.pdf.

consistent with Canada's G20 commitments at the Pittsburgh Summit, the CSA is proposing a regulatory framework to govern mandatory trading of OTC derivatives on exchanges or electronic trading platforms. We have set out our responses to the CSA's questions below. Our most substantial concerns with developing this instrument are that: (i) the definition of DTF is not so broad as to capture smaller broker-type intermediaries; (ii) DTF regulations allow continued or increased liquidity in the OTC derivatives market; and (iii) volumes do not migrate from exchanges, which are more tightly regulated, to DTFs, which may have more flexibility.

TMX Group

TMX Group's key subsidiaries operate cash and derivative markets for multiple asset classes, including equities, fixed income and energy. Toronto Stock Exchange, TSX Venture Exchange, TMX Select, Alpha Exchange, The Canadian Depository for Securities Limited, Montreal Exchange, Canadian Derivatives Clearing Corporation, Natural Gas Exchange ("NGX"), Boston Options Exchange, Shorcan, Shorcan Energy Brokers, Equicom and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products, and other services to the global financial community. TMX Group is headquartered in Toronto and operates offices across Canada (Montreal, Calgary and Vancouver), in key U.S. markets (New York, Houston, Boston and Chicago), as well as in London, Beijing and Sydney.

Response to Questions

What follows in this comment letter are responses to the questions listed in the Consultation Paper.

1. **Is the DTF category appropriately defined? If not, what changes are need and why.**

Please see our response to question 5 below regarding the DTF framework.

2. **Is it appropriate to permit DTF operators a degree of discretion over the execution of transactions? Why or why not? IF discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?**

No, it is not appropriate. To allow DTF operators to exercise discretion over the execution of transactions confuses the role of market and intermediary and puts the DTF operator in a conflict of interest situation. Like exchanges, DTFs should have self-regulatory obligations to protect the confidentiality of participant information and not express an opinion or provide participants with market advice or colour, or perform any other traditional broker activity. The trading platform itself should be run in a non-discretionary manner, by parties that do not have an interest in the transactions, in a way that allows for maximum accessibility for participants. We do not believe that DTFs should offer voice or hybrid voice-electronic execution methods, as described in the Consultation Paper, where those methods allow for DTF discretion. Introducing brokers should be permitted to use discretion to facilitate trades off of the platform and bring the trades to the DTF for execution. Introducing brokers which do not offer OTC derivative trade execution facilities should not be required to be recognized as DTFs.

3. **Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?**

DTFs should be permitted to offer execution through an order book and an RFQ system. They should not be permitted to use hybrid execution methods such as voice brokering.

4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

The minimum trading functionality prescribed for DTFs should be the same as that prescribed for SEFs in the United States as described in the Consultation Paper – i.e. an order book or an RFQ system offered in conjunction with an order book[2] for mandated trades and any execution mode for non-mandated trades.

5. Is the proposed regulatory framework for DTFs appropriate?

TMX Group agrees that DTFs should be recognized and generally be regulated similarly to exchanges. Broadly, TMX Group believes the following changes should be made to the regulatory framework for DTFs:

(i) The definition of DTF should be narrower to allow for additional intermediary types

Generally, it appears that the CSA has followed the European model in defining a DTF broadly, similar to the organized trading facilities ("OTFs") in Europe. TMX Group believes that Canada should follow a model more similar to the US swap execution facility ("SEF") definition such that only intermediaries which actually execute a trade are captured.

The proposed definition of DTF is "a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of the trades".[3]

The phrase "buyers and sellers agree to the terms of the trade" is too broad in scope. This definition could also capture brokers and other entities that merely facilitate or match, but do not execute, trades. We propose replacing "agree to the terms of the trades" with "execute the trade." Other entities can use various methods to bring together or match buyers and sellers to agree on terms of a trade outside of the DTF. Entities that do not provide execution facilities should not be captured by the definition nor should these entities represent a regulated status that confuses the services and regulatory oversight for the market.

The CSA also states in the Consultation Paper "that the application of the proposed DTF regulatory regime be limited to those systems and/or facilities that bring together multiple buying and selling interests leading to the execution of OTC derivatives transactions"[4] To the extent this language is provided in any final guidance, we propose removing "leading to the execution of" and replacing it with "to execute".

Similar to the regulatory structure in the US, the definition of a DTF should be narrower and there should be a separate category for intermediaries such as introducing brokers. If necessary for clarity, brokers should be explicitly carved out of the definition. Under the Commodity Exchange Act, for example, certain brokers are explicitly carved out of the term "trading facility" which forms part of the definition of SEF.[5]

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[2] Consultation Paper at 813.
[3] *Ibid.* at 803 and 817.
[4] *Ibid.* at 816.
[5] The term "trading facility" does not include—

Brokers provide valuable liquidity and matching services in the market, but do not provide a trade execution facility and, due to the nature of their business and the costs to develop one, may not wish to do so. These participants should be permitted to continue to operate without recognition as a DTF. If counterparties wish to execute their OTC derivatives transactions on a DTF or if counterparties are trading OTC derivatives products which are mandated to trade on a DTF, a broker could then bring the transaction to a DTF for execution.

A very broad definition of DTF will likely require all market intermediaries in the OTC derivatives space to be recognized as DTFs. Brokers do not execute trades, but they do arrange or match trades before reporting them to trading platforms. Many brokers, some of which are not large entities with financial resources, may wish to continue their existing activities without becoming a DTF.

SEF set-up costs have been estimated by ISDA to be approx. $7.4 million, with ongoing operating costs estimated at nearly $12 million per annum. While costs in Canada pursuant to the proposed DTF rules may not be as high, there are substantial costs to bring systems into compliance, management time to oversee the transition and marketing efforts to educate clients regarding the changes will be required.

In the US, introducing brokers are able to continue carrying out their activities and report matched trades to registered SEFs instead of themselves registering as SEFs. TMX Group believes that the CSA should follow the US model with respect to this issue and with respect to DTF regulation generally for the reasons set out below.

(ii) Canada should more closely follow the US model

TMX Group believes that the Canadian rules should generally more closely emulate the US rules to address the issues described below:

(a) ***Market fragmentation*** - differences in regulations in multiple jurisdictions and the challenges relating to complying with multiple different regulatory regimes may cause derivatives markets to fragment along jurisdictional lines causing markets to become more national in scope and less international. The derivatives market in Canada is currently more inter-dependent with the US. As such, significant divergence from US regulation may pose significant risks in terms of disruption to commercial activity in Canada. Canadian market participants are already accustomed to US regulation of swaps and SEFs and have adjusted their operations accordingly. As such, a significant regulatory adjustment for North American participants to the US framework may cause confusion and harm economic activity levels in Canada. The European swap transaction level rules are not yet in effect and it is not yet clear how effective the

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(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;
(ii) a government securities dealer or government securities broker…
Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term "trading facility" for the purposes of this chapter without any prior specific approval, certification, or other action by the Commission. (See 7 U.S. Code § 1a (1)(51)(B))

European model will be in practice. Canadian regulations should not diverge significantly from the US regulations unless there are very strong investor protection or capital market efficiency reasons to do so.

(b) ***Detrimental to participants*** - Forcing brokers to be DTFs may lead to significant confusion of roles and creates problems with overall market structure. For example, brokers serve an important role in emerging markets today through acting in the best interests of their clients (one counterparty to a transaction) while trading platforms are marketplaces and for public interest reasons have broader responsibilities such as providing equal access, facilitating transparency, best pricing, etc. It is not clear how these two roles can be reconciled in one entity.

Further, a broad definition of DTF capturing almost all intermediaries is likely to drive many smaller intermediaries, which play an important role in generating market liquidity, out of the market due to costs of compliance and inability to recover those costs. This may result in less market liquidity as only a few large entities with significant financial resources are able to comply with the DTF requirements and remain in business and may also leave participants with fewer options to generate liquidity due to the more limited number and type of intermediaries. This may also result in a less competitive DTF market. A smaller number of DTFs/intermediaries are likely to result in higher fees for participants.

Much of the Canadian derivatives market may be smaller in size and less liquid than comparable markets in other countries. As such, it is important that, for particular product markets, an ability to trade certain OTC derivatives, that are not yet ripe for regulation and less liquid and subject to negotiation, off exchanges or DTFs is preserved and that existing intermediaries be able to provide liquidity to these markets.

(c) ***Detrimental to brokers*** – As already described, because of the way in which a DTF is currently defined and described in the Consultation Paper, many introducing brokers may be required to register as DTFs. The costs of becoming a DTF is likely to be too high for many smaller brokers..

(iii) Standardized derivatives should be required to trade on an exchange

Regulators may wish to reconsider the framework underlying the current approach to OTC derivative reform through establishing a regulatory framework for derivatives that ensures standardized derivatives transact in the most transparent and secure model (exchange-traded and cleared). Under US law it is illegal to transact in a future (standardized derivative) off exchange unless in a block or otherwise exempt. Swaps evolved off exchange as non-standardized negotiated contracts and serve an important role in the evolution of markets and facilitating market needs. Regulation appropriate for transaction venues for futures, however, will contain meaningful differences from those appropriate for OTC derivatives.

Regulators should reconsider alignment in the law with the US framework that requires futures be transacted through central limit order book models (futures exchanges) and cleared. OTC derivatives frameworks, including that for SEFs in the US, emerged to address a regulatory gap for OTC derivatives (traditionally non standardized, negotiated or emerging derivative products) that warranted a regulatory framework appropriate for their role in markets. This proposal eradicates the higher purpose of futures exchanges in the markets and overlooks the incentives underlying this regulated structure to develop markets that serve the public interest the best. From the perspective of participants, there may also be little incentive to trade standardized derivatives products on an exchange, when they could trade analogous OTC derivatives more flexibly through a DTF. Under this framework, what is the value in being an exchange? If there is no concept of having to trade standardized derivatives on exchange (futures), it is unclear why a futures exchange would continue to operate when it could take advantage of the greater flexibility afforded DTFs and arguably be subject to a lower standard of regulation.

(iv) Securities regulators should define the term "exchange"

Securities regulators should provide a definition of "exchange" in the provincial securities regulation to clarify the distinction between an exchange, a DTF and other forms of platforms or intermediaries that may or may not require registration or regulatory oversight as a marketplace for derivatives.

(v) Exchanges should be permitted to offer OTC derivatives without DTF recognition

In the United States regulatory regime, as noted in the Consultation Paper,[6] designated contract markets are permitted to offer OTC derivative products. The same structure should be permitted in Canada. Exchanges are, and will continue to be, the marketplaces subject to the highest order of regulation. It would be inefficient for exchanges to have to comply with an additional regulatory framework to offer OTC derivatives and inefficient for regulators to separately monitor their compliance with the DTF framework. If an exchange wishes to offer the flexibility of a DTF, this could be done through a separate affiliate registered as a DTF so that the distinction between the two recognition statuses are preserved and it is clear to participants whether an entity is operating as an exchange or a DTF.

Whether an entity is recognized as an exchange or a DTF should be based upon the characteristics of its platform and operations and not on the basis of the products it offers. The products an entity is permitted by regulation to offer should depend upon its recognition status – *i.e.*, an exchange can offer derivatives and OTC derivatives while a DTF can only offer OTC derivatives.

(vi) The concept of an exchange and a DTF should be uniform across provinces

TMX Group is pleased that the CSA's intention is that the features and requirements of DTFs will be harmonized across the various jurisdictions in Canada.[7] The Consultation Paper, however, also notes that the Committee anticipates that in some jurisdictions a DTF may be recognized as an exchange.[8] Allowing an entity to qualify as an 'exchange' in one jurisdiction and as a 'DTF' in another creates confusion as to what level of regulation each category is held

[6] Consultation Paper at 812.
[7] *Ibid.* at 819.

[8] *Ibid.*at 803, footnote 3.

to. It should be clear to the market, across provinces, that exchanges are held to the same high standards which have historically been imposed. Entities that permit greater flexibility and are held to the DTF regulations should be recognized as DTFs in every province, not as exchanges.

(vii) Spot and forward products should be carved out of the definition of OTC derivative

Similar to the US regulatory framework, trading of spot and forward products should not be captured by this instrument. Forwards are currently explicitly included in the definition of "derivative" in many provincial securities acts. The proposed definition of "OTC derivative" in the Consultation Paper is "a derivatives contract that is traded other than on a formal exchange." Assuming the definition of derivative from the provincial securities act is applied to the use of the term derivative in DTF regulation, forward contracts may be caught by this definition. Many end users, particularly in the commodities industry, transact in forward products for commercial, non-speculative purposes. Subjecting these products to the DTF regulatory regime would be confusing and disruptive to longstanding commercial practice and at odds with the US approach to this issue. Forward and spot products should be explicitly carved out of the definition of OTC derivative.

6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions?

TMX Group does not believe that DTFs should be permitted to exercise discretion in the execution of transactions.

As also addressed in our response to question 5, the inherent conflicts of interest that would exist if a DTF were to also be a dealer are too great to allow a DTF to exercise discretion in the execution of transactions and, in so doing, act as a dealer. A DTF should be a neutral trade execution facility. If it were to also act as a dealer, it may actively be acting against the interests of certain counterparties. Market participants will have less trust in a DTF if this were permitted, which will reduce volumes and liquidity. As noted earlier, an 'introducing broker' concept should be added to Canada's current registration rules similar to that used in the United States. Introducing brokers would be registered dealers permitted to solicit and accept orders for execution on a DTF using a variety of discretionary methods.

7. To address conflicts of interest should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity?

Yes. The DTF itself should not be permitted to exercise discretion.

Strict conflict of interest regulations should apply to any organization operating both a facility and a trading/dealing/brokering arm, including separation of operations in two different entities. An operator acting as a dealer or broker on its own platform, as the Consultation Paper suggests[9] may occur, fosters unfair trade practices and may jeopardize investor confidence in Canada.

8. What factors are relevant in defining the proposed best execution duty?

We would suggest that the IIROC Rulebook adequately summarize best execution duties. With respect to certain products, such as fixed income, size of the trade is a more relevant measure of best execution than price. Again, however, DTFs themselves should not be permitted to exercise execution transaction and

[9] Consultation Paper at 819.

thereby act as dealers or brokers.

9. **Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?**

TMX Group believes it is appropriate to allow, without mandating, DTFs to require clearing of all trades on the DTF that are capable of being cleared. Some trades may also be subject to a clearing obligation pursuant to applicable securities legislation, as addressed in proposed National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives (the "Clearing Rule"), in which case the DTF would have no choice. Given the costs associated with clearing and the potential impact of such a requirement on market liquidity, particularly in certain product markets (such as certain energy products), however, it may well be that a DTF would not choose to require clearing unless mandated under the Clearing Rule due to the risk participants may avoid trading on a DTF that requires clearing of all trades.

10. **Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?**

When establishing the rules, the CSA should keep in mind cost effectiveness and fairness considerations for the participants, DTFs, clearing agencies and trade repositories.

11. **Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?**

A DTF should not be allowed to exercise discretion in trade execution on its facility. Prior to execution, brokers should be permitted discretion in the manner of trade matching. Access to the trading platform should be motivated by principles of fairness and market transparency rather than potential conflicts of interest between a DTF operator and participants on the platform. Additionally, the minimum requirements for dealers engaged in bringing trades to the platform (the introducing broker concept) should be dealt with through broker/dealer registration requirements.

12. **Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?**

The organizational and governance requirements for DTFs should ensure a level playing field between DTFs and other marketplaces. To the extent it is possible, the same organizational and governance requirements that apply to exchanges should be applied to DTFs.

13. **Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.**

DTFs should not be allowed to exercise execution discretion and should be permitted, as exchanges are, to perform their regulatory and surveillance functions themselves, provided they are subject to appropriate SRO/market oversight obligations.

14. **Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.**

TMX Group agrees with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts. However, a separate legal entity affiliated with a DTF operator should be allowed to enter into trades as principal, on its own account, on the DTF platform operated by its affiliate, provided regulatory requirements in place would prescribe the implementation of safeguards for the appropriate management of potential conflict of interests.

15. **How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.**

The sufficiency of a DTF's financial resources should be evaluated in a similar fashion to the sufficiency of exchange's financial resources is evaluated, in order to ensure a level playing field between DTFs and exchanges and to offer an equivalent protection to the DTFs participants.

16. **Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs?**

As consistent with the SEF rules in the US, no they should not.

17. **Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?**

DTFs should be required to provide post-trade transparency to their trade repositories as soon as technologically possible.

18. **What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?**

TMX Group does not have a view on this matter.

19. **When should deferred publication of trade information be permitted? Are there circumstances other than block trades?**

In addition to block trades, deferred publication of trade information should be allowed for exchange for risk and exchange for physical trades, where applicable, in a manner similar to deferred publication allowed for marketplaces.

20. **Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?**

The threshold may be different depending on the class of derivative.

21. **What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).**

Generally, TMX Group believes these requirements should be consistent with those applicable to US SEFs.

Pre-trade information should only be required to be made available to participants, not the public generally.

The following post-trade information could be provided without charge to the public at the end of the day: instrument, quantity, open, high, low, settlement and volume.

22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

Real-time post-trade data should be made available for any participant willing to pay for such data. The information disseminated should include the post-trade data addressed in our response to 21.

We note that identity of counterparties should not be disseminated to participants or the public. Trade information dissemination is important for market efficiency and integrity, but the identification of counterparties could be detrimental in the context of relatively small and illiquid markets, as Canadian OTC derivatives markets can be.

Given the necessity for counterparties to remain anonymous, the CSA might need to take into consideration, in determining what level of trade transparency is beneficial for a given market, the numbers of players involved, the frequency of trading, the size of trades and other similar factors that may allow identification of the counterparties even if the information is not actually disseminated. For some specific markets, not disseminating post-trade data may foster market integrity and efficiency even more than mandated dissemination.

23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

Generally, yes. Regulators should also consider whether an analogous product is already listed on an exchange. If an analogous product has sufficient standardization and liquidity to be traded on an exchange, this is a strong indication that it may be appropriate for mandated trading on a DTF (or exchange).

24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

In the absence of clearer rules regarding DTF regulation, it may not yet be appropriate to suggest which products should be subject to the mandatory trading obligation.

25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

Any product mandated to trade on a DTF should also be permitted to trade on an exchange as explained in the response to question 5.

Generally, the CSA may want to consider exempting end users from the mandatory trading obligation.

26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 813?

Yes, with regulators having the ability to evaluate classes of OTC derivatives if it appears that DTFs are not doing so or if such products may pose systemic risk. Reliance upon the market to initiate proposals would put less pressure on regulatory resources. Regardless of which market players initiate the evaluation process, however, there could also be a public comment period (with well-defined timelines) before determining that any product should be mandated to trade. This would allow regulators to get the broad perspective necessary to make an appropriate determination on the matter.

27. What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

There should either be order book level transparency or RFQ-level transparency for mandated trades. The bid-ask and size should be displayed.

28. For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

This should be similar to determination of block sizes as discussed in question 20.

29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

OTC derivatives that have been mandated to trade on a DTF should be executed on an order book with certain limited exceptions. Block trades and RFQ execution may also be permitted in certain instances. TMX Group believes these requirements should align with US requirements regarding SEFs. It would also be challenging to achieve the appropriate level of transparency without order book execution.

30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

TMX Group believes that the Canadian regulatory approach should be aligned with the US approach.

<u>**General**</u>

31. Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

As discussed in the response to question 5, the Canadian rules should generally more closely align with the US rules regarding SEFs.

Further, while market rules and market models may vary between DTFs and exchanges, a level regulatory playing field should be established for the trading of listed derivatives and the trading of OTC derivatives for exchanges and DTFs. Exchanges are, and should continue to be, subject to similar, but stricter regulations than DTFs. However, the regulators should be mindful not to create a regulatory framework that could encourage the migration of activity from exchange-traded markets to DTFs with significantly lower regulatory and compliance requirements.

We would also note that regulators should be mindful that as the Canadian market is smaller than some comparable jurisdictions, such as the US, it may also be less liquid and this should be taken into consideration when drafting any rules or mandating that any particular OTC derivatives be required to trade on a DTF.

TMX Group appreciates the opportunity to provide comments with respect to the Consultation Paper and looks forward to further dialogue on this matter. We hope that you will consider our concerns and suggestions and would be happy to discuss these at greater length. Please feel free to contact Jennifer Oosterbaan, Legal Counsel, at [redacted] if you have any question regarding our comments.

Respectfully submitted,

TMX GROUP LIMITED

[redacted] [redacted]

James Oosterbaan President, NGX and Group Head of Energy	Alain Miquelon President and Chief Executive Officer, Montréal Exchange Group Head of Derivatives

2015-03-30

To each of:
Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services
Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

By e-mail:

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Re. CSA Consultation Paper 92-401 - *Derivatives Trading Facilities*

Ladies and Gentlemen:

TriOptima AB ("**TriOptima**") is pleased to submit the following comments in connection with CSA Consultation Paper 92-401 - Derivatives Trading Facilities (the "**Proposal**"). As discussed below in further detail, TriOptima is a provider of post-trade services to major market participants in the OTC derivatives markets.

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Any defined terms used have the meaning prescribed to them in the Proposal, unless otherwise specified herein.

TriOptima

TriOptima offers post-trade services in the OTC derivatives markets. TriOptima is headquartered in Stockholm and also conducts its business through its four subsidiaries in New York, London, Singapore and Tokyo. The company's client base is made up of major broker/dealer banks and other financial institutions globally.

TriOptima currently offers three post-trade services for the OTC markets:

- *triReduce*: a service for early termination of OTC derivatives - so called portfolio compression,[1]
- *triResolve*: a service for the reconciliation of counterparty positions in OTC derivatives and other financial products, margin management and operational risk management; and
- *triBalance*: a service for the mitigation of portfolio risk imbalances across bilateral and cleared OTC derivative exposures.[2]

TriOptima previously offered a trade reporting repository for interest rate derivatives, which has been wound down.

TriOptima's comments on the Proposal

Post-trade risk reduction services are not trading activities

Post-trade risk reduction services, such as bilateral and multilateral trade compression, multilateral counterparty credit risk/portfolio rebalancing and multilateral basis risk reduction, can be clearly differentiated from trading activities in that they do not involve the interaction of buying and selling interests and are not price-forming. Instead, they are designed to reduce counterparty credit risk, basis risk and/or operational risk. Post-trade risk reduction services operate with some variation but there are common parameters that reflect their risk-reducing function and differentiate them from trading activity:

- They are typically multilateral and they need to be executed in bulk as a single compound transaction[3] to achieve the identified risk-reduction result and cannot be executed in part by any individual participant;
- There is no price negotiation – participants are not able to post bids or offers to enter into specific positions;
- They are designed to provide a result which is overall market risk neutral for each participant;
- They are designed to reduce unwanted secondary risks, such as counterparty credit risk, basis risk and/or operational risk – these risks have arisen as a result of contracts already entered into by the participants (e.g. because of their normal trading activities);

[1] See Annex 1.
[2] See Annex 2.
[3] See Annex 3.

- They are non-continuous and non-real time – they operate on an overnight or intra-day basis using stale valuations.

Providers of post-trade risk reduction services are not party to any trades and do not provide advice in relation to any trades. Rather, providers of post-trade risk reduction services perform a calculation exercise based on parameters received from participants participating in the service and report the calculated results back to the participants, who verify the results and decide whether or not to implement the calculated results. It is important to note that the results can only be implemented in full or else the post-trade risk reduction event will be deemed null and void (i.e. all-or-nothing compound transaction).

Defining "Derivatives Trading Facility", Question 1

TriOptima acknowledges that the Canadian Securities Administrators Committee (the "**Committee**") has clarified in the Proposal that "/../ the proposed definition would not capture facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, *or portfolio compression, which reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios*". TriOptima encourages the Commission to also clarify that other post-trade risk reduction services that reduce, rebalance or eliminate non-market risk in existing derivatives portfolios without changing the overall market risk would not be captured by the proposed definition of a Derivatives Trading Facility.

As described above, post-trade risk reduction services are risk reduction tools designed to reduce second order risks such as counterparty credit risk, operational risk and/or basis risk and thus systemic risk. As such, and because these services can be clearly differentiated from trading activities (no price discovery, the services are designed to be overall market risk neutral and the services' compound transaction nature), it is not appropriate to classify them as trading venue activities. It should also be noted that it has been clarified in recital 8 of MiFIR that the European organized trading facility category shall not be deemed to capture compression services. Also, recital 27 of MiFIR clarifies that (i) trade execution requirements should not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risk in derivatives portfolios without changing the market risk of the portfolios, and (ii) MiFIR is not intended to prevent the use of post-trade risk reduction services.

Based on the above, we would ask the Commission to clarify that providers of post-trade risk reduction services delivering compound transactions are not captured by the Derivatives Trading Facilities category, and accordingly not subject to the license requirements for Derivatives Trading Facilities.

Trading Mandate, Questions 23, 24 and 25

When determining which derivatives must be traded on a Derivatives Trading Facility, for reasons explained above TriOptima would encourage the Commission to make it clear that any derivatives trades resulting from post-trade risk reduction services should not be subject to the trading venue execution obligation. This is particularly important because post-trade risk reduction services are typically multilateral in the sense that several participants from different jurisdictions in different time-zones participate in one and the same service run. The efficiency of a service run is directly related to the number of participants and the number of trades that are submitted to the service run; the greater the number of participants and trades, the more risk reduction can be achieved. A service run can only be effected in full, i.e. all component transactions proposed to reduce risk by the service must be executed for it to have the intended risk-reducing effect. If one or several component transactions do not execute pursuant to the risk reduction optimization calculation, the risk reduction is not achieved. With respect to post-trade risk reduction services, trading venue obligations in different jurisdictions would mean that these services could not be delivered in more than one jurisdiction at a time, which would materially impede post-trade risk reduction efficiency.

It should be noted that trades resulting from post-trade risk reduction have been exempted from trading venue execution obligations in other jurisdictions.[4] Therefore, TriOptima would encourage the Commission to make it clear that any derivatives trades resulting from post-trade risk reduction services should not be subject to the trading venue execution obligation.

Market Transparency, Question 16, 17, 19, 27 and 29

As discussed above, post-trade risk reduction services can be clearly differentiated from trading activities in that they do not involve the interaction of buying and selling interests and are not price-forming. As such, no price discovery takes places which make price transparency irrelevant since there are no prices readily available to make transparent. For purposes of post-trade transparency, the market would be misled should prices derived from post-trade risk reduction services - if prices at all could be derived - be required to be made public and such prices would not have any relevant information value.

Under the Proposal, a DTF would be required to report to the public transactions executed on its facility in as close to real-time as technically feasible. In this context, and should transactions resulting from post-trade risk reduction services be required to trade on a DTF, it should be noted that transactions resulting from post-trade risk reduction services are executed in bulk and such bulks could consist of many thousands of individual transactions. DTFs are likely to face considerable operational and technological constraints, making it impossible to report such transactions in real-time. In the derivatives market generally, there is comparatively low transaction volumes and as systems are not designed to instantly process thousands of transactions, it is not technologically practicable to report thousands of transactions in real-time or close to real-time.

[4] See e.g. Art 31 and recital 27 of MiFIR.

For these reasons, TriOptima encourages the Commission to, to the extent transactions entered into as part of post-trade risk reduction services would be mandated for trading on a DTF, exempt such transactions from future pre- and post-trade transparency requirements.[5] It should be noted that transactions resulting from post-trade risk reduction services should not be subject to pre- and post-trade transparency requirements under MiFIR.[6]

We are happy to provide further information on the above, if and as required.

Yours faithfully,

TriOptima AB

[redacted]

Per Sjoberg
Chief Executive Officer

[redacted]

Christoffer Mohammar
General Counsel

[5] Please also refer to TriOptima comment letter dated September 11, 2013.
[6] See Art 31 and recital 27 of MiFIR.

Annex 1

Because of the interconnectedness of derivatives trading, active market participants have at any one time large numbers of contracts outstanding with multiple counterparties, each creating counterparty credit risk and an operational burden to manage and oversee. However, when these risks are viewed on a portfolio basis and compared against the portfolios of other participants, there are ready opportunities to reduce certain risks without changing one's market risk. triReduce compression allows participants to terminate contracts early in order to eliminate counterparty credit risk, lower the gross notional value of outstanding contracts, and reduce operational risks by decreasing the number of outstanding contracts. triReduce is operated for rates, credit and commodity derivatives and has helped remove in excess of $500 trillion of gross notional exposure from the financial system since its launch in 2003 including, more recently, cleared transactions. triReduce has approximately 180 subscribing legal entities.

Annex 2

The objective of the G20 commitments adopted in Pittsburgh 2009 is to mitigate systemic risk, and the actions supported by the G20 (including mandatory clearing) are means toward that end. While many OTC derivatives will be suitable for central clearing, some OTC derivatives will remain bilateral and not be cleared, and the combination of cleared and uncleared components in a portfolio may create risk imbalances within such portfolios and increase initial and variation margin requirements. The portfolio imbalances can however be efficiently rebalanced by lowering counterparty risk/DV01 in a portfolio.

Injections of off-setting trades between specific counterparties can rebalance risk exposures across multiple CCPs and bilateral counterparties alike. Proactive risk rebalancing helps reduce systemic risk and is a valuable tool for both CCPs and their members in the administration of their default recovery and resolution situations. In a multilateral context, these trades can be generated without changing participants' market risk and funding risk. TriOptima's triBalance (counterparty risk rebalancing) service was launched to enable rectification of such portfolio imbalances.

Annex 3

Compound transaction

A compound transaction may be delivered to participants by a service provider as part of a risk reducing exercise.
The differences between compound transaction services and trading are:

- A compound transaction is market risk neutral for each of the compound transaction participants;
- Participants are indifferent to the price at which the components in the compound transaction are concluded, since overall the compound transaction is balanced;
- Participants do not submit bids and offers to enter into a specific position, but rather indicate tolerances (e.g. maximum change in counterparty credit exposure) which the compound transaction must satisfy;
- The compound transaction and its components are not price-forming events. Normally, the compound transaction is effected several hours after the marks-to-market or the pricing curves are determined and, consequently, a compound transaction is calculated on basis of stale and irrelevant market data;
- A compound transaction is designed to reduce second order risks emerging from existing OTC derivatives, such as counterparty credit risk, operational risk and/or basis risk;
- A compound transaction is multilateral and not bilateral (i.e. there are more than two parties to the transaction);
- All participants in the compound transaction must accept the transaction in full or it will not be executed. Unlike trading activities, it is an "all or nothing" proposal, arranged by the post-trade risk reduction service provider (e.g. TriOptima), where several thousands of individual transactions are components of the overall compound transaction. The individual component transactions are irrelevant in their own right and cannot be executed separately to achieve the desired risk reduction effect. If one party fails to accept, the entire proposal is declared null and void and no changes to the participants' portfolios take place;
- Periodicity of arranging a compound transaction is not continuous, but rather cycle-based and a cycle extends over more than a trading day;
- The service provider is not party to the compound transaction; nor is it involved in settlement of the compound transaction.

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DELIVERED VIA ELECTRONIC MAIL

March 31, 2015

British Columbia Securities Commission
701 West Georgia Street
Vancouver, BC
V7Y 1L2

Attention: Mr. Michael Brady, Senior Legal Counsel

Dear Mr. Brady:

Re: FortisBC Energy Inc. (FEI) and FortisBC Inc. (FBC), (together, FortisBC) Comments re CSA Staff Consultation Paper 92-401: Derivatives Trading Facilities

1. Introduction

FortisBC Energy Inc. and its affiliate FortisBC Inc. (collectively FortisBC) hereby respectfully submit comments on the Canadian Securities Administrators (CSA) Staff Consultation Paper 92-401 Derivatives Trading Facilities published on January 29, 2015. The Consultation Paper discusses the development of a regulatory framework for OTC derivatives trading platforms, to be referred to in Canada as "derivatives trading facilities" or "DTFs". The Consultation Paper also discusses the proposed approach for requiring market participants to use DTFs to enter into certain classes of OTC Derivatives. This initiative is in furtherance of Canada's G20 commitment to require standardized OTC Derivatives to be traded over exchanges or electronic platforms where appropriate. The Consultation Paper notes that the primary objective of imposing DTF trading obligations in respect of particular classes of OTC Derivatives (Mandatory DTF Trading Requirement) is to enhance the transparency and efficiency of OTC Derivatives markets for the benefit of all market participants. FortisBC appreciates the opportunity to submit these comments on Derivatives Trading Facilities and looks forward to further working with the Committee as it moves forward to implementing Canada's G-20 commitments that relate to the regulation of the trading of derivatives in Canada through the British Columbia Securities Commission.

2. FortisBC Use of Derivatives

In order to mitigate the risk of market price movements on its natural gas rates for customers, FEI has actively engaged in OTC natural gas commodity hedging in the past. FEI has undertaken hedging to mitigate market price volatility to support customer rate stability and not for speculative purposes.

FortisBC has also engaged in physical commodity (gas and electricity) trading for the purposes of managing costs for customers. FortisBC believes that these types of transactions should not be classified as derivatives per the Model Rules definitions and therefore not subject to the pending derivatives legislation.

FortisBC's financial hedging and physical commodity purchases and trading strategies and plans have been subject to acceptance by the British Columbia Utilities Commission on a regular basis before their implementation.

3. Comments Regarding CSA Derivative Trading Facilities Section 7(k) Confidential treatment of trading information

The Consultation Paper proposes to define derivatives trading facility (DTFs) to mean a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades. Under Section 7(k) the proposed rules states that a DTF would be required to implement reasonable safeguards and procedures to protect a participant's order or trade information. Among other things, a DTF would be prohibited from releasing a participant's order or trade information to a person or company other than the participant, a securities regulatory authority or a regulation services provider unless the DTF participant has provided prior written consent to the release of the information; the release of information is required by applicable law; or the information has already been publicly and lawfully disclosed to another person or company. However, subject to certain conditions, we anticipate that a DTF would be permitted to release trading data for use in research.

FortisBC would like to express its concerns regarding pre-trade and post-trade data transparency and making transaction data available to the public. FEI purchases natural gas at a number of market hubs in B.C. and uses financial hedges to manage price risk at these hubs. While some market hubs are very liquid, such as the AECO/NIT market hub proxy for Alberta gas, others are not so liquid. For example, the Sumas market hub is relatively illiquid, with a small number of buyers and sellers. As part of its previous price risk management strategy, in the past FEI typically hedged its Sumas price exposure for each winter period. FEI is concerned that, given the small amount of trading at this hub, making the derivatives data available to the public for this hub, or any other relative illiquid hubs, could compromise FEI's hedging position or strategy if it needed to hedge the hub price in the future. FEI would prefer that this data is made public in such a manner that protects FEI's positions and strategies to manage price risk and costs for its customers. FortisBC is also concerned with the public availability of any pricing data associated with its forward electricity contracts as these are usually negotiated in confidence with the counterparty. If this pricing is made available to competing counterparties, it could compromise FortisBC's ability to competitively enter into pricing power supply that assists in managing costs for its customers.

4. Comments Regarding Exemption

FortisBC requests that the Committee ensures the proposed rules are clear, concise and consistent with other previously published model rules. The Consultation Paper does not mention End-User Exemption. For example, it should be noted that Consultation Paper 91-406 Derivatives Central Counterparty Clearing proposed an exemption will be made available if a party to a Mandatorily Clearable Derivatives transaction is: 1) one of the counterparties is not a financial entity and 2) that counterparty is entering into the transaction to hedge or mitigate commercial risk related to the operation of its business. We believe that exemptions applicable in the context of mandatory clearing should be included in the DTF rules.

5. Clarity Regarding Roles and Responsibilities

FortisBC hopes that the Committee will provide more clarity and a schedule outlining the key roles and responsibilities for various market participants. This will assist in navigating through the various compliance rules and regulations and effectively meeting key deadlines.

6. Conclusion

FortisBC appreciates the Committee's consideration of comments in developing the derivatives regulation. FortisBC has submitted its concerns and comments in the interests of managing its gas and power supply and costs for its customers. FortisBC welcomes further discussion of these comments and concerns if it is required and would like to have the opportunity to review and comment on future papers and provincial rules.

Please direct any further questions to [redacted]

[redacted]

[redacted]

[redacted] Energy Supply and Resource Development

FortisBC Energy Inc.

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Delivered via E-mail

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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

c/o Josée Turcotte, Secretary
Ontario Securities Commission
E-mail: comments@osc.gov.on.ca

c/o Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
E-mail: consultation-en-cours@lautorite.qc.ca

Re: Comment Letter on CSA Consultation Paper 92-401 – *Derivatives Trading Facilities*

Dear Sir/ Madam:

State Street Corporation ("**State Street**")[1] appreciates the opportunity to comment on CSA Consultation Paper 92-401 – *Derivatives Trading Facilities* (the "**Consultation Paper**").

State Street is one of the largest providers of trade matching, trade processing and clearing and settlement solutions for derivatives transactions, and as such, we have been active in the policy discussions about platform trading and central counterparty clearing of derivatives in different jurisdictions around the world. We support derivatives clearing and execution regulatory initiatives which we believe will reduce global systemic risk and, when properly implemented, will also benefit our institutional investor customer base.

Background regarding Our Derivatives Trading Activities and Platforms

State Street is the indirect parent company of SwapEx, LLC ("**SwapEx**"), a Delaware limited liability company that is provisionally registered as a swap execution facility ("**SEF**") with the United States Commodity Futures Trading Commission (the "**CFTC**") which has been exempted by the Ontario

[1] With $28.19 trillion of assets under custody and administration and $2.45 trillion of assets under management at December 31, 2014, State Street is a leading specialist in meeting the needs of institutional investors worldwide. Our customers include mutual funds, collective investment funds and other investment pools, corporate and public retirement plans, insurance companies, foundations, endowments and investment managers. We operate in more than 100 geographic markets worldwide. We conduct our business primarily through our principal banking subsidiary, State Street Bank and Trust Company, incorporated under a special act of the Massachusetts legislature.

Securities Commission (the "**OSC**") on an interim basis from the requirement to obtain recognition as an exchange under the *Securities Act* (Ontario).[2] SwapEx lists for trading foreign exchange non-deliverable forwards ("**NDFs**") that are not presently listed for clearing by a clearing agency (and thus are settled bilaterally) as well as interest rate swaps for which the Chicago Mercantile Exchange acts as a CFTC-regulated derivatives clearing organization ("**DCO**").

State Street and its subsidiaries also engage in derivatives and foreign exchange trading as principals and agents and we maintain electronic communications and trade matching platforms which facilitate communications related to spot foreign exchange transactions, deliverable foreign exchange forwards and deliverable foreign exchange swaps[3] that are not regulated as exchanges, alternative trading systems, SEFs or in other relevant trading platform categories.

<u>Introductory Comments and Policy Discussion related to Trading Facility Rule Harmonization</u>

State Street welcomes the efforts of the Canadian Securities Administrators (the "**CSA**") and the CSA Derivatives Committee (the "**Committee**") to strengthen OTC derivatives markets as reflected in the consultation papers and rules that have been introduced since 2009, including the current proposal to create a framework for regulating derivatives trading facilities ("**DTFs**") and trading on DTFs.

Our primary recommendations below emphasize the importance of ensuring international alignment of rules governing electronic platforms. We believe that care must be taken to avoid imposing any unnecessary incremental regulatory burdens on electronic platforms given that oversight and regulation in foreign jurisdictions may in relevant cases often be fully sufficient. Even minor incremental regulatory burdens can be counterproductive from the standpoint of international regulatory harmonization and may have significant detrimental impacts on Canadian access to international markets. Unless there is a clear and pressing need to diverge from international standards, incremental burdens typically only to serve to increase market fragmentation and will ultimately increase the trading costs borne by Canadian market participants. In particular, given the highly integrated North American derivatives trading market, the extensive regulation imposed by the CFTC and US laws, the potential costs to non-Canadian DTFs to effect changes to their systems, rules and procedures to meet incremental requirements and the relatively limited size of the Canadian market, there is a risk that incremental regulatory obligations imposed in Canada will result in foreign DTFs electing not to offer access to their platforms in Canada, particularly where such incremental requirements are viewed as providing little or no incremental regulatory benefits in light of the existing U.S. regulatory system in which such platforms are currently operating.

We specifically discuss below the importance of aligning the regulation of electronic trading platforms for deliverable foreign exchange transactions in order to ensure that efficient access to existing international trading platforms is maintained. In our view and the view reached by the United States Department of the Treasury ("**Treasury**") following extensive consultation and study, deliverable FX trading on electronic

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[2] We refer to the order of the OSC granted to SwapEx dated October 29, 2013 (the "**OSC SwapEx Exemption Order**"), as amended by an order of the OSC dated September 30, 2014 extending the termination date of such order and analogous orders issued by the OSC to other SEFs. The terms and conditions of the OSC SwapEx Exemption Order are set out in Schedule "A" thereto.

[3] We refer to these terms in the sense they are defined in the United States *Commodity Exchange Act*, as amended (the "**CEA**"). "**Foreign exchange forward**" is defined in Section 1a(24) of the CEA as "a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange." "**Foreign exchange swap**" is defined in Section 1a(25) of the CEA as "a transaction that solely involves: (A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and (B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange."

platforms already functions very well in a highly transparent market with minimal risks and are subject to adequate internationally coordinated oversight from central banks and prudential regulators.

In our view, imposing DTF recognition requirements on international electronic platforms for deliverable foreign exchange trading would likely cause significant and unwarranted regulatory burdens, potential withdrawal of platforms from the Canadian market and an unwarranted increase in costs to Canadian market participants that would erode a well-functioning market.

As noted in the OTC Derivatives Regulators Group's August 2013 *Report on agreed understandings to resolving cross-border conflicts, inconsistencies, gaps and duplicative requirements*: "The adoption of consistent, effective and, to the extent practicable, non-duplicative standards in and across jurisdictions is of paramount importance in achieving the G20 regulatory reform objectives." This recognition of the importance of international harmonization of rules and the importance of deference to home country regulations has been recognized repeatedly, including in the Communiqué of the July 2013 meeting of G20 Finance Ministers and Central Bank Governors representatives who agreed "that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulations and enforcement regimes, based on essentially [identical] outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes."

It has been specifically recognized that differences in the way derivatives rules are being implemented could cause market disruption and fragmentation, reduced liquidity in certain markets and the concentration of risks within certain jurisdictions.[4] In our view, the risks of market fragmentation and the limited benefits of imposing incremental regulatory burdens that may not ultimately provide tangible improvements in market regulation are particularly acute in the case of the regulation of electronic trading platforms.

<u>Specific Comments and Submissions in Response to Questions Posed by the Committee</u>

We are providing below responses to specific questions raised by the Committee in the Consultation Paper. For ease of reference, the text of questions that we are responding to are set out in full below.

Question 1: Is the DTF category appropriately defined? If not, what changes are needed and why?

As noted in the Consultation Paper, the proposed definition of "derivatives trading facility" is similar to the definition of a SEF that applies in the United States under the CEA and we generally agree with this approach, subject to the comments below.

Exclusion of Physical FX Trading from the Scope of OTC Derivatives Definition for the DTF Rule

It is important to note that the definition of "derivatives trading facility" turns on the definition of "OTC derivatives" since a facility or market is only a DTF if it involves "orders of multiple buyers and multiple sellers of OTC derivatives".

We strongly believe that the definition of "OTC derivatives" used in the DTF Rule should be narrowed to be better aligned with the definition of "swaps" used under US law by clarifying that spot foreign exchange

[4] As noted by the OTC Derivatives Regulators Group: "As our jurisdictions implement OTC derivatives reforms, local market conditions, domestic legal frameworks and varying implementation schedules have resulted in differences in the way these reforms are being implemented. These differences create a risk that conflicts, inconsistencies, gaps or duplicative requirements would reduce the effectiveness of OTC derivatives reforms. The Principals recognise that absent appropriate co-ordination, our respective cross-border rules and implementation schedules could cause market disruption and fragmentation, reduced liquidity in certain markets, and the concentration of risks within certain jurisdictions" (OTC Derivatives Regulators Group's August 2013 *Report on agreed understandings to resolving cross-border conflicts, inconsistencies, gaps and duplicative requirements*).

transactions, deliverable foreign exchange forward transactions and deliverable foreign exchange swap transactions ("**Physical FX Transactions**") are not "OTC derivatives" for the purposes of this rule. By narrowing the definition in this manner, a platform that only facilitates Physical FX Transactions will not be caught within the "derivatives trading facility" definition under applicable Canadian DTF Rules or the "SEF" definition under US rules.[5] The policy arguments for this approach are set out below.

This alignment of the definition of OTC derivatives in the DTF Rule with the CEA swaps definition would best allow Canadian market participants to have access to existing trading platforms that permit participants to enter into ordinary course deliverable foreign exchange transactions. Requiring Physical FX Transaction platforms to register as DTFs could very likely cause these platform providers to not provide access to Canadian market participants given the significant new compliance costs for platforms that do not require direct regulation in the United States. Erecting barriers to access to established electronic trading platforms for Physical FX Transactions may thus have a material adverse impact on liquidity and pricing in the Canadian market.

As noted in the Consultation Paper, a key objective of the G20 mandate and the CSA's implementation thereof is to enhance the transparency and efficiency of OTC derivatives markets for the benefit of all market participants. Electronic trading in particular brings additional benefits to the swaps markets. Electronic systems increase the size of the market by permitting geographically remote market participants to submit and respond to orders. Electronic trading also generally increases the integrity of the market by reducing human errors that may occur through manual trading processes and by providing a transparent, non-discretionary algorithm to match bids and offers. Receiving, matching, and routing orders electronically can also facilitate the international goal of straight-through processing.

Physical FX Transactions were among the first OTC asset classes to migrate to electronic trading on electronic communications networks ("**ECNs**"). Since the early 2000s, the number of ECNs for FX derivatives has increased substantially and includes a number of single-dealer and multidealer request-for-quote ("**RFQ**") platforms. A significant consequence of the widespread use of ECNs in the FX derivatives market is the wide availability of pricing, which contributes to the narrow spreads and deep liquidity that characterizes this market. The increased number of ECNs has led to a corresponding increase in the redundancy, and hence resiliency, of the FX derivatives markets: in the event of disruption to a given ECN, traders can readily move their trading to another operational platform that lists the same or similar FX products for trading.

With average daily turnover of approximately US$4 trillion,[6] the foreign exchange market is widely acknowledged to be the largest financial market in the world. Unlike certain other over-the-counter derivatives markets, the liquidity, transparency and strong operational infrastructure of the foreign exchange markets have allowed them to continue to operate in a safe and sound manner, despite wrenching market disruptions, such as the currency crises of the 1990s, the bursting of the high-tech

[5] The CEA is already harmonized with Canadian trade reporting rules proposed or in force in relevant CSA jurisdictions in respect of trade reporting in respect of Physical FX Transactions. Notwithstanding that Physical FX Transactions are excluded from the CEA definition of "swaps" (as provided under the CFTC definition on the basis of a determination by the Secretary of the U.S. Treasury as described in section 1a(47)(E)(i) of the Commodity Exchange Act (and also further discussed later in this comment letter), deliverable FX forwards and swaps must be reported to a swap data repository in accordance with CFTC Rules (see CEA s. 1a(47)(E)(iii)). Moreover, swap dealers and major swap participants registered with the CFTC must comply with conduct of business standards in respect of their transactions in deliverable FX forwards and swaps (see CEA s. 1a(47)(E)(iv)) other than specific requirements to provide a pre-trade mid-market mark to a counterparty, on the basis that the pre-Dodd-Frank market infrastructure was liquid enough to ensure ready availability of prices for market participants (see CFTC No-Action Letters 12-42 (December 6, 2012) and 13-12 (May 1, 2013)).

[6] Bank for International Settlements, Triennial Central Bank Survey – Report on Global Foreign Exchange Market Activity in 2010, at 6-7 (December 2010).

bubble in 2000-2001 and the financial crisis of 2008-2009. As the Foreign Exchange Committee of the Federal Reserve Bank of New York has observed:

> The [foreign exchange] marketplace itself is spread across a series of liquid trading centers in different time zones and operates twenty-four hours a day, each business day. Absent such consideration of these key characteristics of the foreign exchange market, the potential for negative unintended consequences of any efforts to improve market resiliency is quite large…
>
> The market functioned well [during the 2008 financial crisis], despite strains seen in international funding and credit markets, and enabled participants to measure and mitigate risk dynamically in a global marketplace… [S]ystemic risk mitigants built into the OTC FX market structure over the years proved successful in providing a liquid and continuous market despite the volatility, defaults, and disruptions of [2008 and 2009].[7]

State Street is concerned that including Physical FX Transactions within the definition of "OTC Derivatives" in the DTF Rule would materially and unnecessarily disrupt the market, with important implications for overall efficiency, stability and costs. Indeed, any presumption in favor of standardization, central clearing, and exchange trading in the highly customized FX market would greatly reduce its effectiveness as a source of funding and/or hedging for corporations, financial institutions, pension funds and registered funds. Moreover, it would have an especially detrimental impact on funding markets, where FX swaps are a low-cost, low-risk instrument used extensively by banks, including central banks, for short-term funding needs, such as currency mismatches. Reducing the availability of customized FX swaps could result in greater reliance on short term placements and/or deposits, thereby creating increased credit risk.

US Department of Treasury Analysis of Physical FX Trading and Regulation

Under the *Dodd-Frank Act*, the Treasury was given the authority to conduct a review and determine whether it was appropriate to require Physical FX Transactions and exchange-trading and central clearing of Physical FX Transactions to be regulated in the same manner as traditional OTC derivatives.

As discussed in detail in its final determination (the "**Treasury Final Determination**"),[8] Treasury determined that Physical FX Transactions should not be subject to U.S. exchange-trading and clearing rules that apply to swaps. This determination was based on a through market and policy review in which Treasury concluded that Physical FX Transactions have distinctive characteristics which differentiate them from other types of swaps (these findings relate to the fact that physical FX markets are highly liquid and transparent, and Physical FX Transactions have fixed payment obligations and are predominantly

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[7] Foreign Exchange Committee of the Federal Reserve Bank of New York, Overview of OTC Foreign Exchange Market: 2009, at 7 (November 9, 2009). The Bank of England's Foreign Exchange Joint Standing Committee reached a similar conclusion regarding the performance of the FX derivatives markets during the financial crisis. Please see Bank of England Foreign Exchange Joint Standing Committee, "FXJSC Paper on the Foreign Exchange Market" (September 2009).

[8] The Treasury Final Determination is available at http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf and provides a detailed discussion of electronic FX trading market and policy matters. The document includes the following discussion of the prevalence and efficiency of electronic platform trading for FX without being subject to the SEF Rule: "Foreign exchange swaps and forwards already trade in a highly transparent market. Market participants have access to readily available pricing information through multiple sources. Approximately 41 percent and 72 percent of foreign exchange swaps and forwards, respectively, already trade across a range of electronic platforms and the use of such platforms has been steadily increasing in recent years. The use of electronic trading platforms provides a high level of pre- and post-trade transparency within the foreign exchange swaps and forward markets. Thus, mandatory exchange trading requirements would not significantly improve price transparency or reduce trading costs within this market" (*pp. 20-21, footnotes omitted)*.

short-lived). Treasury further noted that the most significant risk posed by FX transactions is typically settlement risk, which is addressed through the Continuous Linked Settlement ("**CLS**") system, and there are long-established procedures for mitigating counterparty credit exposure in this market. Furthermore, the current FX system has worked well throughout the recent financial crisis, with little evidence of the sort of dislocation encountered in certain segments of the OTC derivatives market and in wholesale funding markets generally. Ultimately, any potential systemic risk concerns in the FX market have already been adequately addressed.

We believe that the findings of Treasury are directly relevant to the policy issues that the Committee and the CSA will wish to consider in determining whether Physical FX Transactions should be included in the DTF Rule's definition of OTC derivatives. We note that Treasury's fact sheet regarding the Treasury Final Determination (available at http://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx) provides a useful summary of the analysis performed and conclusions reached by Treasury in connection with this key decision.

Additional Comments on the Definition of "Derivatives Trading Facility"

The proposed definition includes a possible requirement that the facility or platform "uses methods under which the orders interact with each other". If retained, it would be useful to clarify or define the meaning of this phrase. For example, it is unclear whether a RFQ system "uses methods under which the orders interact with each other" and it will be important for the rule to clearly indicate whether pure RFQ systems are DTFs.

We would also recommend that the definition of DTF clearly exclude programs and facilities that route orders or RFQs to a DTF, assuming that the DTF to which the order or RFQ is routed is itself recognized or exempt in the relevant Canadian jurisdiction. We expect that this is the Committee's intention, given that different programs or facilities may provide an interface with a DTF but only the DTF itself is providing a many-to-many platform or providing the facility that permits and evidences trade execution.

Question 2: Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

From our perspective, it is critically important that if there are any consequences to the use of discretion, then the DTF Rule should provide a very clear and narrow definition of "discretion" in order to limit the risk that platforms will be subject to unintended additional regulatory requirements in Canadian jurisdictions that do not apply outside of Canada. For example, a DTF operator may exercise discretion in respect of trading that impacts all DTF participants (e.g., decisions to introduce trading limits, close a market earlier or publish a calculated market value). We assume that these are not types of discretion that should trigger additional regulatory requirements and so it will be important to eliminate any relevant ambiguity in the definition of discretion that might impair Canadian market participants' access to DTFs or unnecessarily increase compliance costs.

Question 4: Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

We agree with the Committee's recommendation that permitted execution methods should include both systems that do and those that do not disclose counterparty identities and we specifically confirm that the various identified types of execution methods (i.e., order book systems, hybrid system and RFQ systems) should each be permitted to operate independently or in combination. Any restrictions could potentially have material impacts on market access.

Question 5: Is the proposed regulatory framework for DTFs appropriate?

We would encourage the Committee to exempt from mandatory registration obligations those DTFs that do not permit trading of derivatives that are subject to mandatory trading requirements. These platforms do not warrant regulation from the perspective of the G20 commitments' policy objectives or from an investor protection standpoint.

Furthermore, our view is that for transactions that are not subject to mandatory DTF execution requirements, DTFs should in no case be subject to more stringent regulatory requirements than are imposed on single-dealer platforms and individual dealers. This would be contrary to the spirit and intention of the G20 commitments since it would introduce costs and compliance issues only on many-to-many platforms that would skew trading towards dealers and single-dealer platforms, thereby potentially reducing liquidity and impairing efficient pricing and market transparency. Accordingly, we encourage the CSA to exempt from mandatory registration obligations those DTFs that do not permit trading of derivatives that are subject to mandatory trading requirements and we further we recommend that the CSA should not impose mandatory DTF registration obligations prior to the introduction of derivatives dealer registration requirements that ensure a level playing field for dealers and DTFs.[9]

Foreign-Based DTFs

We are supportive of the position that foreign-based DTFs that are registered by their home regulator should be eligible for exemptive relief. We would also suggest that the DTF Rule should provide an automatic full exemption from DTF registration requirements so long as the SEF is registered with the CFTC and is in compliance with specified Canadian reporting and compliance requirements. We believe that the process for granting exemptions to registered SEFs on a case-by-case basis would provide no real benefits to Canadian market participants and would increase compliance costs and potentially limit market access.

We commend the Ontario Securities Commission on accommodating registered SEFs (including State Street's SwapEx platform) with exemptions from Ontario exchange requirements, and we agree that the scope of reporting applicable under the relevant Ontario exemption orders could reasonably be imposed as a condition to exempting CFTC-registered SEFs from Canadian DTF registration requirements. It is our view that that set of requirements could be codified and applied on a blanket basis for registered SEFs in order to eliminate unnecessary uncertainty and cost. Setting out a codified exemption regime is also in keeping with efforts to provide clear and predictable requirements for electronic trading platforms.[10]

Setting standards of fair access to DTFs for Canadian market participants would likely also be a reasonable compliance requirement (as referred to in Footnote 91 to the Consultation Paper) but it is not clear if there are additional Canadian market integrity requirements that need to be imposed on SEFs beyond the requirements applicable under CFTC rules.

Question 14: Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

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[9] Even those regulatory burdens that do not have an obvious direct cost to many-to-many platforms may ultimately still have an anti-competitive impact. For example, single-dealer platforms may take advantage of mandatory pre-trade price disclosure imposed on many-to-many platforms by minimally undercutting available pricing, thereby taking trading volume from more transparent markets and skewing trading economics significantly in favour of the single-dealer platforms to the ultimate detriment of the market and the pricing that will be available.

[10] As agreed by the OTC Derivatives Regulators Group Principals: "whenever possible, and consistent with applicable laws and regulations, the details of laws and regulations applicable to foreign organised trading platforms, including registration requirements, should be made clear before their implementation. Enhancing clarity and predictability of the details of applicable laws and regulations for various stakeholders should help reduce regulatory uncertainty and avoid unnecessary burdens and unintended consequences" (OTC Derivatives Regulators Group's September 2014 *Report on Cross-Border Implementation Issues*).

Our view is that it is important to permit DTF operators and their affiliates to trade on the related DTF in order to ensure sufficiently deep liquidity pools and to avoid having DTFs either excluding Canadian participants or providing Canadian participants with curtailed trading options. Unnecessary restrictions on operator and operator-affiliate participation in trading could substantially decrease the liquidity available on the DTF and interfere with brokers' ability to obtain the best possible price for its customers' orders. We recommend that conflict of interest provisions be used to address perceived risks.

Question 16: Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

We agree that the Committee is considering relevant factors in its discussion of pre-trade transparency. We also agree with the Committee's recommendations that pre-trade transparency requirements apply only to those products that are sufficiently liquid to ensure that the information is of benefit to market participants and the price formation process.

We also note that if the DTF pre-trade transparency requirements imposed on registered SEFs are more extensive or worded differently than those that apply under CFTC Rules, then that could of course introduce a risk that the SEF would restrict Canadian market access It is important to note that preferential transparency could not be provided to Canadian market participants (other than, for example, requirements that are in effect imposed on the Canadian participant itself such as an obligation to solicit quotations from a minimum number of quote providers on an RFQ platform) and some SEFs may not wish to alter their existing pre-trade transparency models from those used under CFTC rules.

Question 17: Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

We believe that DTFs should be permitted to satisfy post-trade transparency requirements by reporting to a trade repository, since that is a central venue for information which may be accessed by market participants on an equal footing.

* * *

State Street appreciates your consideration of these comments and submissions. If Committee members or regulatory staff have any questions concerning the matters discussed in this letter including regarding the regulatory approach in the United States, you are encouraged to contact our legal counsel, Justin McCormack, by phone at [redacted] or by email at [redacted].

Sincerely,

[redacted]

Lawrence Lee
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2 April 2015

VIA EMAIL

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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

Re: Comments on Consultation Paper 92-401 – *Derivatives Trading Facilities*

Ladies and Gentlemen:

Bloomberg L.P. ("**Bloomberg**") appreciates the opportunity to comment on Consultation Paper 92-401 – *Derivatives Trading Facilities* (the "**Consultation Paper**"), which was issued by the Canadian Securities Administrators (the "**CSA**") on January 29, 2015.

We welcome the CSA's decision to include in its proposed regulatory framework a comparability regime for OTC derivatives trading platforms that are registered with approved foreign regulators. We believe it is important to the stability of the Canadian derivatives market that non-Canadian trading platforms be able to offer access to participants located in Canada without needing to obtain separate authorization from the Canadian regulators, so long as these platforms remain appropriately regulated in their home jurisdictions. Requiring the operators of non-Canadian trading platforms to go through a separate authorization process in order to make their services available in Canada would represent a serious barrier to entry, one which could lead to the fragmenting of liquidity among various derivatives trading venues throughout the world.

The establishment of a comparability regime in the CSA's final regulatory framework would ensure that Canadian market participants are able to enjoy full access to the liquidity offered by non-Canadian trading platforms without experiencing any interruption in their current trading access. We strongly encourage the CSA to include provisions establishing a comparability regime for foreign regulated OTC derivatives trading platforms in its final regulations.

Bloomberg is eager to work closely with the CSA in the coming months as the CSA continues to develop its new regulatory framework. Please do not hesitate to reach out to me at [redacted]

[redacted]ly,

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Dear Sirs/Mesdames:

CSA Consultation Paper 92-401 – *Derivatives Trading Facilities*

This letter is in response to the request for comments regarding the above-noted CSA Consultation Paper (the "**Consultation Paper**"). As counsel to global financial institutions, pension plans, commodity producers, investment funds and derivatives trading platforms, Osler has extensive involvement with derivatives transactions and derivatives regulation. This comment letter is also informed by input from clients that trade derivatives or that would be subject to regulation as derivatives trading facilities (a "**DTF**"). We have responded to a selection of the questions posed by the CSA Derivatives Committee (the "**Committee**") in the Consultation Paper that are most relevant to our clients.

1. *Is the DTF category appropriately defined? If not, what changes are needed and why?*

In our view, the DTF category is appropriately defined. The definition is flexible and takes into account a variety of trading platforms and execution methods. We are also supportive of the enumerated exclusions from the DTF definition. In particular, we think that it is appropriate to exclude: (i) purely bilateral trading, (ii) one-to-many facilities such as single-dealer platforms and (iii) facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards, electronic post-trade confirmation services and portfolio compression services. For example, portfolio compression service providers such as TriOptima, Creditex and Markit should not be subject to DTF regulation in Canada. We recommend that these exclusions should be included in companion policy guidance that accompanies any future DTF rules.

4. *Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?*

In our view, there should be no minimum trading functionality prescribed for DTFs. If an entity satisfies the definition of DTF by virtue of the modes of execution it makes available to Canadian participants, then it will need to be regulated as a DTF but should not be required to add modes of execution to its facility. For example, it would not be appropriate to require a small DTF that offers RFQ functionality in a particular asset class to also offer a central limit order book ("**CLOB**"), particularly if that asset class is not well-suited to trading via a CLOB.

Also, we note that the request-for-stream execution method would depend on market makers to provide continuous streaming quotes. It would be helpful for the Committee to define market making activity in the context of request-for-stream execution methods, and whether such activity would be considered to be the business of dealing in derivatives as a dealer under futures derivatives registration rules, particularly if the market maker is located outside of Canada and provides market-making services only on foreign-based DTFs.

5. *Is the proposed regulatory framework for DTFs appropriate?*

The proposed regulatory framework for DTFs is appropriate. We applaud the Committee for stating the intention to regulate DTFs under new rules appropriate for derivatives trading, and to not regulate DTFs under the existing regulatory framework for securities and futures exchanges, ATSs and QTRSs in NI 21-101.

Also, it is appropriate for the Committee to recommend that DTFs may be authorized or exempt from authorization. We are supportive of the proposal to grant exemptive relief to foreign-based DTFs that are subject to comparable regulation in their home jurisdictions. Given the cross-border nature of derivatives trading, it is important to support harmonized rule making, substituted compliance and regulatory reciprocity wherever possible.

Finally, we encourage the Committee to follow a principles-based approach to regulation of DTFs. A principles-based approach will encourage effective regulatory oversight while preserving needed flexibility for DTFs to operate their businesses in a dynamic and competitive market.

6. *Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)*

Without a derivatives dealer registration regime in Canada, it is not possible to comment on the possible application of dealer requirements on a DTF that exercises discretion. The requirements of a derivatives dealer regime may be unduly onerous for a DTF. For example, in our view it would not be appropriate to require that a DTF become a member of IIROC simply because it exercises discretion in the execution of transactions.

There are many alternatives for regulating DTFs that exercise discretion, such as specific business conduct requirements in the future DTF rule. The Committee should adopt a flexible approach to regulating DTFs that exercise discretion. It may be necessary and valuable to Canadian derivatives markets to permit a DTF to exercise discretion, particularly if the DTF facilitates trading of bespoke derivatives that may not otherwise be suitable for electronic trading. Regulation of DTFs that exercise discretion must be appropriately balanced between limiting the potential for conflicts of interest and permitting worthwhile activity.

7. *To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?*

No, a DTF that exercises discretion in the execution of transactions should not be required to exercise this functionality in a separate affiliated entity. Requiring the functionality in a separate affiliated entity would be unnecessarily costly and burdensome. Consider the example of securities marketplace regulation, where there are examples of firms carrying on business as a brokerage firm and an ATS out of the same entity (with appropriate policies and procedures to manage against conflicts of interest). Similar requirements should be adopted for DTFs that exercise discretion.

8. *What factors are relevant in defining the proposed best execution duty?*

Any duty of best execution of a DTF that exercises discretion in respect of derivatives trading should be clearly distinguished from best execution in respect of securities trading. Given the unique characteristics of derivatives products and various execution methods, even if traded on a DTF, a best execution duty may be very difficult to define and enforce. Further study and harmonization with international approaches is necessary.

10. *Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?*

Should it be decided that DTFs must engage in trade reporting to trade repositories, then a DTF should have the right to choose the trade repository to which it will report (assuming that the repository is appropriately recognized in the Canadian jurisdiction).

We also note that a DTF should not be required to provide access and trading feeds to all regulated clearing agencies. A DTF should have the right to choose to connect to certain clearing agencies and not others. If a DTF does not connect to a particular clearing agency that is preferred by a participant, then that participant is free to trade on other DTFs that connect to the preferred clearing agency. However, if a DTF connects to multiple clearing agencies, then participants should have the right to choose the clearing agency they wish to use to clear a transaction.

11. *Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?*

We do not have a view on whether a DTF that exercises discretion should be permitted to limit access to its facility. However, more generally, all DTFs should have some grounds for limiting trading access to certain types of participants in order to ensure the integrity of the transactions that take place on the DTF's system. For example, in the US, a swap execution facility has to ensure that every participant is an eligible contract participant, i.e., a sophisticated investor. A DTF should be permitted to restrict trading access to those types of sophisticated investors. Since most derivatives trading is institutional, DTFs should be permitted to refuse access to retail investors. However, we acknowledge that similarly situated groups of participants that meet prescribed sophistication or asset thresholds should be treated the same and benefit from the same access rights.

12. *Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?*

Most of the proposed organizational and governance requirements for DTFs are appropriate. However, we recommend that the Committee place reasonable limits on any transparency requirements. Any requirements for a DTF to make public disclosure (such as on a website) of order execution process, access requirements or technology requirements should be limited so as to not require DTFs to disclose any commercially sensitive confidential information. Also, with respect to record keeping, we note that many jurisdictions in which foreign-based DTFs operate require records be kept for five years, not seven. In our view, future DTF rules should require records to be kept for five years and should permit records to be kept in various mediums, such as written records or voice recordings.

With respect to confidential treatment of trading information, we agree that DTFs should be prohibited from releasing a participant's order or trade information to a person other than the participant, a trade repository, the trading counterparty of the participant, other derivatives trading facilities, a securities regulatory authority or a regulation services provider without consent of the participant. There should also be allowance for information to be released to vendors that provide outsourcing services to DTFs without the need for participant consent, provided that any vendors that receive confidential information are under duties of confidentiality to the DTF.

13. *Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.*

A DTF should be permitted to choose whether to perform its own regulatory or surveillance functions or engage a third-party regulation services provider. For smaller DTFs, the costs of engaging a third-party provider could be prohibitive and impact the commercial viability of the facility.

Also, if a Foreign-Based DTF uses a foreign-based third-party service provider to monitory compliance by participants with DTF rules and appropriately discipline participants in the event of non-compliance, the foreign-based third-party service provider should not require any authorization from Canadian regulatory authorities.

16. *Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?*

In our view, pre-trade transparency requirements should not apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs. There are many options for price discovery in the market, such as bulletin boards, single dealer pages and RFQ facilities. Also, certain swaps trade infrequently and a pre-trade transparency requirement for such swaps may preclude maintaining confidentiality, thus adversely affecting the price to the customer. Pre-trade transparency requirements could significantly raise transaction costs for end-users with little benefit to price discovery.

17. *Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?*

If it is decided that a DTF will be required to report to a trade repository, then the DTF should be permitted to choose the trade repository to which it chooses to report.

Since 2013, Canadian derivatives market participants have made significant investments of time and resources to develop systems for reporting derivatives transactions in Canada. These systems are based on a reporting counterparty waterfall that involves only clearing agencies, dealer counterparties, Canadian financial institution counterparties and non-dealer counterparties. If that reporting waterfall were to be amended to include DTFs, all market participants would need to undertake costly reporting system modifications. We therefore recommend that the Committee consult with market participants and DTFs as part of a cost/benefit exercise to determine whether DTF reporting to trade repositories would be worthwhile. For DTFs, there would be a significant cost to collect jurisdiction information (such as guaranteed affiliate information) from its participants for reporting purposes and code that information into trade reporting systems. These costs could be avoided if the Committee preserves the status quo in Canada and doesn't require DTF reporting to trade repositories.

18. *What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?*

See comments above in response to question 17.

19. *When should deferred publication of trade information be permitted? Are there circumstances other than block trades?*

There should be exceptions from real-time public reporting by DTFs for block trades.

20. *Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?*

Canadian regulators should attempt to harmonize block trade threshold sizes with international standards whenever possible. This would mean that if deferred publication is permitted for a block trade in the United States or another comparable jurisdiction, then deferred publication of the block trade should be permitted in Canada.

23. *Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?*

We agree with the criteria for determining whether a derivative should be subject to a DTF trading mandate, however we caution that some criteria should carry more weight than others. In particular, if there is no mandate for trading a particular derivative in the United States then there would be significant obstacles to making the derivative subject to a Canadian DTF-trading mandate. Cross-border flow and activity should be carefully studied prior to making any derivatives subject to a Canadian DTF-trading mandate.

Canadian market liquidity could evaporate if US counterparties are resistant to a DTF-trading mandate when trading with a Canadian counterparty.

25. *Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?*

Commercial end-users should be exempt from the trading mandate.

29. *Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?*

It is not appropriate to require specific execution methods for the OTC derivatives that have been mandated to be traded on a DTF. Participants should not be restricted in their execution methods and must be able to use their expertise to determine how to execute their orders. Also, we agree with the proposal to allow market participants to enter into pre-arranged transactions that have been mandated-to-trade and then 'expose' those transactions to the market.

30. *What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?*

DTFs, whether authorized or exempt from authorization, should not be required to trade products that have been mandated to trade on a DTF. For example, it would not be appropriate to require a DTF that specializes in commodity derivatives to trade interest rate swaps, or a DTF that specializes in security-based swaps to trade currency swaps.

* * * *

Thank you for the opportunity to comment on the Consultation Paper. We would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact Blair Wiley [redacted]

Yours very truly,

Osler, Hoskin & Harcourt LLP

CSA Consultation Paper 92-401 *Derivatives Trading Facilities* – Comment Letters Received

#	Date	Commenter
1	24-Mar-15	Capital Power Corporation (**Capital Power**)
2	27-Mar-15	International Swaps and Derivatives Association (**ISDA**)
3	30-Mar-15	Canadian Advocacy Council for Canadian CFA Institute Societies (**CAC**)
4	30-Mar-15	Canadian Commercial Energy Working Group, submitted by Sutherland Asbill & Brennan LLP (**Sutherland**)
5	30-Mar-15	Canadian Market Infrastructure Committee (**CMIC**) – 2 letters: English and French
6	30-Mar-15	CanDeal.ca Inc. (**CanDeal**)
7	30-Mar-15	Global Foreign Exchange Division (**GFXD**) of the Global Financial Markets Association (GFMA)
8	30-Mar-15	Investment Industry Association of Canada (**IIAC**)
9	30-Mar-15	SaskEnergy Incorporated (**SaskEnergy**) and TransGas Limited (**TransGas**)
10	30-Mar-15	TMX Group Limited (**TMX Group**)
11	30-Mar-15	TriOptima AB (**TriOptima**)
12	31-Mar-15	FortisBC Energy Inc. (**FEI**) and FortisBC Inc. (**FBC**) (together, **FortisBC**)
13	01-Apr-15	State Street Corporation (**State Street**)
14	02-Apr-15	Bloomberg L.P. (**Bloomberg**)
15	02-Apr-15	Osler, Hoskin & Harcourt LLP (**Osler**)

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British Columbia Securities Commission
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Financial and Consumer Services Commission (New Brunswick)
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Dear Sirs/Mesdames:

RE: Canadian Securities Administrators ("CSA") Consultation Paper 92-401 Derivatives Trading Facilities ("Paper 92-401")

Capital Power Corporation, together with its affiliates and subsidiaries (collectively "**Capital Power**"), makes this submission to comment on Paper 92-401 published by the Canadian Securities Administrators Derivatives Committee (the "**Committee**") on January 29, 2015.

Capital Power appreciates the opportunity to comment, and commends the Committee for seeking public input, on Paper 92-401. Capital Power generally supports the efforts of the CSA to establish a regulatory regime for the Canadian over-the-counter ("**OTC**") derivatives market in order to address Canada's G-20 commitments. To that end, Capital Power respectfully urges the CSA to develop regulations that strike a balance between not unduly burdening derivatives market participants while at the same time addressing the need to introduce effective regulatory oversight of derivatives and derivatives market activities.

Capital Power is a growth-oriented North America power producer headquartered in Edmonton, Alberta. Capital Power develops, acquires, operates and optimizes power generation from a variety of energy sources, including coal, natural gas, biomass and wind. Capital Power owns more than 2700 megawatts of power generation capacity across 15 facilities in Canada and the United States, and owns 371 megawatts of capacity through power purchase arrangements. An additional 1020 megawatts of owned generation capacity is under construction or in advanced stages of development in Alberta and Ontario.

Capital Power optimizes and hedges its commodity portfolio using physical forward contracts for electricity, natural gas, environmental commodities (e.g. carbon offsets and credits), USD/CDN currency exchange, and financial derivative transactions based on those same commodities. Capital Power's trading counterparties include other power producers, utility companies, banks, hedge funds and other energy industry market participants. Trading activities take place primarily through electronic exchanges, such as ICE (Intercontinental Exchange) and NGX (Natural Gas Exchange), but also through brokered transactions and directly with counterparties. Capital Power is a registered "market participant" in the Alberta wholesale electricity market constituted as the Alberta "Power Pool" under the *Electric Utilities Act* of Alberta (the "**EUA**") and is also a licensed "retailer" (as defined in the EUA) of retail electricity services to large commercial and industrial customers in the retail electricity market in the Province of Alberta.

SPECIFIC COMMENTS TO QUESTIONS:

Capital Power has the following specific comments in reply to specific questions posed in Paper 92-401:

Question 5: Is the proposed regulatory framework for DTF's appropriate? And

Question 13: Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

Capital Power considers Question 5 to encompass Question 13 and comments on them jointly. Capital Power is concerned about the regulatory, market surveillance and enforcement functions that the Committee proposes that DTF's would perform, regardless of whether or not DTF's would exercise any transaction execution discretion. Specifically, Capital Power submits that allowing, or requiring, DTF's to fulfill regulatory, market surveillance and enforcement functions creates a situation with an inherent and insurmountable conflict of interest for the DTF.

Capital Power has inferred from Paper 92-401, perhaps incorrectly, that the Committee envisions DTF's to be private for profit enterprises and not governmental agencies? Capital Power submits that the regulatory, market surveillance and enforcement functions that the Committee proposes for DTF's to perform would be most appropriately performed by a government agency, or other instrumentality of the state, such as the securities regulatory authorities in each province or territory. In any event, such functions should be performed by an entity independent from a DTF.

DTF's as private for profit enterprises would necessarily, and justifiably, have as their first and foremost goal the maximization of profits through the services they provide. Profits would be maximized by, among other things, providing more services to more "customers", that is, derivatives trading market participants. In that commercial context, Capital Power respectfully submits that it is both unrealistic and inappropriate for the Committee to expect DTF's to function, on the one hand, as promoters of their businesses and, on the other hand, as a combination of the police, judge, jury and executioner with respect to improper conduct of their customers.

Capital Power is particularly concerned about the proposals in Paper 92-401 that DTF's should have power to "discipline" their customers, including through "fines". Given that the relationship between a DTF and a customer would be based on a private contract between them, Capital Power is unsure how such fines would be enforceable outside of a successful judgment awarded by a court against a customer after a normal-course legal action brought by the DTF? Fines might be expressed within the contractual relationship as liquidated and/or pecuniary damages. Canadian courts typically do not award pecuniary damages and even non-pecuniary liquidated damages would have to be successfully claimed by the DTF through a trial process. At most, Capital Power submits that the power of a DTF to "discipline" its customers, in the event that the customer breaches the terms of the contract between it and the DTF, should be limited to the ability of the DTF to terminate the contractual relationship and thereby terminate the customer's access to the DTF's services.

Capital Power fully supports that DTF's, trading activities on DTF's and DTF customers should be subject to robust monitoring for improper, disruptive, manipulative, etc., trading activities. Capital Power also supports enforcement of trading rules designed to prevent such negative activities, including through suspensions and fines. As stated above however, Capital Power does not believe that such monitoring and enforcement functions should be carried out by a DTF itself because of the inherent conflict of interest between those functions and the DTF's profit and business growth goals. For the reasons discussed above, Capital Power respectfully submits that the regulatory, market surveillance and enforcement functions contemplated by Paper 92-401 should be performed not by DTF's but by independent entities such as government agencies or other instrumentalities of the state.

Question 9: Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

Capital Power submits that the requirement to clear particular derivatives trades, or classes of derivatives trades, should be based on a thorough and transparent analysis of the systemic risk, if any, posed by such trades and not simply transactional expediency on the part of a DTF. Accordingly, Capital Power submits that it is not appropriate to allow a DTF to require clearing of trades, which have not been mandated for clearing by the relevant securities regulator, simply because such trade would be capable of being cleared.

Except with respect to trades that have been mandated for clearing, Capital Power submits that allowing market participants discretion whether to clear trades or not preserves valuable transactional flexibility and liquidity in the market. Such flexibility and liquidity could be jeopardized if DTF's could require clearing of trades that had not been mandated for clearing by the regulators. In addition, Capital Power expects that the mandatory clearing of derivatives trades will likely result in a significant increase in capital requirements and transaction costs for such cleared trades. The increased costs associated with clearing may also result in decreased trading activity and a corresponding decrease in market liquidity. Derivatives markets, and market participants, should only be subjected to these adverse consequences to the extent justified in order to address systemically risky derivatives trades, or classes of derivative trades, which have been determined to be systemically risk by securities regulators after a thorough and transparent assessment process.

Question 10: Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

Further to our comments above about preserving flexibility and liquidity, Capital Power submits that it is not appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository. Allowing market participants to choose which DTFs', clearing agencies' and trade repositories' services they use should foster competition among those service providers. That competition should in turn lead to the optimization of efficiencies in service delivery by those entities and correspondingly lower prices for their customers.

Question 11: Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

Capital Power submits that it would be appropriate to permit a DTF, which exercises trade execution discretion, to limit access to its facility. Grounds for limiting such access could include the sophistication of a DTF's customer, the customer's credit rating and other financial metrics, technical capabilities, etc. Capital Power agrees with the comments in Paper 92-401 that denying DTF's such limiting ability could force DTF's into fiduciary-type relationships with persons with whom they would otherwise not choose to transact.

Question 18: What is the preferred method of real-time public reporting of transactions executed on a DTF (i.e. directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

Capital Power submits that the preferred method of real-time public reporting of transactions executed on a DTF would be through trade repositories and not directly by a DTF or some other method. Capital Power notes that trade repository and trade data reporting rules, including public dissemination of trade data, are already in effect in Manitoba, Ontario and Quebec. Proposed trade repository and reporting rules have been published by regulators in five other provinces. Capital Power anticipates that well before any DTF related rules become effective trade repositories and trade reporting will likely be in effect across Canada. Given the regulatory framework being developed around trade repositories and trade reporting, Capital Power sees no value in requiring DTF's to duplicate the public reporting that trade repositories will already be doing. Capital Power urges the CSA to avoid any duplicative, or potentially conflicting, efforts or requirements among the various streams of rule developments that the CSA is undertaking.

Question 22: In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to counterparties? Please specify.

Further to our comments in response to Question 18 above, Capital Power submits that trade information dissemination should be addressed in the context of existing or proposed trade repository and trade data reporting rules. Accordingly, Capital Power does not believe that DTF's should function as public disseminators of trade data because that function will be performed by trade repositories. A DTF's trade reporting and dissemination functions should be limited to disclosing all pertinent trade details to the two counterparties to such trade.

Capital Power respectfully requests that the Committee consider its comments and again expresses its gratitude for the opportunity to provide comments. If you have any questions, or if we may be of further assistance, please contact Mr. Zoltan Nagy-Kovacs, Senior Counsel, at [redacted]

Yours Truly,

"***CAPITAL POWER***"

Per: "Zoltan Nagy-Kovacs"
Zoltan Nagy-Kovacs Senior Counsel

ISDA. Safe, Efficient Markets

27 March 2015

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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

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RE: Canadian Securities Administrators Consultation Paper (92-401)—Derivatives Trading Facilities

Dear Sirs/Mesdames:

The International Swaps and Derivatives Association (***ISDA***) appreciates the Canadian Securities Administrators Derivatives Committee's (Committee) engagement with the industry throughout this consultation process. We welcome the opportunity to provide comments to the Committee concerning this Consultation Paper that sets out the framework for the regulation of Derivatives Trading Facilities (DTFs) in Canada.

We respectfully encourage the Committee to take a flexible approach focused on broad principles aimed at risk reduction, increased transparency and market integrity, rather

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than imposing detailed requirements, to allow for a smoother transition toward the use of DTFs.

ISDA has previously highlighted in its comment letters to a number of national authorities the importance of effective cross-border regulatory harmonization. Over-the-counter (OTC) derivatives markets have historically been the most global in nature of all financial markets. The absence of consistency in regulatory reform negatively impacts these markets and threatens the efficiency with which end-users can manage their business risk.

We urge the Committee to address how cross-border regulatory harmonization could be achieved and suggest ways to reduce undesirable regulatory outcomes that threaten the efficient functioning of markets. We stress the importance of an approach to a comparability of foreign rules based on regulatory outcomes rather than a detailed assessment of each jurisdiction's individual rules.

Below we respond to the questions posed in this Consultation Paper.

Question 1: Is the DTF category appropriately defined? If not, what changes are needed and why?

We are generally supportive of the proposed definition of a DTF. It provides sufficient flexibility to accommodate established and unique market practices.

However, as explained in more detail below, we urge the Committee to interpret this definition in a flexible way to allow DTFs to offer various methods of execution that take into account the liquidity and other unique trading characteristics of a particular product.

Question 2: Is it appropriate to permit operators a degree of discretion over the execution of transactions? Why or Why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

The discretion of the operator is important for participant choice. Preserving this discretion is especially important when trades are executed in less liquid markets or during a liquidity crisis.

Question 3: Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

ISDA is supportive of the Committee's intention to permit various execution methods on a DTF. An assessment of a DTF's execution methods must be based on an appreciation of the unique characteristics of the relevant swap's trading liquidity. Even relatively standardized contracts may trade infrequently and therefore cannot be executed on an Order Book or an RFQ to more than one person system. For such swaps, the requirement to advertise a requester's interest to a broad portion of the market may preclude maintaining confidentiality and may adversely affect the price to customers, who should be the primary beneficiaries of such regulations. Therefore, ISDA urges the Committee to allow DTFs' participants to decide what methods of execution are suitable for their particular instrument.

Question 4: Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

We believe the definition of a DTF allows participants a broad choice of execution methods that will satisfy product liquidity and participants' trading needs.

Question 5: Is the proposed regulatory framework for DTFs appropriate?

ISDA is supportive of the Committee's overall approach to the proposed regulatory framework for DTFs. We urge the Committee, however, to maintain a principles based approach to regulation of these new trading venues. Compliance with core principles will ensure reliable regulatory oversight and at the same time, will not put the Committee in a position of a front-line decision maker that imposes its judgment on every aspect of the DTF's operation. This will also allow DTFs to maintain their competitive positions in the Canadian market and globally and to keep pace with rapidly changing market demands.

Question 6: Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

ISDA believes that if the operator of a DTF exercises discretion in the execution of transactions, such operator should be subject to effective business conduct rules. We believe that an essential component of the regulatory framework is ensuring that the operator, in exercising discretion in the execution of transactions, makes such decisions based on sound risk management and free from conflicts of interest. However, we do believe that applying a blanket requirement to register as a swap dealer will lead to unnecessary burdensome regulatory compliance. A swap dealer registration will impose additional costly compliance requirements that have nothing to do with establishing a risk management program or avoiding conflicts of interest. A better approach is to require DTFs to establish reasonable procedures designed to prevent any conflicts of interest that may arise in the execution of discretionary trades by DTFs' operators.

Question 7: To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or Why not?

ISDA recommends that the Committee refrain from adopting the requirement that a DTF must only exercise discretion in the execution of transactions in a separate affiliated entity. This requirement will put a strain on the resources of new trading facilities that may use capital for prudential purposes and at the same time, will allow entities with the deepest pockets to set up separate affiliated entities and achieve trading dominance. As discussed above, a better approach is to establish effective procedures to avoid conflicts of interest in executing discretionary trades.

Question 8: What factors are relevant in defining the proposed best execution duty?

At the outset, the Committee should make it clear that the proposed best execution duty does not apply if a DTF does not act on behalf of a participant. In this case, neither the dealer nor the firm owes the participant an agency obligation.

We believe that a core-principles approach-- and not detailed regulation-- is the best way of ensuring that best execution is achieved in the derivatives markets, which are primarily institutional rather than retail. The Committee should allow DTFs the flexibility to develop their own best execution policy. A DTF should consider a number of factors, including delivery of a fair price (albeit not necessarily the best price), execution costs, likelihood of execution, the nature of the trade, and the unique characteristics of the relevant financial instruments.

Question 9: Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

ISDA believes that the Committee should not allow a DTF to require, through its rulebook, that its participants clear all transactions capable of being cleared (regardless of whether those transactions are subject to a mandatory clearing obligation). In this case, a DTF and not the Committee would effectively be establishing a mandatory clearing requirement. The Committee may permit a DTF to decide whether they would like to trade only products that have been determined to be mandatorily cleared.

Question 10: Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

We would like to see regulations that unambiguously allow two parties to trade a product on a DTF and agree in advance which clearing agency they will use to clear their transaction. In addition, a DTF should have the ability to provide access to a clearing agency that already clears existing products. We believe the above approach would not fragment liquidity since all participants would have access to the same clearing agency.

As to the reporting obligations, please see our responses to Questions 18, 19, and 22.

Question 11: Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds?

To require that all contract participants have impartial access to its markets and services may preclude a business model designed for wholesale participants only. European regulators, for example, permit platform operators to categorize clients and to make rules appropriate for the category based on objective, transparent criteria designed to ensure suitability and protect market integrity. This does mean that different clients may be treated in different ways. It is not necessary to prescribe that the business model of each DTF must ensure that all types of clients have equal access to its platform. However, similarly situated groups of participants have to be treated similarly to alleviate any anti-competitive conduct.

Question 12: Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

ISDA recognizes the importance of rules governing the establishment and operation of a DTF as they are essential for achieving the overarching goal of promoting trading on centralized venues. To this end, we support flexible governance rules that accommodate various business and corporate structures. We believe the Committee should offer guidance or best practices to encompass a broader range of violations and account for unique trading practices of a particular DTF.

We agree that recordkeeping is an essential element for monitoring trade violations. However, each DTF must retain the flexibility, within a core principles framework, to determine and implement a record retention system that is best suitable for its operations and is the most cost effective way of preventing abusive trading practices.

Question 13: Is it appropriate that a DTF that does not exercise discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

We believe that a DTF is best placed to and should have the flexibility to determine how best to perform its regulatory and surveillance functions. Requiring the use of a third-party regulation services provider may incur additional costs on DTFs, especially nascent platforms that do not have excess capital to invest in a third-party provider and may instead choose to perform these functions in-house.

To reiterate, DTFs should have the flexibility to determine the manner in which they are going to comply with their regulatory and surveillance responsibilities based on each DTF's financial resources, expertise and available technology on the assumption that it has a clear set of principles against which to assess itself. This again highlights the importance of an outcome based regulatory regime that provides for the necessary flexibility in determining how best to achieve desired regulatory objectives.

Question 14: Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own account? Please explain.

In general, ISDA believes that prohibiting operators of DTFs from entering into trades on their platforms as principals, on their own account may create a significant withdrawal of liquidity on these platforms. In derivatives markets, client transactions have traditionally involved firms employing their own capital and managing the risk associated with client-facing transactions. The ban may prevent the supply of additional liquidity by firms that are willing to use their own capital to take the risk on a short-term basis.

A better approach is to institute a comprehensive business conduct program to ensure that customer trades are executed fairly and free from conflicts of interest. Given the small size of the Canadian market, however, DTFs may be benefited from aligning their model with the U.S. CFTC Swap Execution Facility (SEF) model insofar as not permitting SEF operators to trade as principals. This will ensure a seamless transition by existing U.S. SEFs into Canada. If the Committee were to adopt rules allowing a different model, it would make the transition more difficult and consequently might deter U.S. SEFs from participating as DTFs in Canada.

Question 15: How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

We believe that financial resources should be construed broadly to include anything of value that a DTF has at its disposal, including operating revenues. We note that one DTF's failure will not lead to a liquidity crisis because swaps trade on various trading platforms with various liquidity pools. Therefore, DTFs should only be required to hold adequate resources to be able to wind-down their operations in six months.

Question 16: Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply?

Importantly, some form of pre-trade price transparency already exists in many forms across various different markets and has developed on the basis of the demands of market participants. For OTC contracts, for example, investors have access to multi-dealer trading venues offering composite pages "click and trade" systems, request for quotes and order books. To remain competitive in these products, dealers have a strong incentive to be as transparent as possible in order to ensure that they remain on the counterparty list of their clients.

In drafting DTF regulations, it is important to recognize this variety of transparency. However certain swaps, for example, commodity swaps, trade infrequently. For such swaps the requirement to advertise a requester's interest to a broad portion of the markets (because such market may have few participants) may preclude maintaining confidentiality, adversely affecting the price to the customer. Equally, order book trading is not suitable for more customized swaps, where price depends on various negotiable terms. Prescribing specific pre-trade transparency requirements could significantly raise transaction costs for commercial end-users and prevent such end-users from engaging in prudent risk management.

We would prefer to see a more targeted approach to pre-trade transparency, based on the needs of market participants, including end-users and the objective of ensuring the best possible price discovery and promoting trading on centralized venues. For DTFs to succeed, market participants must be given the discretion to choose the level of transparency that best meets their needs.

Question 17: Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

ISDA is concerned that this Consultation Paper does not take into consideration the post-trade transparency requirements for a DTF contained in the existing and proposed transaction reporting regulations - the Trade Repositories and Derivatives Data Reporting rule or regulation (91-507) issued by the Ontario Securities Commission (OSC), the Manitoba Securities Commission (MSC) and the Autorité des marchés financiers (AMF), as well as the proposed Multilateral Instrument (96-101), Trade Repositories and Derivatives Data Reporting (96-101). The post-trade transparency requirements for a DTF should consider the impact to the requirements under 91-507 and 96-101 (collectively, the Reporting Rules) and should leverage the experience resulting from compliance with the reporting requirements in other jurisdictions to fully consider the approach to and impact of transaction level public reporting.

Question 18: What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

ISDA notes that except as when entered as a principal, a DTF is not a reporting counterparty under §25 of the Reporting Rules. The consultation report suggests that a DTF would only be responsible for transaction level public reporting, either directly to the public or via a Trade Repository (TR). This implies that the reporting counterparty would still be responsible for reporting all transaction data to the TR, including the data subject to aggregated public reporting but excluding such data from transaction level public dissemination. This will lead to duplicative and inconsistent reporting. ISDA is concerned that bifurcation of the reporting responsibility will impact data quality and complicate compliance with the Reporting Rules for both reporting counterparties and TRs.

As evidenced by the Commodity Futures Trading Commission (CFTC) reporting rules, a shared responsibility for reporting a single transaction results in disaggregation of data and negatively impacts data quality. Under the CFTC reporting rules, a SEF is responsible for the initial creation data reporting, including the data for transaction level public dissemination, while the reporting counterparty is responsible for reporting continuation data, including life-cycle data and valuation data. This shared obligation is challenging since a SEF and reporting counterparties may have established connectivity to report to different Swap Data Repositories (SDRs). Such division in reporting is both complex and costly, and therefore ISDA has recommended that the CFTC eliminate this shared responsibility for reporting of swaps.

Similarly, in Canada, assigning partial reporting responsibility for transaction reporting to a DTF would hamper the ability of reporting counterparties to comply with §26(6) of the Reporting Rules that requires them to "report all derivatives data relating to a transaction to the same recognized trade repository to which the initial report was made." This requirement would increase the cost and complexity of compliance with the Reporting Rules.

ISDA believes that a DTF should be responsible for reporting trades executed on or via its facility that are intended for clearing. After trades have been cleared, the clearing agency must assume the reporting obligation for the cleared transactions in accordance with the reporting hierarchy prescribed by the Reporting Rules. For trades executed on a DTF that are not intended for clearing, the reporting counterparty should have the obligation to report in accordance with the hierarchy prescribed by the Reporting Rules. On February 11, 2015, the SEC issued the proposed rules – Reporting and Dissemination of Security-Based Swap Information (proposed SBSR). The proposed rules are consistent with this recommendation.

This approach eliminates the potential for transaction data to be reported to different TRs, thus streamlining the reporting process, improving parties' ability to comply with their reporting obligations and preserving data quality. We suggest that the Committee align the reporting obligations for DTFs and the Reporting Rules with § 901(a) (1) of the proposed SBSR. A consistent cross-border approach would allow a DTF that is also registered as a Security-Based SEF to report to a single multi-jurisdictional TR to satisfy its reporting obligations. This approach promotes efficiency and improves data quality.

It is important to note that there is little value in reporting a bilaterally executed transaction that is intended for clearing (an "alpha" trade) to a TR as the alpha trade is immediately or very shortly (usually within minutes) terminated and replaced by cleared trades (the "beta" and "gamma" trades) that are reported to a TR by the clearing agency. The beta and gamma trades more accurately represent the market exposure. To minimize the reporting cost incurred by DTFs and counterparties, the Committee should limit the reporting obligation for an alpha trade to only the data that is required for public dissemination in Appendix A of the Reporting Rules (Appendix A). If creation data reporting of all applicable fields in Appendix A is not required for alphas, then the DTF should not be required to source creation data that is not readily available to it (e.g., Master Agreement type and version). In this case, a reporting counterparty would not be required to supplement a report submitted by the DTF.

Notably, the jurisdiction where the DTF is registered should not trigger a reporting obligation. The DTF is merely a conduit for the trade (except to the extent it enters into a trade as principal) – it does not take on any credit or counterparty exposure and therefore the reporting rules of the DTF's jurisdiction are not relevant. Rather, a transaction executed on a DTF should be subject to reporting obligations only as they apply to the counterparties to the trade under applicable provincial reporting rules. To comply with its reporting obligation, the DTF will need to gather representations from its participants (e.g., as part of their on-boarding process) to establish which local reporting laws apply to a trade between two parties executed on the DTF.

Separately, one item worth highlighting relates to data confidentiality and privacy laws. In certain jurisdictions, consent is required from counterparties to allow reporting of counterparty information. While this adds an operational burden to the reporting process and requires a period of time to be implemented, consent where permitted, and where requirements for informed consent are met, serves to address confidentiality restrictions. Where consent, even if obtained, is not sufficient, and reporting of counterparty identifying information could lead to criminal charges, a regulatory solution is the only safeguard. Further, where local laws are unclear on the point, any ambiguity may not be resolved in favor of the reporting party and therefore a regulatory solution is the preferred safeguard. Execution of a Global MOU among regulators would be most effective to mitigate data confidentiality risk to reporting parties and resolve interpretive ambiguities.

Question 19: When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

Recent amendments issued by the OSC and MSC and an order issued by the AMF extend the date for transaction level public reporting under 91-507 to July 29, 2016. Prior to this deadline, significant work is expected to be undertaken by the authorities to determine an approach to transaction level public dissemination that balances the need for transparency with the necessity to preserve party anonymity and market liquidity.

The requirements for transaction level public dissemination should be based on a careful analysis of Canadian transaction data in order to determine where such requirements can align with those of other global regulators and in what cases distinct treatment is necessary to preserve the Canadian market. Any requirements with respect to block sizes, corresponding delays and other mechanisms that may apply to publicly reported transaction data (e.g., notional cap sizes) should be based on the relative liquidity of the product, not just the trade size, and should be consistently applied to a product or sub-product regardless of the execution method. For additional considerations and suggestions regarding transaction level public dissemination, please refer to our letter submitted to the Committee on January 16, 2015.

Question 20: Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

Achieving the appropriate relationship between reporting delay and frequency and volume of trading in a specific swap product is critical to achieving the balance between transparency and liquidity. In all derivatives markets, there are clearly definable categories of swaps that trade with significantly lower frequency and volume than more liquid categories of swaps.

ISDA believes that in determining an appropriate size of a block trade, the Committee should take into account the relationship between trading volume, frequency of trading and liquidity. Block treatment should be permitted for any swap transaction, regardless of size, in swap categories for which trade frequency is particularly low. In highly illiquid markets, a single transaction is especially likely to move the market (i.e., change the price that market participants would demand or accept for a particular swap transaction).

Question 21: What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to the data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

ISDA recommends that the Committee align the requirements with other jurisdictions, including the CFTC rules in 17 CFR 16.01. This would provide the public with access to consistent data across regimes and prevent any arbitrage that could result from differences in the reporting obligations between DTFs and SEFs, as well as other platforms.

Question 22: In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

We believe a DTF should be restrained from disclosing swap transaction and pricing data relating to publically reportable swap transactions prior to the public dissemination of such data by a TR. Advance disclosure by a DTF would undermine the party anonymity protections afforded to the counterparties and would negatively impact market liquidity. Moreover, DTFs that are registered as SEFs would already be restricted from disclosing swap transaction and pricing information prior to public dissemination of such data by an SDR.

Consistent with the requirement for SEFs and the proposed SBSR, DTFs should be required to report any transaction level data to a TR for public dissemination. Allowing a DTF to disseminate derivatives data directly will fragment data, impact data quality and impair data aggregation and analysis. If each DTF is allowed to disseminate its own data before a TR has disclosed swap transaction and pricing data, then in addition to the three TRs currently recognized for reporting under 91-507, there will be many DTFs publishing their own data in varying formats. Both regulators and the public will have to aggregate data across many sources to obtain a complete picture of the Canadian derivatives market, making it more difficult to access data.

Question 23: Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

In general ISDA supports the criteria proposed by the Committee. ISDA supports the criteria that measure liquidity on a product-specific basis. ISDA acknowledges, however, that in practice, defining a standard measure of liquidity is hard to achieve. At a minimum, a product that is determined to be suited for mandatory trading should trade multiple times daily with multiple distinct swap counterparties. We urge the Committee to perform an in-depth study of the markets on a swap-specific basis, in conjunction with market participants, to determine the appropriate criteria for a DTF-trading mandate. ISDA will be happy to assist the Committee in such efforts.

Question 24: Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

The critical issue in determining whether there is sufficient trading liquidity in a certain contract to justify a mandatory trading obligation must be assessed on a contract-by contract basis. Each relevant instrument should be broken down into fixed contract specifications, including specified maturity, rate source, currency, business day conventions, etc. While we recognize that two swaps with different contractual specifications may hedge each other, in whole or in part, the trading of these two swaps does not create a single trading liquidity pool for the purposes of generating readily observable prices and market volumes. We believe that certain interest rate and credit default contracts may be subject to mandatory DTF trading, while commodity and energy products do not have sufficient trading liquidity to be executed on a DTF.

In addition, as previously mentioned, the FX market is cross-border and global in nature. Clearing mandates and platform trading obligations should be globally aligned and we note that deliverable FX forwards and FX swaps, following the 2012 U.S. Treasury exemption,[1] are currently excluded from the definition of "swaps" in the Commodity Exchange Act (CEA) in order to exclude these types from the application of clearing obligations and SEF rules within the U.S.

Question 25: Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

If after a careful review of the available data, the Committee determines that certain swaps are subject to a mandatory trading obligation, then such swaps should be traded exclusively on DTFs. Otherwise, these products could continue to trade on other trading venues, including single-dealer platforms, which would lead to fragmentation of liquidity.

ISDA believes that commercial end-users should be exempt from a trading mandate and therefore any trade with an end-user can be traded off venue. End-users did not contribute to the financial crisis; they do not pose significant risk to the derivatives markets.

Also, ISDA notes that inter-affiliate transactions should be exempt from a DTF trading mandate. The distinctive characteristics of inter-affiliate swaps, the lack of systemic risk engendered by such trades, and the important systemic and private benefits of inter-affiliate swaps argue persuasively in favor of the Committee exempting such swaps from the mandatory clearing and trade execution obligations.

Finally, ISDA notes that each package transaction as a whole (and not its individual components) must be assessed for its liquidity characteristics to determine whether such transaction is suitable for trading on a DTF.

Question 26: Should there be a formal role for DTFs initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

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[1] http://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx

While we understand the efficiency of requiring each DTF to make the initial assessment of whether a particular swap or a class of swaps should be mandated to trade on DTFs, the Committee should make the final determination pursuant to a set of objective criteria established by the Committee. ISDA believes that such criteria should be based on global minimum volumes of daily trading over a significant period of time for each swap. We also believe that the Committee must periodically re-evaluate the liquidity characteristics of a swap to determine whether a particular swap should continue to be mandated for DTF trading.

Having this determination made by the Committee will eliminate the competitive motivation of one DTF to determine that a particular swap is mandated to be traded on a DTF and thus force other DTFs to list this swap as a mandatorily traded swap.

Question 27: What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

Please see generally our answers to Questions 3, 4, and 16. We believe the Committee should not prescribe restrictive pre-trade transparency requirements for mandatorily traded swaps. Even mandatorily traded swaps will have various degrees of liquidity and frequency of trading. Consequently, a restrictive requirement to quote prices to all or a certain number of participants in less liquid markets would likely result in fewer dealers making markets, reduced liquidity, and greater costs to DTF participants.

Question 28: For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

Please see our answer to question 20. We also note that the Committee should use at least a 6-month window of data as part of its methodology for determining appropriate minimum block sizes for each swap category.

Question 29: Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request for quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

Please see our answer to Questions 3, 4, 16, and 27. We would like to reiterate that it is not appropriate to mandate specific execution methods for the OTC derivatives that have been mandated to be traded on a DTF. The proposed definition of a DTF as a facility "that bring[s] together multiple buying and selling interests leading to the execution of OTC derivatives transactions" does not limit execution methods for mandatorily traded products.

While we believe that the participants should be able to trade in a multiple-to-multiple environment, the participants should not be restricted in their execution methods and must be able to use their expertise to determine how to execute their orders. Requiring specific methods of execution for mandatorily traded contracts will increase hedging costs and the price offered in response to an RFQ request.

A pre-trade broadcast to all, in case of an Order Book, or to many, in case of an RFQ to more than one, could artificially affect prices and move the market against the requester, in particular, in the case of large size trades that do not qualify as block trades. Each participant, in every case, should be allowed to assess the balance between the available liquidity in the market and potential consequences of wide dissemination of the request. In more liquid markets, a requester may wish to execute a trade via an Order Book or an RFQ to a larger number of participants because the markets will not be affected by the request.

Question 30: What additional requirements should apply to DTFs with respect to products that have been mandated to trade on a DTF?

Please see our responses to questions 3, 4, 16, and 29. At this time, we don't believe that additional requirements should apply to DTFs with respect to products that have been mandated to trade on a DTF. As we explained above, we would prefer to see a more targeted approach to pre-trade transparency, based on the needs of market participants, including the objective of ensuring that end-users achieve the best possible price discovery on a DTF. This also requires flexibility of the execution methods, taking into account the characteristics of each mandatorily traded product.

Question 31: Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider which might justify a divergence between Canadian rules those in effect in the U.S. and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

Given the limited liquidity and the number of liquidity providers in many OTC products in Canada, it is important to allow flexible execution methods on a DTF. We also note that it is important to establish a workable post-trade transparency reporting regime.

In addition, the relatively small size of the Canadian market and the cross-border nature of OTC derivatives markets underscore the potentially significant risk of market fragmentation and loss of access to primary trading markets if cross-border harmonization of rules is not respected.

We support the Derivatives Committee's recommendation that exemptions should be available for foreign-based DTFs from the requirements of the Canadian DTF regime. However, we believe that these exemptions should not be granted only on a case-by-case basis. Given the importance of ensuring appropriate market access to regulated SEFs and OTFs and the principal of international cooperation and inter-reliance among regulators, we suggest that it is appropriate to grant an outright exemption from DTF rule requirements for SEFs and OTFs that are regulated under the CEA or MiFID II, are in compliance with related CFTC or EU requirements, have not improperly restricted access to trading by market participants in applicable Canadian provinces, and have complied with all Committee member requests for information and periodic reports as contemplated by the DTF rule. Such an approach could codify the exemptions provided to a number of SEFs by the OSC but do so on a transparent and equitable basis that eliminates unnecessary barriers to market access.

Additional Comments:

As we noted in Question 25, we expect that the Committee will provide an exemption from any mandatory DTF trading obligation for end-users that have the benefit of an exemption from the mandatory clearing obligation for the related trade. We consider such an exemption to be appropriate and consistent with the policy rationale for exempting end-users from a clearing mandate. For example, a company that is entering into a credit facility and simultaneously entering into related interest rate swaps with one or more hedge providers that are taking the benefit of security under the credit facility will negotiate numerous deal terms with the lenders and hedge providers. For numerous reasons, this type of standard market arrangement cannot be fit within a DTF trading model.

Separately, we believe that the end-user hedging exemption should also be available for financial entities. We expect to discuss this further in our comment letter on the draft Clearing Rule.

Further, we urge the Committee to exempt inter-affiliate transactions from a DTF trading mandate given the importance of permitting company groups to internally manage their risk.

Finally, we recommend that phase-in and staging provisions similar to that proposed for the clearing rule be included in the eventual draft DTF rule.

ISDA appreciates the opportunity to provide its comments on the DTF Consultation Paper and looks forward to working with the Committee as it continues to consider the

ISDA

issues outlined in this Consultation Paper. Please feel free to contact me or ISDA's staff at your convenience.

Sincerely,
Steven Kennedy,

[redacted]

Global Head of Policy
ISDA

The Canadian Advocacy Council for Canadian CFA Institute Societies
ADVOCATING THE CFA INSTITUTE'S CODE OF ETHICS AND STANDARDS

March 30, 2015

BY EMAIL

Dear Sirs/Mesdames:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

Josée Turcotte, Secretary
Ontario Securities Commission
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and

Me Anne-Marie Beaudoin, Corporate Secretary
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Re: CSA CONSULTATION PAPER 92-401 *Derivatives Trading Facilities* (the "Proposed Amendments")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on and wishes to provide comments on the following specific questions posed with respect to the Proposed Amendments.

[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 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.

Defining "Derivatives Trading Facility"

1. *Is the DTF category appropriately defined? If not, what changes are needed and why?*

Yes, the DTF category is appropriately defined.

2. *Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?*

It is appropriate to permit a DTF operator a degree of discretion over the execution of transactions because it provides additional flexibility for clients. Discretion should be permitted for trading in some products that are mandated to trade on a DTF, such as semi-standard swaps (e.g. CDS, IRS).

Permitted Execution Methods

3. *Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?*

We are of the view that the description of permitted execution methods is exhaustive and thus suitable for facilities that offer or plan to offer trading in OTC derivatives.

4. *Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?*

Given the broad scope of the Proposed Amendments, an order book or an RFQ should be the minimum trading functionality prescribed.

Regulatory Authorization of DTFs

5. *Is the proposed regulatory framework for DTFs appropriate?*

We agree that the proposed regulatory framework is appropriate.

6. *Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)*

We do not believe that it would be appropriate to impose all of the dealer requirements on a DTF in these circumstances. We believe that the dealer requirements currently applicable to exempt market dealers that address conflict of interest matters and financial solvency would be relevant to a DTF where the operator exercises discretion. We note that while it will be important that the operator of the DTF be subject to regulatory oversight and scrutiny, the functions of an operator exercising discretion in matching orders is different from an entity that is in the business of trading. If the operators were required to register as a dealer subject to all of a dealer's obligations, it could increase their operating costs which could be passed on to the end users.

7. *To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?*

We do not believe it would be necessary for a DTF to exercise discretion in a separate affiliated entity. The DTF would likely lose some operational and regulatory efficiencies if they were required to operate two entities, and clients could be subject to additional administration and costs if they were forced to deal with two entities. It would be more efficient for clients, and potentially for collateral management, if only one entity was required. As noted above, we do not believe that full dealer registration should be required in these circumstances but that a level of regulation and oversight may be desirable depending on the model of the DTF. From a registration and surveillance perspective, a single entity could be easier to monitor, and would have fewer related party conflicts to manage.

8. *What factors are relevant in defining the proposed best execution duty?*

With respect to the derivatives contemplated by the Proposed Amendments, it is difficult to quantify the factors in any specific case that would be relevant in defining the proposed best execution duty, resulting from the fact that these derivatives are non-standardized and thus each trade must be examined on a case by case basis. The factors that may be relevant are not just temporal factors; the attributes of the derivative being written or bought will help in the determination. Outside of an RFQ competitive quote situation it will be very difficult to define the duty. The implementation of the best execution duty is complex and ambiguous, as illustrated by the comprehensive CFA Institute Trade Management Guidelines for investment firms which was developed by the CFA Institute Trade Management Task Force, which sets out a framework for firms to make consistently good trade-execution decisions.

Organizational and Governance Requirements

9. *Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?*

Our response to questions #9, #10 and #11 depend in part on the number of DTFs operating in Canada. While it is appropriate to allow a DTF to require clearing of all trades that are capable of being cleared, it may not also be appropriate to allow that same DTF to mandate that certain clearing agencies or trade repositories be used, particularly if they are related entities. It should be the choice of the participant as to which facility they wish to use in order to clear their trades. Clients who do not want to be forced to clear trades through a particular clearing agency will deal with DTFs that do not have such a requirement.

10. *Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?*

Please see our response to #9 above.

11. *Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?*

We do not have a view as to whether or not a DTF that exercises discretion should be permitted to limit access to its facility. In the event DTFs are permitted to limit access, the criteria for determining access should be clear and disclosed to potential participants.

12. *Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?*

Yes, we believe the proposed organizational and governance requirements are robust and appropriate.

13. *Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.*

In order to encourage economic business models we believe that for most cases, it is appropriate that a DTF that exercises discretion be permitted to perform its regulatory and surveillance functions itself, provided that it is subject to regulatory audits. There is a lesser chance of a conflict of interest in the circumstances where the DTF does not exercise execution discretion. DTFs should however have the option of utilizing a third-party regulation service provider for this purpose if they so choose. In addition to being able to engage a third party regulatory service provider should they choose to do so, the regulators could require such an engagement if the unique aspects of a particular DTF's discretion or business model so warrants.

14. *Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.*

Such a proposal will help mitigate conflict of interest concerns.

15. *How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.*

A DTF's financial resources should be evaluated similar to those used for recognized exchanges and clearing agencies to the extent there is an inherent or related clearing business as part of the DTF, or if there is not, similar to the evaluation process of other jurisdictions (such as that used in the United States for SEFs).

<u>Pre-trade Transparency</u>

16. *Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?*

No, we do not believe pre-trade transparency requirements should apply to OTC derivatives that have not been mandated to be traded on DTFs. However, if pre-trade transparency requirements will apply, indicative (non-firm) bids and offers may be appropriate.

<u>Post-trade Transparency</u>

17. *Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?*

Yes the proposed requirements are appropriate.

18. *What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?*

We think the most efficient reporting could be done via trade repositories, assuming that reported trades are the sum of all the trades executed in the DTFs reporting to the trade repositories. Such reporting lines should provide a greater potential to preserve confidential information of participants. If a DTF provided real time public reporting directly, there could be a greater opportunity for market participants to identify confidential information.

19. *When should deferred publication of trade information be permitted? Are there circumstances other than block trades?*

Deferred publication of trade information should be permitted in the event of illiquidity (i.e. below a certain volume/trade count threshold). There should be a mechanism to prevent disclosure where the situation warrants delayed disclosure.

20. *Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?*

Criteria to be considered should include the instrument type, currency of the instrument, historical liquidity of the instrument (total notional amount and trade count), as well as settlement risk. The criteria should be reviewed at regular intervals (e.g. every six months) to determine if they are still relevant.

21. *What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).*

A DTF should be required to provide information on the total notional volume, market value and percentage of block trade volume per instrument type (e.g. IRS, OIS, CDS – single name, CDS Index). The information should be published daily within one business day of the trade.

22. *In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.*

A DTF should only be required to report to the counterparties to the trade. We do not believe there would be a benefit to providing post-trade information to all participants.

Trading Mandate

23. *Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?*

Yes the proposed criteria are appropriate.

24. *Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?*

To ensure the greatest amount of harmonization possible with the United States and other jurisdictions such as the EU, we would encourage the types of OTC derivatives suitable for mandatory trading on a DTF in the first instance be the same as those already designated in other jurisdictions (e.g. interest and credit swaps). We strongly support the “wait-and-see” approach discussed in the Notice, as there may be some products where there is insufficient liquidity in Canada to mandate clearing even though the market ecosystem in other jurisdictions is more developed. If package trades and total return swaps were subject to a mandatory trading obligation, it could be detrimental to market participants.

25. *Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?*

Package trades should be permitted to trade other than on a DTF, since they are used by commercial enterprises to hedge specific commercial risks. They may trade infrequently, and it could be more of a burden for such products to trade on a DTF than bilaterally (or through other means). Non-financial users of derivatives in certain instances should be eligible for non-DTF trading. Exemptive relief should be available for such trades, potentially though an expedited process.

26. *Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 813?*

Yes there should be a formal role for DTFs, but they should not be permitted to arbitrate the process for commercial reasons.

27. *What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).*

An order book model price and size would be appropriate, and for an RFQ model indicative size and a price would initially be appropriate.

28. *For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?*

The size threshold should be discretionary, and there should be a pre-trade process for exemption and/or standing criteria, regularly evaluated and updated by the regulator and/or the DTF in consultation with the regulator and industry, by which a trade is automatically exempted from the reporting requirements.

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
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March 30, 2015

VIA ELECTRONIC MAIL

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Re: Comments on CSA Consultation Paper 92-401 Derivatives Trading Facilities

Dear Sir or Madam:

On behalf of The Canadian Commercial Energy Working Group (the "**Working Group**"), Sutherland Asbill & Brennan LLP hereby submits this letter in response to the request for public comment on CSA Consultation Paper 92-401 Derivatives Trading Facilities ("**Consultation Paper 92-401**") published by the Canadian Securities Administrators ("**CSA**") Derivatives Committee.[1] The Working Group welcomes the opportunity to provide comments on Consultation Paper 92-401 and looks forward to working with the CSA throughout the derivatives reform process.

As the drafting process continues, it is critical for the CSA to ensure that the regulatory framework for derivatives trading facilities ("**DTFs**") and the rules regarding the trade execution mandate are compatible with and accommodating of the unique characteristics of the over-the-counter ("**OTC**") derivatives market. With this in mind, the Working Group's comments

[1] CSA Consultation Paper 92-401 Derivatives Trading Facilities (Jan. 29, 2015), *available at* http://www.albertasecurities.com/Regulatory%20Instruments/5043114-v1-CSA_Consultation_Paper_92-401_-_Derivatives_Trading_Facilities.pdf.

contained herein identify issues and offer recommendations designed to ensure a workable regulatory framework for DTFs and rules regarding the trade execution mandate.

The Working Group is a diverse group of commercial firms that are active in the Canadian energy industry whose primary business activity is the physical delivery of one or more energy commodities to others, including industrial, commercial, and residential consumers. Members of the Working Group are producers, processors, merchandisers, and owners of energy commodities. The Working Group considers and responds to requests for comment regarding developments with respect to the trading of energy commodities, including derivatives, in Canada.

I. INTRODUCTION.

As Consultation Paper 92-401 sets forth a proposed regulatory framework for DTFs and the trade execution mandate, issues pertaining to the following topics should be addressed in the drafting process: (i) the role of voice brokers; (ii) the absence of exemptions from the trade execution mandate for end-users and intragroup transactions; (iii) the relationship between the determination process for mandatory trade execution and mandatory central clearing; (iv) the process to determine which OTC derivatives or classes of OTC derivatives are subject to the trade execution mandate as it relates to consistent application and market participants' input; (v) the definition of "OTC derivative;" (vi) the potentially insufficient public reporting delay; and (vii) the treatment of foreign DTFs. Each of these issues will be discussed in detail below.

II. COMMENTS OF THE WORKING GROUP.

A. The Obligations of Standalone Voice Brokers Are Unclear.

Under Consultation Paper 92-401, it is unclear what the obligations would be for a brokerage firm that only offers voice execution (*i.e.*, a "**standalone voice broker**"). This uncertainty primarily stems from the question of whether a standalone voice broker is a many-to-many platform, and thus falls under the scope of the DTF definition. Although Consultation Paper 92-401 does not directly answer this question, a standalone voice broker should fall outside of the scope of the DTF definition.

A standalone voice broker typically takes an order from one customer and then finds that customer a counterparty to the requested derivatives transaction. Unlike execution facilities where multiple sellers and multiple buyers come together to collectively engage in trading activity, a standalone voice broker handles transactions for single buyers or single sellers. The fact that a standalone voice broker might call multiple parties is irrelevant. While a standalone voice broker might be trying to facilitate a transaction for a number of customers at the same time, that standalone voice broker is trying to match a counterparty with each one of those customers – it is not matching multiple bids against multiple offers.

In short, a standalone voice broker does not facilitate a many-to-many trading environment, and there is no multiple-to-multiple trading occurring. Comments by the U.S. Commodity Futures Trading Commission ("**CFTC**") in the preamble to its final rule on swap execution facilities ("**SEFs**") support this position.[2] Specifically, the CFTC noted that "trading systems or platforms facilitating…execution…via voice exclusively are not multiple participant to multiple participant…."[3] Accordingly, a standalone voice broker should fall outside of the scope of the DTF definition.

If a standalone voice broker is considered a DTF under Consultation Paper 92-401, the Working Group is concerned that the proposed regulatory obligations for a DTF may compromise the traditional role of a standalone voice broker in commodity derivatives markets in two main ways. *First*, many of the potential requirements imposed on DTFs (*e.g.*, keeping electronic records of all bids and offers and "messages" sent to participants) are inconsistent with voice execution and may effectively prevent standalone voice brokers from operating at all if they must register as DTFs.

Second, the regulatory burdens under the proposed DTF framework (*e.g.*, obtaining regulatory authorization from the securities regulators in each jurisdiction) may drive some of the smaller standalone voice brokers out of the Canadian markets, potentially resulting in (i) fewer intermediaries for market participants to choose from and (ii) less liquidity in the markets.

However, to the extent standalone voice brokers are considered to be DTFs, voice execution should be a permitted execution method for OTC derivatives transactions subject to the trade execution mandate. Permitting voice execution in this context will provide market participants necessary flexibility and help preserve the integrity and function of the OTC energy derivatives market.

Solution. As the drafting process progresses, the Working Group respectfully recommends that amendments be made to clarify that a standalone voice broker is not a many-to-many platform and thus not a DTF. If, however, a standalone voice broker is considered to be a DTF, the Working Group respectfully suggests that the rules be extended to permit voice execution as a permissible execution method for OTC derivatives transactions subject to the trade execution mandate.

B. The Failure to Provide Exemptions for End-Users and Intragroup Transactions Could Potentially Introduce Costs or Risks That Outweigh the Benefits of Trading OTC Derivatives.

The Working Group appreciates the CSA's efforts to propose a regulatory framework for OTC derivatives trading that is consistent with Canada's G20 commitment. However, the proposed framework in Consultation Paper 92-401 does not appropriately balance the regulatory objectives with the burdens they would impose on market participants. Failure to strike an

2 *See, e.g.,* CFTC Final Rule, *Core Principles and Other Requirements for Swap Execution Facilities*, 78 Fed. Reg. 33,476, 33,500 (June 4, 2013), *available at* http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf.

3 *See, e.g., id.*

appropriate balance could potentially introduce costs or risks that outweigh the benefits of trading OTC derivatives. To establish a balanced regulatory framework that would foster an efficient OTC derivatives market, the CSA should specifically include exemptions from mandatory trade execution for end-users and intragroup transactions.

The Working Group notes that the same arguments which support exemptions for end-users and intragroup transactions from mandatory central clearing apply in the context of the trade execution mandate. Specifically, exemptions for end-users and intragroup transactions should be included because (i) such exemptions would reduce unnecessary regulatory and economic burdens on market participants and (ii) the inclusion of such exemptions would be consistent with the recommendations of the Derivatives Committee to address Canada's G20 commitment to OTC derivatives trading.

In Consultation Paper 92-401, the Derivatives Committee recommends that the CSA pursue Option 2 to address the G20 commitment to OTC derivatives trading.[4] Option 2 provides that mandatory trade execution should apply only to those transactions with sufficient standardization and liquidity *and/or that pose systemic risks to the integrity of the markets*.[5] In this respect, an exemption for end-users would be consistent with the Derivatives Committee's recommendation since it would be limited in scope and would be available to market participants that do not pose systemic risks to the integrity of the markets. Similarly, an exemption for intragroup transactions is also consistent with the Derivatives Committee's recommendation because intragroup transactions simply represent transfers of risks *within* a corporation organization and do not pose risk to the integrity of markets.

Solution. The Working Group respectfully requests that exemptions from the trade execution mandate are added for end-users and intragroup transactions. The standards to qualify for these exemptions should be the same as the standards to qualify for the exemptions for end-users and intragroup transactions, respectively, in the anticipated, final National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives.[6]

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[4] Consultation Paper 92-401 at 17.

[5] *Id*.

[6] When the Working Group notes in this comment letter that the standards to qualify for the exemptions should be the same as the standards for the exemptions in the anticipated, final National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives, it means that the standards should be *consistent* – not that the proposed standards, as currently drafted in Proposed National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives ("**Proposed Clearing Rule**"), should be used. The Working Group largely supports the construct of the proposed exemptions for end-users and intragroup transactions in the Proposed Clearing Rule. However, the Working Group plans to submit comments on the Proposed Clearing Rule in advance of the May 13, 2015 deadline and will offer suggestions to improve the proposed exemptions for end-users and intragroup transactions.

C. The Standard for OTC Derivatives or Classes of OTC Derivative to Be Subject to Mandatory Trade Execution Should Be Higher Than the Standard in the Context of Mandatory Central Clearing.

The Working Group appreciates that the CSA contemplates separate analyses for the determination processes regarding mandatory trade execution and mandatory central clearing. The Working Group agrees that the analysis for each should be separate since each generally serves different purposes (*e.g.*, mandatory trade execution aims to increase transparency and mandatory central clearing aims to reduce credit risk). Although each generally serves different purposes, certain of the factors that regulators should consider for each determination are critical for both determinations (*e.g.*, product liquidity and product standardization). However, the Working Group respectfully suggests that the standard for OTC derivatives or classes of OTC derivatives to be subject to mandatory trade execution should be higher than the standard in the context of mandatory central clearing.

The reason for the higher standard with respect to the mandatory trade execution determination process is, in part, because more liquidity is needed to facilitate effective platform execution than mandatory central clearing.[7] Fostering efficient markets will, in turn, help reduce market risks. To effectively achieve this, only OTC derivatives or classes of OTC derivatives that are subject to mandatory central clearing should be considered for mandatory trade execution. The determination of whether OTC derivatives or classes of OTC derivatives are subject to mandatory trade execution should not be a *fait accompli* if an OTC derivative is already subject to mandatory central clearing.

Amendments to the mandatory trade execution determination process to require OTC derivatives or classes of OTC derivatives to first be subject to mandatory central clearing before they can be considered for mandatory trade execution would, in this respect, bring the derivatives regime in Canada in line with the regime in the United States.

Solution. Consultation Paper 92-401 should be amended so that the OTC derivatives or classes of OTC derivatives must first be subject to mandatory central clearing before they can be considered for mandatory trade execution.

D. The Proposed Trade Execution Mandate Determination Process May Not Have Adequate Safeguards to Ensure Consistent Application and Would Benefit from Guaranteeing the Opportunity for Market Participants to Comment.

The Working Group respectfully submits that the proposed process for determining which OTC derivatives or classes of OTC derivatives would be subject to the trade execution

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[7] It is the Working Group's understanding that a certain level of liquidity is required for a clearing house to safely clear a derivative. That level of liquidity is lower than the level of liquidity required for market participants to feel comfortable trading a derivative solely on a platform. Said another way, the level of liquidity necessary for market participants to safely enter into and exit larger positions is higher than the level of liquidity necessary to safely clear a derivative.

mandate may benefit from modifications. Specifically, the Working Group suggests that modifications could be made to (i) ensure a consistent application of the trade execution mandate within and across provinces and (ii) guarantee market participants the opportunity to provide input with respect to pending mandatory trade execution determinations.

Consultation Paper 92-401 contemplates that the regulators would make the final determination as to which OTC derivatives or classes of OTC derivatives would be subject to the trade execution mandate. This is an appropriate course for making that determination.

For the determination process, Consultation Paper 92-401 provides a proposed list of factors that the regulators should consider. While the Working Group supports the proposed factors listed, it is unclear whether the proposed list would be the universe of factors regulators could consider or if other factors may be taken into account. Without a uniform list of criteria that regulators must consider when making the trade execution mandate determination, there is potential for inconsistent application in the same province as well as across provinces. The potential lack of consistency may result in OTC derivatives or classes of OTC derivatives being subject to mandatory trade execution in one province but not in another, or it could result in derivatives with similar characteristics (*e.g.*, similar levels of liquidity and standardization) being treated differently under the trade execution mandate.

As noted above, the trade execution mandate determination process would benefit from market participants' input. Under the proposed framework in Consultation Paper 92-401, however, it is unclear if the public will be guaranteed an opportunity to comment on pending trade execution mandate determinations. Since these determinations will impact market participants, their comments should be considered in the determination process.

Solution. The Working Group proposes that a uniform list of factors should be considered by the regulators for the trade execution mandate determination. Such a list should provide the regulators with the flexibility to determine how much weight to give each factor. In addition, the Working Group suggests that regulators modify the proposed framework to guarantee market participants an opportunity to comment on pending mandatory trade execution determinations.

E. The Definition of "OTC Derivative" Is Unclear.

In Consultation Paper 92-401, the Derivatives Committee notes that the term "OTC derivative" refers to "a derivatives contract that is traded other than on a formal exchange."[8] Based on this definition, it is unclear the extent to which the definition of "OTC derivative" will be consistent with the definition of "derivative" in the Scope Rule (in Ontario, Manitoba, and Québec, the Scope Rule is numbered 91-506; in Alberta, British Columbia, New Brunswick, Nova Scotia, and Saskatchewan, the Proposed Scope Rule is numbered 91-101).

[8] Consultation Paper 92-401 at 26.

Solution. The Working Group respectfully suggests that the regulators include explanatory guidance as to the relationship between the definition of "OTC derivative" in the context of DTFs and the definition of "derivative" in the Scope Rule.

F. The Post-Trade Transparency Proposals Regarding Public Dissemination Requirements Are Potentially Insufficient to Protect Counterparties to a Transaction.

The Working Group generally supports initiatives to increase transparency in derivatives markets and, as such, appreciates the importance of the proposals set forth in Consultation Paper 92-401 regarding pre- and post-trade transparency requirements. However, the Working Group is concerned that the post-trade transparency[9] proposals are potentially insufficient with respect to: (i) the public reporting delay; and (ii) the explanation of what qualifies as "market information."

In Consultation Paper 92-401, the Derivatives Committee recommended that DTFs be required to publicly report transactions executed on the DTF "as close to real-time as technically feasible,"[10] with an exception. The Derivatives Committee proposed an exception to this time frame that would permit, but not require a reporting delay for block trades in order to provide protection for larger transactions.[11] In addition, under the post-trade transparency proposals, the Derivatives Committee recommended that DTFs provide certain "market information" to the general public.[12] However, the Derivatives Committee has not determined what this "market information" will be.

The Working Group notes that the public dissemination of post-trade information is permitted to be delayed, but there is no requirement that would prevent DTFs from disseminating this information in real-time. Further, depending on what would constitute "market information," public dissemination of such information may hinder market participants' ability to effectively hedge. With this in mind, the Working Group is concerned that the proposed post-trade transparency requirements are insufficient to protect counterparties to a transaction since they may not ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions or otherwise fully execute their trading strategy.

Solution. The Working Group suggests that amendments be made to include a mandatory minimum time delay for public dissemination of data with respect to large trades. The Working Group also respectfully requests further guidance on what would qualify as "market information," and cautions that depending on the scope of what would qualify as

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9 As noted in Consultation Paper 92-401, "post-trade transparency" in the context of OTC derivatives refers to "the dissemination of price and volume information, other than to the executing parties, on completed transactions." Consultation Paper 92-401 at 40.

10 *Id*. at 41.

11 *Id*.

12 *Id*. at 41-42.

"market information," a mandatory minimum time delay for public dissemination of such information may also be appropriate.

G. The Proposed Approach Regarding Foreign-Based DTFs Should Be Amended.

In Consultation Paper 92-401, the Derivatives Committee recognizes that "the Canadian OTC derivatives market comprises a relatively small share of the global market and a substantial portion of transactions entered into by Canadian market participants involve foreign counterparties."[13] Given these realities, it is critical that the DTF regulatory framework does not impose unnecessary regulatory or economic burdens on foreign market participants, as this may cause them to exit the Canadian OTC derivatives market. In addition, it is critical that the DTF regulatory framework does not limit Canadian entities' access to foreign derivatives markets. With this in mind, the Working Group is concerned about the approach contemplated in the proposals regarding foreign-based DTFs set forth in Consultation Paper 92-401.

Evidence of the cross-border consequences of a rigid trading facility framework and mandatory platform-execution paradigm can be seen in the global market for interest rate swaps. A recent study by the International Swaps and Derivatives Association ("**ISDA**") found that after the CFTC's SEF rules came into force, European dealers became reluctant to trade Euro-denominated interest rate swaps with U.S. counterparties.[14] That reluctance grew even more acute after the CFTC's first mandatory trade execution requirements came into force.[15]

The absence of a streamlined framework for substituted compliance or equivalency determinations indicates that foreign-based DTFs may be subject to unnecessary economic and regulatory burdens if they provide access to Canadian entities. For example, Consultation Paper 92-401 contemplates that foreign-based DTFs could seek exemptions on a case-by-case basis if the foreign-based DTF is able to demonstrate to Canadian regulators that the regulation and oversight in its home jurisdiction is comparable.[16] Stated differently, each foreign-based DTF seeking an exemption would be required to demonstrate regulatory comparability of its home jurisdiction – even if another foreign-based DTF from the same home jurisdiction already successfully demonstrated the regulatory comparability. Not only would this impose unnecessary burdens, but it creates the potential for inconsistent determinations regarding comparability.

Further, Consultation Paper 92-401 proposes that foreign-based DTFs would still be subject to reporting obligations to Canadian securities regulators with respect to services

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[13] *Id*. at 3.

[14] *See* ISDA Research Note, *Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-Year 2014 Update* at 6 (July 24, 2014), *available at* http://www2.isda.org/attachment/NjY0NQ==/Fragmentation%20study%20FINAL.pdf.

[15] *Id*.

[16] *See* Consultation Paper at 46.

provided to local counterparties *even if its home jurisdiction is determined to be comparable*.[17] This duplicative reporting obligation may be unnecessary if Canadian regulators can arrange access to that information from the DTF's home country regulator.

Solution. The Working Group respectfully requests that the DTF regulatory framework includes a reasonable framework for substituted compliance or equivalency determinations and provides other necessary compliance relief in order to avoid imposing unnecessary burdens on foreign market participants.

III. CONCLUSION.

The Working Group appreciates this opportunity to provide comments on Consultation Paper 92-401 and respectfully requests that the comments set forth herein are considered during the drafting process.

If you have any questions, please contact the undersigned.

Respectfully submitted,
/s/ R. Michael Sweeney, Jr.
R. Michael Sweeney, Jr.
Alexander S. Holtan
Blair Paige Scott

[17] *Id*.

Canadian Market
Infrastructure Committee

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
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March 30, 2015

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators ("CSA") Consultation Paper 92-401: Derivatives Trading Facilities ("DTF") (the "Consultation Paper")

INTRODUCTION

The Canadian Market Infrastructure Committee ("**CMIC**")[1] welcomes the opportunity to comment on the Consultation Paper.[2]

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[1] CMIC was established in 2010, in response to a request from public authorities, to represent the consolidated views of certain Canadian market participants on proposed regulatory changes. The members of CMIC who are responsible for this letter are: Bank of Montreal, Bank of Tokyo-Mitsubishi UFJ (Canada), Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, Canadian Imperial Bank of Commerce, Deutsche Bank A.G., Canada Branch, Fédération des Caisses Desjardins du Québec, HSBC Bank Canada, JPMorgan Chase Bank, N.A., Toronto Branch, Manulife Financial Corporation, National Bank of Canada, OMERS Administration Corporation, Ontario Teachers' Pension Plan Board, Public Sector Pension Investment Board, Royal Bank of Canada, Sun Life Financial, The Bank of Nova Scotia, and The Toronto-Dominion Bank. CMIC brings a unique voice to the dialogue regarding the appropriate framework for regulating the Canadian over-the-counter ("**OTC**") derivatives market. The membership of CMIC has been intentionally designed to present the views of both the 'buy' side and the 'sell' side of the Canadian OTC derivatives market, including both domestic and foreign owned banks operating in

CMIC supports the efforts of the CSA to implement Canada's G20 commitment to mandate the trading of suitable OTC derivatives on exchanges or electronic trading platforms. The Consultation Paper sets out detailed background information on DTFs and related concepts, which was very useful in our consideration of the issues.

General Comments

As a preliminary point, while acknowledging Canada's G20 commitment, CMIC submits that it is critical to recognize the unique nature of the Canadian market, including its relatively small size and its limited liquidity, such that mandatory trading on DTFs may not be warranted, or may only need very limited scope. Mandating DTFs in Canada may, as a result, not be necessary. Taking such an approach in Canada is not inconsistent with Canada's G20 commitment to reporting and clearing of derivatives. However, if regulators believe that mandating DTFs is required, please see our answers to your questions below.

CMIC also submits it is important for regulators to consider developing an approach for foreign DTFs, such as Swap Execution Facilities ("**SEFs**") and Organized Trading Facilities ("**OTFs**"), that is built on substituted compliance with foreign jurisdictions, thereby creating an incentive for such foreign DTFs to service the Canadian market. Establishing bespoke regulation in Canada could well cause foreign DTFs to choose not to participate in the Canadian market, which would be harmful for maintaining access to global market liquidity by Canadian market participants.

In addition, as mentioned in our previous response letters, CMIC submits that the goal of harmonization among all provinces (including harmonization of the effective date), as well as with global derivatives regulation, is of utmost importance. Given the small size of the Canadian OTC derivatives market as compared to the global market, Canadian DTF rules should not conflict with global rules or place undue burdens on foreign DTFs, as that would put Canadian market participants at a competitive disadvantage. Certainly, Canadian DTF rules should not limit or restrict the ability of a DTF to comply with the SEF rules under the Dodd-Frank Act or the OTF rules under the European Market Infrastructure Regulation.

Another aspect of harmonization that CMIC supports is harmonization of DTF rules relating to governance with existing securities laws relating to alternative trading systems. As they are both trading facilities, the governance of each should be substantially similar.

It is also CMIC's view that the DTF rules should remain as flexible as possible, in particular with respect to execution methods, in order to easily adjust to changes over time in a product's liquidity. In particular, there should not be any uniquely Canadian rules that would impede trading on a foreign platform at the same time without compromising flexibility or harmonization with global protocols. It is important for Canadian rules to recognize the comparatively smaller Canadian market and the far more limited liquidity available in Canadian products.

All of these four concepts are elaborated upon below in our responses to the questions.

Canada. As it has in all of its submissions, this letter reflects the consensus of views within CMIC's membership about the proper Canadian regulatory regime for the OTC derivatives market.

[2] Canadian Securities Administrators, "CSA Consultation Paper 92-401 – Derivatives Trading Facilities" (2015), online: BCSC <https://www.bcsc.bc.ca/Securities_Law/Policies/Policy9/PDF/92-401 CSA_Consultation_Paper January_29 2015/>.

Responses to Questions in the Consultation Paper

Definition of "Derivatives Trading Facility"

1. Is the DTF category appropriately defined? If not, what changes are needed and why?

CMIC Response: CMIC is of the view that the definition should be amended by referring to "…a trading facility, platform or market...". This would align the definition more closely with the definition of a SEF under the Dodd-Frank Act and, in our view, provide greater clarity. In addition, we suggest adding at the end of the definition, "and for greater certainty, does not include a single dealer platform."

2. Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

CMIC Response: It is CMIC's view that DTF operators should be allowed a degree of discretion over the execution of transactions, whether or not the transactions are mandated to trade on a DTF, provided that such discretion is exercised in a manner consistent with the proposed best execution duty as discussed in our response to Question 8 below. In CMIC's view, the following are examples of types of discretion that should be permitted for DTFs (provided that each client approves such discretion for its trades): when to place an order, which participants to contact for a request for quote ("**RFQ**"), which client orders or RFQs are matched with other client orders or quotes, order and timing of matching and how a trade is executed. Giving a DTF operator such discretions will provide flexibility in execution methods and also allow the DTF to source liquidity for a particular type of transaction.

Permitted Execution Methods

3. Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

CMIC Response: The description of permitted execution methods for a DTF are, in CMIC's view, suitable for DTFs currently offering trading in OTC derivatives. However, we would hope and expect DTFs themselves to provide more insight in their answers to this question.

4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

CMIC Response: CMIC recommends that the CSA should not prescribe minimum trading functionality. Limiting trading to execution methods comparable to those used in the futures market, such as an order book system, rather than allowing for a variety of execution methods, is unlikely to be suited to the liquidity characteristics of the Canadian market and could attract high-frequency or predatory trading. CMIC strongly believes that a wide variety of execution methods be permitted, whether the transaction is mandated or not. As noted in Commodity Futures Trading Commission ("**CFTC**") Commissioner J. Christopher Giancarlo's White Paper[3], "A swap product's particular liquidity characteristics determine the execution technology and methodology, which can change over time" and therefore he suggests that this "liquidity continuum" necessitates flexible execution methods.[4] CMIC supports Mr. Giancarlo's view on this point.

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[3] J. Christopher Giancarlo, "Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank" (2015), online: CFTC <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

[4] Giancarlo, *supra* note 3 at 26.

Regulatory Authorization of DTF

5. Is the proposed regulatory framework for DTFs appropriate?

CMIC Response: CMIC believes that DTFs are better-suited to respond to this question. However, to the extent that a Canadian uses a foreign DTF, that foreign DTF should not be required to register in Canada and comply with the proposed regulatory framework, provided such foreign DTF is subject to equivalent oversight in an approved jurisdiction. Allowing such an exemption on a jurisdiction-by-jurisdiction basis, rather than on an individual DTF basis, is the most efficient regulatory approach as it avoids the necessity of having every foreign DTF apply for an exemption. This is necessary in order for Canadian market participants to continue to have access to foreign DTFs and liquidity. CMIC anticipates that imposing such duplicate regulatory requirements may well cause foreign DTFs to restrict access to the Canadian market or actually disengage from the Canadian market.

6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

CMIC Response: CMIC believes that DTFs are better-suited to respond to this question. However, to the extent that dealer requirements apply in the case of discretion, such requirements should not apply to a foreign DTF if the foreign DTF is subject to equivalent oversight in an approved jurisdiction.

7. To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?

CMIC Response: It is CMIC's view that requiring a DTF that exercises discretion to only do so in a separate affiliated entity is not necessary. CMIC submits that customary firewalls and internal conflict of interest policies should be sufficient measures to avoid conflicts of interest relating to the exercise of discretion.

8. What factors are relevant in defining the proposed best execution duty?

CMIC Response: CMIC recommends that the way in which the best execution duty is defined under National Instrument 23-101 *Trading Rules* is an appropriate way in which to define such duty for purposes of DTFs exercising discretion.

Organizational and Governance Requirements

9. Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

CMIC Response: CMIC does not believe that it is appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared. If this were allowed, then a DTF could effectively establish a mandatory clearing policy. CMIC submits that it is inappropriate for a DTF to establish clearing policy and suggests that this duty rests with the regulators and not with DTFs.

10. Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

CMIC Response: CMIC believes that a DTF should allow participant access to whichever clearing agency or trade repository ("**TR**") such participant chooses. A DTF merely facilitates the transaction and should be limited to that role. Allowing a DTF to require transactions executed on its facility to be cleared through a particular agency would restrict the ability for market participants to use certain DTFs, if these DTFs don't provide clearing capabilities to central clearing counterparties where they are clients or members. Such an approach could easily lead to decreased trading flexibility and increased operational costs of doing business.

11. Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

CMIC Response: It is appropriate to allow a DTF to establish standards that must be met prior to a participant being allowed to trade on the platform. Examples of such standards include a requirement that a participant must have the minimum technical capability to trade electronically, and that a participant cannot engage in fraudulent or manipulative trading practices. Therefore, CMIC believes that it is appropriate for a DTF to have the ability to limit access. However, such standards should not include the credit worthiness of a participant. Ultimately, a DTF is not taking on the credit exposure of its participants and therefore a DTF should not limit access to participants based on credit worthiness.

12. Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

CMIC Response: CMIC believes that DTFs are better-suited to respond to this question.

13. Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

CMIC Response: CMIC believes it is appropriate that a DTF that does not exercise discretion be permitted to perform its regulatory and surveillance functions itself, provided it does not trade on its own behalf. Often, the DTF is in the best position to perform this function.

14. Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

CMIC Response: CMIC agrees with this proposal. DTFs have access to all market data and trading information and it would be a conflict of interest for them to be engaging in proprietary trading within the same entity that has access to such information. Appropriate walls together with separation by legal entity should be required.

15. How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

CMIC Response: CMIC believes that the methodology and frequency of calculation of financial resources are matters that are best left to DTFs to provide commentary. However, we note that the Giancarlo White Paper[5] points out that requiring a DTF to have financial resources in an amount that exceeds the total amount which would enable a DTF to cover operating costs for a one year period calculated on a rolling basis is inappropriate. This is the standard applicable to clearing agencies, and it is appropriate in the clearing context given the impact on the market if a clearing agency were to fail. However, if a DTF were to fail, there would not be a material impact on the market assuming there is more than one DTF for the particular products traded by the failed DTF. Giancarlo thus

[5] Giancarlo, *supra* note 3 at 46.

argues that DTFs should be required to only hold financial resources sufficient to conduct an orderly wind-down of its operations, a view with which CMIC agrees.

Pre-trade Transparency

16. Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

CMIC Response: CMIC supports the CSA's goal of promoting pre-trade transparency and acknowledges the important benefits that may be realized through the disclosure of order information, including enhanced price discovery. At the same time, CMIC endorses the CSA's observation that enhanced pre-trade transparency may not actually achieve enhanced price discovery and agrees that it would be inappropriate to impose pre-trade transparency requirements for products that do not have sufficient liquidity to be mandated to trade on a DTF.

CMIC notes that the benefits of pre-trade transparency are generally associated with the order book model of execution, in which offers to purchase and sell derivatives products are made visible to all market participants with access to the order book. For liquid products traded via an order book, market makers will generally be willing to post offers to purchase and sell products on a continuous basis. The order book therefore assists with price discovery, insofar as it is possible for market participants to look at the order book and obtain an accurate sense of the current market price before they choose to interact with a particular market maker.

For illiquid product markets traded via an order book, however, the order book model may not always facilitate price discovery. Market makers will generally be less willing to post offers to purchase and sell securities on a continuous basis, and to the extent that such offers are posted, they will generally contain wider spreads in order to protect the market maker from downside risk. This means that the offers displayed in the order book may not reflect the best prices that a market maker is willing or able to provide, and market participants may need to look outside of the order book in order to find those prices.

While CMIC does not believe it would be appropriate for the CSA to require that bespoke or illiquid products be executed over a DTF, CMIC nevertheless supports the right of market participants to execute such products over a DTF on a voluntary basis. In these circumstances, however, CMIC does not believe that a DTF should be required to satisfy any particular disclosure requirements in order to enhance pre-trade transparency. As discussed above, mandatory pre-trade transparency would likely force a DTF into adopting an order book model that may not be appropriate given the illiquid nature of the product.

Rather, CMIC believes that market participants should be afforded the flexibility to select a DTF, execution model, and attendant levels of pre-trade transparency that are compatible with their particular circumstances. CMIC notes that this flexible approach is generally consistent with the CFTC rules, which do not impose any pre-trade transparency requirements for so-called "permitted transactions", which are not required to be executed using a SEF.

Post-trade Transparency

17. Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

CMIC Response: CMIC also supports the CSA's efforts to promote post-trade transparency. However, CMIC has serious reservations around certain of the proposed measures to promote post-trade transparency, particularly the requirement for DTFs to make real-time public reports.

Under the CSA proposal, a DTF would be required to "report to the public transactions executed on the DTF in as close to real-time as technically feasible". CMIC notes that the CSA proposal is generally silent on the rationale for requiring a DTF to make real-time public reports, which is not at all obvious given that such reports will already be provided by a TR. Moreover, the CSA proposal is generally unclear on what type of information a DTF would be required to report to the public, and whether this would include the creation data reported to a TR by a reporting counterparty under OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* ("**TR Rule**") (or the corresponding rule in other provinces), or a subset of the creation data reported to the public by a TR under the TR Rule, or alternatively some other set of information. CMIC submits that in order for market participants to properly evaluate the appropriateness of such public reports by a DTF, the CSA should provide greater clarity as to the type of information that the CSA contemplates a DTF disclosing.

To the extent that the CSA envisions a DTF reporting all or some of the creation data that is reported to a TR by a reporting counterparty, CMIC submits that such a reporting obligation should be harmonized to the fullest possible extent with public dissemination requirements applicable to TRs starting July 29, 2016. Further, CMIC submits that such a reporting obligation is not appropriate, as it does not appear to consider the mechanics of the clearing process or the separate reporting obligations of a clearing agency under the TR Rule. CMIC notes that a swap that is accepted for clearing – typically referred to as the "alpha" swap – is terminated immediately and replaced with two new swaps – usually known as the "beta" and "gamma" swaps. After the alpha swap has been terminated and replaced by beta and gamma swaps, the clearing agency becomes responsible for reporting these swaps in accordance with the reporting counterparty hierarchy in the TR Rule.

Because alpha swaps are terminated and replaced by beta and gamma swaps that are subject to full reporting by the clearing agency, CMIC submits that neither the DTF nor counterparties should be responsible for any reporting obligations in respect of alpha swaps. CMIC submits that there is little to no value in having DTFs report creation data for alpha swaps, whether through a TR or to the public directly, since they are almost immediately superseded by cleared swaps that are reported by the clearing agency. Requiring DTFs to make additional reports to the public would present negligible benefits with respect to post-trade transparency, as these reports would contain substantially the same information as the reports made by the clearing agency in respect of the gamma and beta trades.

In contrast to the minimal benefits provided by requiring a DTF to provide public reports, the costs of providing such reports would likely be high. This is highlighted by the experience of SEFs in complying with the reporting requirements in the U.S. Under CFTC rules, SEFs share responsibility for reporting alpha trades with Swap Dealers ("**SDs**")/Major Swap Participants ("**MSPs**"), with SEFs responsible for reporting the initial creation data and SDs/MSPs responsible for reporting the continuation data. These shared reporting rules have proven extremely challenging for SEFs to comply with, as they require a SEFs to report data that does not relate to execution, and thus is often outside of a SEF's possession. Moreover, SEFs and SDs/MSPs will frequently be connected to different Swap Data Repositories ("**SDRs**"), and thus will be incapable of sending data to the same location. This leads to issues of "orphaned" data, whereby part of a transaction may be reported to one SDR, and another part of the transaction may be reported to another SDR.

In order to avoid some of the difficulties that have arisen under the CFTC rules, CMIC submits that it is important that a single party be responsible for reporting a single swap transaction. For a transaction that is executed over a DTF and is subject to the clearing requirement, CMIC believes that the sole reporting party should be the clearing agency. Under CMIC's suggested approach, there would not be a public report in respect of an alpha transaction; rather, a clearing agency would report the resulting beta and gamma transactions once the alpha transaction had been taken up for clearing. For an uncleared bilateral transaction that is not subject to a clearing requirement and that is executed over a DTF, CMIC submits that one of the counterparties to the transaction should be responsible for reporting, as determined by the reporting counterparty hierarchy under the TR Rule.

CMIC notes that such an approach is generally consistent with the reporting processes contemplated under the TR Rule, and thus will be able to leverage existing reporting infrastructures developed to comply with that rule.

18. What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

CMIC Response: To the extent the CSA believes that additional public reports by a DTF are necessary, then CMIC strongly believes that such reports should be made indirectly through a TR, rather than directly by a DTF. Because there may ultimately be a number of different DTFs operating in the Canadian marketplace, requiring DTFs to disclose information to the public directly would mean that information would be fragmented across a number of venues, frustrating the ability of regulators and market participants to quickly and easily gain a complete view of the market. In addition, requiring DTFs to disclose information to the public directly may impair the quality of data, insofar as different DTFs may have different standards and practices for reporting.

19. & 20. When should deferred publication of trade information be permitted? Are there circumstances other than block trades? Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

CMIC Response: As suggested in its response letter to CSA Staff Notice 91-302 *Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting*, CMIC is strongly of the view that the CSA's public reporting rules should provide for delays in the disclosure of large notional or "block" transactions. Disclosure of block transactions on an immediate or real-time basis may have a negative impact on the proper functioning of the market by impeding the ability of a dealer to hedge its risk exposures. For trades in illiquid products, a dealer will often require more time than T+1 to hedge its risk exposures. If the details of a transaction are disseminated to the public prior to a dealer having completed its hedge, the dealer may face increased costs in executing the hedge, since market participants can potentially trade against the dealer's position. These higher costs may either get passed on to end users in the form of wider spreads, or may deter dealers from participating in such transactions altogether, reducing liquidity in already illiquid product markets. Similarly, for trades in illiquid products, buy-side participants may seek to execute a large position by spreading the trade across multiple dealers. If details of a transaction are disseminated to the public prior to the buy-side participant having completed its trades, the buy-side participant may face increased costs in executing its trades since market participants can potentially trade against the buy-side participant's position.

CMIC submits that it is necessary for the CSA to adopt rules providing for delays in disclosure, comparable to those found in the U.S. Under CFTC rules, counterparties to transactions with notional values above certain minimum block sizes set by the CFTC will be permitted delays in reporting their transactions to the public. Formulating the appropriate thresholds for Canada can only be done after a significant study of trade reporting data in Canada.

21. What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the U.S. CFTC rules in 17 CFR 16.01).

CMIC Response: In addition to real-time public reports, the CSA proposal suggests that DTFs would be required to provide "certain market information, to be determined by the Committee, to the general public at no charge on a delayed basis". The CSA proposal indicates that a similar requirement exists under CFTC rules, where a SEF/Designated Contract Market ("**DCM**") is required to make public "timely information on price, trading volume, and other trading data on swaps". The required elements for publication by a SEF/DCM are set forth in 17 CFR 16.01.

As in the case of real-time public reporting, CMIC notes that the CSA proposal is generally silent on the rationale for requiring a DTF to separately publish information to the public on a delayed basis, when such information would presumably be available from a TR on a real-time basis. Again, the CSA proposal provides little colour on the information that would be published by the DTF on a delayed basis, making it difficult for market participants to evaluate the need for such reporting.

To the extent the CSA has patterned this requirement on the corresponding CFTC rules, CMIC submits that the CFTC rules may not, in this instance, provide an appropriate comparator. CMIC notes that there has been a longstanding requirement for DCMs to report such information under CFTC rules, and it is possible that the CFTC expanded this requirement to SEFs in order to minimize differences in treatment between SEFs and DCMs. Because the CSA regime does not contain a direct analogue to DCMs, CMIC does not believe that the consistency rationale would be applicable in the Canadian marketplace. Accordingly, CMIC strongly urges that the CSA consider deleting the requirement.

Provided the CSA determines that public reporting by a DTF on a delayed basis is necessary, CMIC believes that the information required to be reported by DTFs should be the same information as is required under the CFTC rules. Aligning the CSA's disclosure requirements with the CFTC rules is in keeping with the general principle of harmonization, and would provide market participants with access to consistent data across the Canadian and U.S. regimes, facilitating comparison and analysis. It may also reduce the likelihood of certain manipulative trading practices, including the reverse engineering of a market participant's positions, which may occur in the event there are gaps between the Canadian and U.S. disclosure requirements.

22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

CMIC Response: With respect to disclosure of transactional information to a DTF's participants, CMIC does not believe that a DTF should be required to report information to its participants. On the contrary, CMIC suggests that the CSA adopt similar rules to those promulgated by the CFTC, which circumscribe the ability of a SEF to disclose transactional information to its participants.

Under CFTC Rules, a SEF is prohibited from disclosing transactional information to its participants *prior to* having reported that information to an SDR for dissemination to the public. Notwithstanding this prohibition, a SEF is permitted to make such information available to its participants *at the same time* as it reports to an SDR, provided that: (i) disclosure is made to the SEF's participants only; (ii) the participants are given advance notice of such disclosure; and (iii) the disclosure is non-discriminatory (i.e. disclosure is made to all of the SEF's participants). The prohibition against disclosure prior to reporting to an SDR is often referred to as the "embargo rule", and is intended to ensure that swap transaction and pricing data is disseminated uniformly and not in a manner that creates unfair competitive advantages for particular market participants.

As concerns regarding unfair competitive advantages and trading practices are equally salient in the Canadian marketplace, CMIC submits that a similar restriction on disclosure prior to public dissemination should be adopted. A requirement to send swap transaction and pricing data (for certainty, excluding information that may identify parties) to a DTF's participants simultaneously with the TR releasing such information pursuant to the TR's public disclosure obligations will reduce potential inequities between market participants, and will incentivize faster reporting to TRs. Notwithstanding that CMIC supports circumscribing a DTF's right to disclose information to its participants, it strongly believes that DTFs should be permitted to make such disclosure. Allowing the DTF's participants to see last trade information will generally enhance post-trade transparency and the price discovery process, and may potentially have positive effects from a liquidity perspective.

Trading Mandate

23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

CMIC Response: In CMIC's view, the CSA's proposed criteria for determining whether a derivative will be subject to a DTF trading mandate are appropriate. CMIC urges the CSA to consider the relative weighting of the criteria and suggests that some factors should be given more weight than others. For example, whether a derivative is liquid may be a more important factor than whether a derivative is trading on a SEF. Furthermore, each aspect of the criteria should be viewed as a separate determination. Whether a trade is mandated for clearing or not is separate and apart from a determination as to whether such trade should be required to go through a DTF, where a range of appropriate exemptions should be available. (See our answers to Question 25 below). To this end, CMIC submits that any class of derivatives required to be executed over DTFs must be first subject to an applicable clearing obligation as a condition precedent, regardless of the determinations made against the remaining criteria for that class of derivative.

Most importantly, CMIC endorses the co-operative consultative process with all Canadian regulators (noted by the CSA in Section 10(a) of the Consultation Paper) as being particularly valuable in the determination of which trades should be mandated for trading on DTFs.

24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

CMIC Response: As mentioned in response to Question 23, CMIC submits that any class of derivatives required to be executed over DTFs must be first subject to an applicable clearing obligation as a condition precedent, regardless of the determinations made against the remaining criteria for that class of derivative. It is therefore very difficult for CMIC to comment on this without knowing which derivatives will be mandated for clearing. Further, there is very limited trade information available to determine liquidity. It is CMIC's view that this can only be determined once a significant amount of trade reporting data is available to the regulators and then studied to determine liquidity. Moreover, CMIC believes that since, for the time being, the regulators alone are able to see the aggregate trade reporting data, only the regulators are in a position to identify which derivatives should be mandated.

25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

CMIC Response: . With regard to the first part of this question, please see our response under Question 24. Also, CMIC submits that, to learn from problems encountered in other jurisdictions, Package Transactions should not be subject to mandatory trading on a DTF. A Package Transaction refers to a transaction involving two or more instruments:

- executed between two (or more) counterparties;
- priced or quoted as one economic transaction with simultaneous execution of all components;
- having at least one component that is subject to the DTF execution requirement; and
- where the execution of each component is contingent upon the execution of all other components.

A Package Transaction, as described above, includes at least one component which, on a standalone basis, would be subject to mandatory DTF execution. We submit that, when included as an integral part of a Package Transaction, such component (and the Package Transaction as a whole) should not be subject to mandatory execution on a DTF. Taking our recommended approach should not be an impediment to foreign platforms seeking to be recognized, or seeking an exemption from recognition, in Canada if Package Transactions are treated differently under foreign rules applicable on such foreign platforms.

Imposing the DTF execution requirement on individual components which are part of a Package Transaction would result in increased costs and risks to market participants. Trading the components of a Packaged Transaction separately and on different venues (i.e. partly on and partly off a DTF) can result in higher costs and greater risks due to timing differences, with the possibility of the market moving between the execution of each component, and differences in transaction specifications, mode of execution, clearing/settlement workflows and relative liquidity, as compared to simultaneous execution using a single execution method.

If a component of a Package Transaction is required to be separately executed on a DTF, the increased cost and risk could render the transaction uneconomic. This negative outcome is not outweighed by price transparency considerations, since the pricing of a component traded as part of a Package Transaction may not be comparable to the pricing of the same type of transaction on a standalone basis.

With respect to the categories of market participants that should be exempt from a trading mandate, it is CMC's view that an end-user exemption should be available, and that the exemption should align with the end-user exemptions under the mandatory clearing rule. In addition, CMIC supports an inter-affiliate exemption from mandatory trading on a DTF. Subjecting inter-affiliate OTC derivatives to mandatory DTF execution requirements would impose unnecessary costs and impede the efficient transfer and management of risks among affiliates, without any discernible benefits. Execution through an RFQ system would not be efficient for inter-affiliate transactions, since RFQ recipients affiliated with the requestor could not be counted toward the minimum number of recipients, while execution through an order book would not ensure that the affiliates' trading interest is matched. The benefits of DTF execution in terms of promoting price discovery are not compelling in the case of inter-affiliate trades, since competitive pricing is not necessarily a primary objective in inter-affiliate transactions.

26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

CMIC Response: As mentioned in our response to Question 24, it is CMIC's view that the regulators alone should determine which derivatives should be required to trade on a DTF and therefore we do not believe that a DTF should have the power to make such determination. CMIC notes that DTFs will always have the ability to provide commentary on proposed trading mandates along with the rest of the public. Further, we note the "made available to trade" ("**MAT**") determination process under CFTC rules (whereby a SEF may submit a MAT determination for products to be mandatorily traded on a SEF and the CFTC may only deny the submission it if is inconsistent with the Commodity Exchange Act or CFTC regulations) has come under criticism. As noted in the Giancarlo White Paper,[6] the MAT process is problematic because it may force swaps to trade through a limited number of execution methods even where those swaps lack the liquidity needed to support such trading. Moreover, in the U.S., because the MAT process is controlled by SEFs, a relatively new SEF could gain a first-mover advantage by forcing a particular product to trade through restrictive methods of execution on the SEF. In other words, the decision of one platform could bind the entire market.[7]

27. What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

CMIC Response: CMIC does not believe that the CSA should be prescriptive in requiring pre-trade transparency requirements. It is CMIC's view that imposing pre-trade requirements would reduce liquidity and reduce flexibility with respect to execution methods.

28. For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

CMIC Response: CMIC submits that such thresholds will need to be determined in conjunction with public dissemination requirements applicable to TRs starting July 29, 2016. A thoughtful review based on a proper analysis of Canadian market data over an extended period of time is necessary to determine the appropriate approach to public dissemination of trade information for the Canadian market. This analysis of Canadian market data can be done only by the regulators, as they alone have access to market-wide data via the TR. Further, this type of analysis will require the assessment of competitively sensitive data, such as block trade data and participant concentrations. Once regulators have performed this analysis after a sufficient period of reliable data is available through trade reporting and determined an approach to public dissemination of trade information, market participants should be consulted. It is CMIC's view that firms acting as market makers would be negatively impacted by regulators adopting in Canada the same thresholds and caps that exist under CFTC rules, given that most instruments in Canada are not as liquid as in the U.S. Market makers would be negatively impacted if the data could be manipulated to conclude that a specific transaction had been executed. This would impair the ability to manage risk which would adversely affect market liquidity, widen bid-offer spreads, reduce efficiency or make the trade not viable. End users looking for hedging solutions would be adversely impacted as a result.

29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

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[6] Giancarlo, *supra* note 3 at 29.

[7] Giancarlo, *supra* note 3 at 30.

<u>CMIC Response</u>*:* As mentioned, it is CMIC's view that the CSA should adopt a flexible approach to execution methods. As noted in the Giancarlo White Paper,[8] the markets would be best served by not limiting trading to specific execution methods. Providing flexibility will allow markets to develop "rationally and organically"[9] as a result of specific product characteristics and liquidity profiles. Further, it would allow execution methods to be tailored to the liquidity characteristics of the specific swap product.

30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

<u>CMIC Response</u>*:* It is CMIC's view that the CSA should consider including the concept of clearing certainty within their DTF rules to allow for greater market access, impartial access and usage of the platform. Market participants executing Intended to be Cleared ("**ITBC**") swaps on a DTF should not be exposed to unnecessary market risk as a result of processing latency outside of their direct control or credit breaches at the clearing agency or their clearing broker.

The CFTC brought much clarity to the marketplace through the issuance of a number of policy statements, such as clearing agencies are required to accept or reject trades submitted for clearing within 10 seconds and that any ITBC swaps that are executed on a SEF and that are not accepted for clearing should be void ab initio (as if it never existed). The CFTC required SEFs to have rules to this effect.

Clearing certainty requires the necessary Straight-Through Processing ("**STP**") framework and the operational framework to resolve rejected ITBC trades due to operational errors. The absence of this framework introduces risk into the system. The necessary STP framework should include a pre-trade credit check to ensure that a bona fide trade is executed on a DTF, an executed trade on a DTF should be sent electronically to the clearing agency and the clearing agency response in turn should accept or reject the trade within 10 seconds. There are some cases where STP may not be feasible (trades executed off-DTF) that are then subsequently entered on the DTF, or package trades where one component is on a DTF and another leg is executed off-DTF, requires careful consideration within this framework. An operational framework that does not deal with trades that are rejected from clearing due to clerical or operational reasons creates additional market and execution risk, if there is no opportunity to re-submit the trade. After a market participant executes a swap, the participant hedges its risk with other swaps. If the swap is declared void and the participant has no opportunity to resubmit, the participant will not be correctly hedged and left with facing unwanted market direction and/or execution risk.

General

31. Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the U.S. and the E.U. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

<u>CMIC Response</u>*:* The Canadian market, relative to the global market, is very small with limited liquidity. It is CMIC 's view that the regulators should evaluate the Canadian OTC derivatives market over a period of time after a sufficient period of receiving reliable trade reporting data so that the regulators can carefully consider whether DTF rules are necessary in Canada and what those rules should be. If this is the case, we do not believe it is economical nor beneficial to take the time to

[8] *Ibid* at 31.
[9] Ibid.

develop DTF rules if there will not be any trades with sufficient liquidity to be mandated to trade on a DTF. It would be unfortunate and counterproductive to formulate DTF rules in Canada that deter foreign SEFs from participating in the Canadian market.

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CMIC welcomes the opportunity to discuss this response with you. The views expressed in this letter are the views of the following members of CMIC:

Bank of Montreal
Bank of Tokyo-Mitsubishi UFJ (Canada)
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board
Canadian Imperial Bank of Commerce
Deutsche Bank A.G., Canada Branch
Fédération des Caisses Desjardins du Québec
HSBC Bank Canada
JPMorgan Chase Bank, N.A., Toronto Branch
Manulife Financial Corporation
National Bank of Canada
OMERS Administration Corporation
Ontario Teachers' Pension Plan Board
Public Sector Pension Investment Board
Royal Bank of Canada
Sun Life Financial
The Bank of Nova Scotia
The Toronto-Dominion Bank

Comité de l'infrastructure du marché canadien

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Autorité des marchés financiers
British Columbia Securities Commission
Commission des valeurs mobilières du Manitoba
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Le 30 mars 2015

Objet : Document de consultation 92-401 des Autorités canadiennes en valeurs mobilières (« ACVM ») : Plateformes de négociation de dérivés (« PND ») (le « document de consultation »)

INTRODUCTION

Le Comité de l'infrastructure du marché canadien (Canadian Market Infrastructure Committee) (« **CMIC** »)[1] se réjouit de l'occasion qui lui est donnée de présenter des observations sur le document de consultation.[2]

[1] Le CMIC a été créé en 2010, en réponse à une demande des pouvoirs publics, pour représenter les points de vue consolidés de certains participants au marché canadien sur les changements proposés à la réglementation. Les membres du CMIC responsables de la présente lettre sont : la Banque de Montréal, Bank of Tokyo-Mitsubishi UFJ (Canada), la Caisse de dépôt et placement du Québec, l'Office d'investissement du Régime de pensions du Canada, la Banque Canadienne Impériale de Commerce, la succursale canadienne de Deutsche Bank A.G., la Fédération des Caisses Desjardins du Québec, la Banque HSBC Canada, la succursale de Toronto de JPMorgan Chase Bank, N.A., Société Financière Manuvie, la Banque Nationale du Canada, OMERS Administration Corporation, le Régime de retraite des enseignantes et des enseignants de l'Ontario, l'Office d'investissement des régimes de pensions du secteur public, la Banque Royale du Canada, Financière Sun Life, La Banque de Nouvelle-Écosse et La Banque Toronto-Dominion. Le CMIC apporte une voix unique dans le dialogue concernant le cadre approprié de réglementation du marché des dérivés de gré à gré au Canada. La composition du CMIC a été volontairement établie pour présenter les points de vue aussi bien du côté « achat » que du côté « vente » du marché canadien des dérivés de gré à gré, y compris les banques nationales et étrangères actives au Canada. À l'instar de tous ses mémoires, la présente lettre se veut l'opinion générale de tous les membres du CMIC quant au cadre approprié de réglementation du marché des dérivés de gré à gré au Canada.

[2] Autorités canadiennes en valeurs mobilières « Document de consultation 92-401 des ACVM – Plateformes de négociation de dérivés » (2015). Disponible à l'adresse suivante : http://www.lautorite.qc.ca/files//pdf/consultations/derives/mars-2015/2015janv29-92-401-consultation-fr.pdf.

Le CMIC appuie les ACVM dans les efforts qu'elles déploient pour honorer l'engagement que le Canada a pris dans le cadre du G20 voulant que les dérivés de gré à gré réguliers doivent être échangés sur des bourses ou des plateformes de négociation électronique. Le document de consultation, qui donne de l'information générale détaillée sur les PND et les notions correspondantes, a été fort utile dans le cadre de notre examen des questions.

<u>Commentaires généraux</u>

D'abord, reconnaissant l'engagement du Canada dans le cadre du G20, le CMIC soutient qu'il est primordial de reconnaître le caractère unique du marché canadien, notamment sa taille relativement modeste et sa liquidité limitée, à tel point que la négociation obligatoire sur des PND n'est peut-être pas justifiée ou ne devrait peut-être s'appliquer que de façon très limitée. L'obligation de négocier sur des PND au Canada n'est donc peut-être pas nécessaire. Une telle position au Canada n'est pas contraire à l'engagement que le Canada a pris dans le cadre du G20 quant à la déclaration et à la compensation de dérivés. Si toutefois les autorités de réglementation estiment qu'il est nécessaire d'établir une obligation de négociation sur des PND, nous vous invitons à lire ci-après nos réponses à vos questions.

Le CMIC soutient en outre qu'il est important que les autorités de réglementation trouvent une solution pour les PND étrangères, comme les plateformes d'exécution de swaps (« **PES** ») et les systèmes organisés de négociation (« **SON** »), qui repose sur une conformité substitutive à l'égard des territoires étrangers, encourageant ainsi les PND étrangères à offrir leurs services sur le marché canadien. L'adoption d'une réglementation proprement canadienne pourrait bien pousser les PND étrangères à choisir de ne pas participer au marché canadien, privant ainsi les participants au marché canadien d'un accès à la liquidité du marché mondial.

De plus, comme nous l'avons mentionné dans nos mémoires antérieurs, le CMIC soutient que l'harmonisation entre toutes les provinces (y compris l'harmonisation de la date d'effet), et avec les règles mondiales sur les dérivés est primordiale. Compte tenu de la taille relativement modeste du marché des dérivés de gré à gré canadien par rapport au marché mondial, le régime de PND canadien ne doit pas être incompatible avec les règles mondiales ni imposer un fardeau indu aux PND étrangères, ce qui placerait les participants au marché canadien dans une position désavantageuse sur le plan de la concurrence. Le régime de PND canadien ne doit bien sûr pas limiter ni restreindre la capacité d'une PND de se conformer aux règles de PES aux termes de la loi intitulée *Dodd-Frank Act* ou aux règles des SON aux termes de l'European Market Infrastructure Regulation.

Un autre aspect de l'harmonisation auquel le CMIC souscrit est l'harmonisation des règles de gouvernance des PND avec la législation en valeurs mobilières existante relative aux systèmes de négociation parallèle. S'agissant dans les deux cas de systèmes de négociation, leurs règles de gouvernance devraient être en substance analogues.

Le CMIC est aussi d'avis que le régime de PND doit rester aussi souple que possible, notamment en ce qui a trait aux méthodes d'exécution, de manière à ce qu'il puisse aisément s'ajuster aux variations de liquidité d'un produit au fil du temps. On ne saurait notamment avoir des règles exclusivement canadiennes qui entraveraient la négociation sur une plateforme étrangère, d'une part, sans, d'autre part, compromettre la souplesse ou l'harmonisation à l'égard des protocoles mondiaux. Les règles canadiennes doivent impérativement tenir compte de la taille relativement modeste du marché canadien et de la liquidité beaucoup plus limitée des produits canadiens.

Ces quatre notions sont plus amplement décrites ci-après dans nos réponses à vos questions.

Réponses aux questions du document de consultation

Définition de « plateforme de négociation de dérivés »

Question 1 : La catégorie de PND est-elle correctement définie? Sinon, quels changements faut-il y apporter et pour quelles raisons?

Réponse du CMIC : Le CMIC est d'avis que la définition doit être ainsi modifiée « ... un système, une plateforme ou un marché de négociation... ». La définition correspondrait alors plus étroitement à la définition d'une PES au sens de la loi intitulée *Dodd-Frank Act* et serait, à notre avis, plus claire. Nous proposons en outre d'ajouter à la fin de la définition, « et à l'exclusion des plateformes exploitées par un courtier unique ».

Question 2 : Convient-il d'accorder aux exploitants de PND un certain pouvoir discrétionnaire sur l'exécution des opérations? Motivez votre réponse. Le cas échéant, le pouvoir discrétionnaire devrait-il n'être accordé que pour la négociation de produits qui ne sont pas visés par l'obligation de négociation sur une PND?

Réponse du CMIC : Le CMIC est d'avis que les exploitants de PND doivent avoir un certain pouvoir discrétionnaire sur l'exécution des opérations, qu'elles doivent ou non être négociées sur une PND, pour peu que ce pouvoir discrétionnaire soit exercé de manière conforme à l'obligation de meilleure exécution proposée dont il est question dans notre réponse à la question 8 ci-après. Le CMIC estime que les exploitants de PND doivent avoir un certain pouvoir discrétionnaire (pourvu que chaque client approuve ce pouvoir discrétionnaire pour ses opérations) dans les cas suivants : pour fixer le moment de la saisie des ordres d'un participant, déterminer les participants auxquels communiquer les demandes de cotation, déterminer les ordres ou les demandes de cotation qui sont appariés avec d'autres ordres ou cotations et établir l'ordre et le moment de l'appariement et la méthode d'exécution. Donner ces pouvoirs discrétionnaires aux exploitants de PND leur donnera une plus grande marge de manœuvre quant aux méthodes d'exécution et leur permettra de chercher un marché plus liquide pour un type d'opérations en particulier.

Méthodes d'exécution autorisées

Question 3 : La description des méthodes d'exécution autorisées pour une PND convient-elle aux plateformes qui permettent actuellement ou qui envisagent de permettre la négociation de dérivés de gré à gré?

Réponse du CMIC : La description des méthodes d'exécution autorisées pour une PND convient, de l'avis du CMIC, aux PND qui permettent actuellement la négociation de dérivés de gré à gré. Toutefois, nous espérons et nous nous attendons à ce que les PND fassent elles-mêmes une analyse plus approfondie dans leur réponse à la présente question.

Question 4 : Veuillez commenter les modes d'exécution exigés. Faudrait-il prescrire une fonctionnalité de négociation minimale pour l'ensemble des PND?

Réponse du CMIC : Le CMIC recommande aux ACVM de ne pas prescrire une fonctionnalité de négociation minimale. Restreindre la négociation à des méthodes d'exécution comparables à celles utilisées sur le marché des contrats à terme, comme un registre des ordres, plutôt que d'autoriser diverses méthodes d'exécution, ne convient probablement pas compte tenu des caractéristiques de liquidité du marché canadien et pourrait ouvrir la voie à des opérations à haute fréquence ou abusives. Le CMIC croit fermement qu'un large éventail de méthodes d'exécution devrait être permis, qu'il y ait ou non obligation de négociation. Comme le souligne dans son livre blanc[3] le commissaire J. Christopher Giancarlo de la Commodity Futures Trading Commission (« **CFTC** »), « les caractéristiques de liquidité particulières d'un produit de swap déterminent la technologie et la méthodologie d'exécution, qui peuvent évoluer ». C'est pourquoi il propose que ce « continuum de liquidité » nécessite des méthodes d'exécution variables[4], et le CMIC appuie ce point de vue.

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[3] J. Christopher Giancarlo, "Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: Return to Dodd-Frank" (2015), online: CFTC <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>.

[4] Giancarlo, *supra*, note 3 à la p. 26.

Autorisation réglementaire des PND

Question 5 : Le cadre réglementaire proposé pour les PND est-il approprié?

Réponse du CMIC : Le CMIC est d'avis que les PND sont les mieux placées pour répondre à cette question. Toutefois, dans la mesure où un Canadien utilise une PND étrangère, cette PND étrangère ne devrait pas être tenue de s'inscrire au Canada et de se conformer au cadre réglementaire proposé, dans la mesure où cette PND étrangère est assujettie à un cadre de surveillance équivalent dans un territoire approuvé. Permettre une telle dispense en fonction de chaque territoire plutôt qu'en fonction de chaque PND, serait la solution réglementaire la plus efficace, car elle dégage les PND étrangères de l'obligation de faire leur propre demande de dispense. Les participants au marché canadien ne seraient pas ainsi privés de l'accès à des PND étrangères et à la liquidité du marché mondial. Le CMIC craint qu'une telle multiplication des exigences réglementaires puisse bien inciter les PND étrangères à restreindre l'accès au marché canadien ou à se retirer tout à fait du marché canadien.

Question 6 : Convient-il d'imposer des obligations applicables aux courtiers aux PND dont l'exploitant exerce un pouvoir discrétionnaire sur l'exécution des opérations? Veuillez fournir des explications. Dans l'affirmative, faudrait-il obliger ces PND à s'inscrire comme courtiers ou leur imposer seulement certaines des obligations des courtiers? Lesquelles?

Réponse du CMIC : Le CMIC est d'avis que les PND sont les mieux placées pour répondre à cette question. Toutefois, dans la mesure où les obligations des courtiers s'appliquent dans le cas de l'exercice d'un pouvoir discrétionnaire, ces obligations ne devraient pas s'appliquer aux PND étrangères si elles sont assujetties à un cadre de surveillance équivalent dans un territoire approuvé.

Question 7 : Compte tenu des conflits d'intérêts, les PND qui exercent un pouvoir discrétionnaire sur l'exécution des opérations devraient-elles être tenues d'exercer cette fonctionnalité dans une société distincte du même groupe? Motivez votre réponse.

Réponse du CMIC : Le CMIC est d'avis qu'il n'est pas nécessaire d'obliger les PND qui exercent un pouvoir discrétionnaire à ne le faire que dans le cadre d'une société distincte du même groupe. Le CMIC soutient que les pare-feu usuels et les politiques en matière de conflits d'intérêts internes devraient constituer des mesures suffisantes pour éviter les conflits d'intérêts quant à l'exercice d'un pouvoir discrétionnaire.

Question 8 : Quels facteurs sont pertinents pour définir l'obligation de meilleure exécution proposée?

Réponse du CMIC : Le CMIC recommande que la définition de l'obligation de meilleure exécution au sens du *Règlement 23-101 sur les règles de négociation* est une définition appropriée de cette obligation aux fins de l'exercice d'un pouvoir discrétionnaire des PND.

Obligations organisationnelles et de gouvernance

Question 9 : Convient-il de permettre aux PND d'exiger la compensation de toutes les opérations qui y sont exécutées et qui peuvent être compensées?

Réponse du CMIC : Le CMIC estime qu'il n'est pas approprié de permettre aux PND d'exiger la compensation de toutes les opérations qui y sont exécutées et qui peuvent être compensées. Si on devait le leur permettre, les PND pourraient alors effectivement établir une politique de compensation obligatoire. Le CMIC soutient qu'il n'est pas approprié que des PND établissent une politique de compensation et estime qu'il revient aux autorités de réglementation de le faire et non pas aux PND.

Question 10 : Convient-il d'autoriser les PND à exiger que les opérations qui y sont exécutées soient compensées par une chambre de compensation en particulier ou déclarées à un référentiel central en particulier?

Réponse du CMIC : Le CMIC estime que les PND devraient permettre aux participants de choisir la chambre de compensation ou le référentiel central (« **RC** ») de leur choix. Les PND ne font que faciliter l'opération et devraient être limitées à ce rôle. Autoriser une PND à rendre obligatoire la compensation des opérations exécutées sur sa plateforme par une chambre de compensation en particulier restreindrait la capacité des participants au marché d'utiliser certaines PND, si ces PND n'offrent pas de services de compensation aux contreparties centrales dont elles sont clients ou membres. Une telle solution pourrait facilement mener à une perte de souplesse de négociation et à une augmentation des coûts opérationnels pour faire des affaires.

Question 11 : Convient-il que les PND qui exercent un pouvoir discrétionnaire sur l'exécution des opérations soient autorisées à restreindre l'accès à leur plateforme? Dans l'affirmative, pour quels motifs?

Réponse du CMIC : Il est approprié de permettre aux PND d'établir des normes à respecter avant qu'un participant ne soit autorisé à y faire exécuter des opérations. Les normes possibles comprennent, notamment une obligation de compétence technique minimale des participants pour exécuter des opérations par voie électronique et une obligation pour les participants de ne pas se livrer à des pratiques de négociation frauduleuses ou manipulatoires. C'est pourquoi le CMIC estime qu'il est approprié que les PND aient la possibilité de limiter l'accès à leur plateforme. Ces normes ne devraient toutefois pas inclure une norme de solvabilité d'un participant. Les PND ne sont en définitive pas exposées au risque d'insolvabilité de leurs participants et ne devraient donc pas limiter l'accès aux participants en fonction de considérations de solvabilité.

Question 12 : Les obligations organisationnelles et de gouvernance sont-elles appropriées? Le comité devrait-il envisager d'autres obligations organisationnelles et de gouvernance?

Réponse du CMIC : Le CMIC est d'avis que les PND sont les mieux placées pour répondre à cette question.

Question 13 : Convient-il que les PND qui n'exercent pas de pouvoir discrétionnaire sur l'exécution soient autorisées à se charger de leurs fonctions de réglementation et surveillance ou faudrait-il les obliger à engager un fournisseur de services de réglementation à cette fin dans tous les cas? Veuillez fournir des explications.

Réponse du CMIC : Le CMIC estime qu'il est approprié d'autoriser les PND qui n'exercent pas de pouvoir discrétionnaire à se charger de leurs fonctions de réglementation et de surveillance, à la condition qu'elles n'exécutent pas des opérations pour leur propre compte. Souvent, les PND sont les mieux placées pour se charger de ces fonctions.

Question 14 : Approuvez-vous la proposition d'interdire aux exploitants de PND de conclure des opérations sur leur plateforme pour compte propre? Veuillez fournir des explications.

Réponse du CMIC : Le CMIC est d'accord avec cette proposition. Les exploitants de PND ont accès à l'ensemble des données du marché et de l'information sur les opérations et ils se placeraient en position de conflit d'intérêts s'ils exécutaient des opérations pour compte propre au sein de la même entité qui a accès à cette information. Des murs appropriés et des séparations entre les entités juridiques devraient être exigés.

Question 15 : Comment évaluer la suffisance des ressources financières d'une PND? Veuillez commenter la méthodologie et la fréquence du calcul.

Réponse du CMIC : Le CMIC estime que les PND sont les mieux placées pour commenter la méthodologie et la fréquence du calcul de leurs ressources financières. Nous vous référons toutefois au livre blanc[5] de M. Giancarlo selon lequel il serait inapproprié d'obliger les PND à avoir des ressources financières d'un montant supérieur au montant total dont elles ont besoin pour couvrir les charges d'exploitation pour une période continue d'une année. Il s'agit de la norme applicable aux chambres de compensation, et elle est appropriée dans le cadre de la compensation compte tenu des répercussions que la défaillance d'une chambre de compensation pourrait avoir sur le marché. Toutefois, la défaillance d'une PND n'aurait que des répercussions négligeables sur le marché dans l'hypothèse où il existe plus d'une PND pour les produits visés négociés sur la PND défaillante. C'est pourquoi M. Giancarlo fait valoir que les PND ne devraient être tenues de détenir que les ressources financières suffisantes pour procéder à une réduction progressive ordonnée de leurs opérations, avis que partage le CMIC.

[5] Giancarlo, *supra*, note 3 à la p. 46.

Transparence avant les opérations

Question 16 : Les obligations de transparence avant les opérations devraient-elles s'appliquer aux dérivés de gré à gré qui sont négociés sur des PND, mais ne sont pas visés par l'obligation de l'être? Dans l'affirmative, quelles obligations devraient s'appliquer et faudrait-il prévoit des dispenses?

Réponse du CMIC : Le CMIC souscrit à l'objectif des ACVM de promouvoir la transparence avant les opérations et reconnaît les grands avantages de la divulgation d'information sur les ordres, notamment une amélioration de la formation des cours. Le CMIC partage par ailleurs l'avis des ACVM selon lequel une transparence avant les opérations plus rigoureuse peut ne pas aboutir à une réelle amélioration de la formation des cours, et convient qu'il serait inapproprié d'imposer des obligations de transparence avant les opérations pour que des produits ayant une liquidité insuffisante soient obligés de négocier sur une PND.

Le CMIC souligne que les avantages de la transparence avant les opérations sont en général associés à un modèle d'exécution fondé sur un registre des ordres auquel tous les participants au marché y ayant accès peuvent voir les offres d'achat et de vente de dérivés. Pour les produits liquides négociés selon un registre des ordres, les teneurs de marché seront en général disposés à afficher des offres d'achat et de vente de produits en continu. Le registre des ordres contribue ainsi à la formation des cours, dans la mesure où les participants au marché peuvent consulter le registre des ordres et se faire une bonne idée des cours en vigueur avant de choisir un teneur de marché en particulier.

En revanche, pour les produits non liquides négociés selon un registre des ordres, ce modèle d'exécution peut dans certains cas ne pas contribuer à la formation des cours. Les teneurs de marché seront en général moins disposés à afficher des offres d'achat et de vente de titres en continu, et si de telles offres sont affichées, elles contiendront en général de plus larges écarts visant à protéger le teneur de marché contre le risque de perte en cas de baisse. Autrement dit, les offres affichées dans un registre des ordres peuvent ne pas rendre compte des meilleurs cours qu'un teneur de marché veut ou peut offrir, et les participants au marché peuvent alors être obligés de chercher ces cours ailleurs que dans le registre des ordres.

Même si le CMIC estime qu'il ne serait pas approprié que les ACVM imposent une obligation de négociation sur une PND pour des produits non liquides ou sur mesure, le CMIC défend néanmoins le droit des participants au marché de choisir de faire exécuter ou non ces produits sur une PND. Dans ces circonstances toutefois, le CMIC ne croit pas qu'il faille imposer aux PND des obligations d'information particulières visant à améliorer la transparence avant les opérations. Comme il est indiqué ci-dessus, la transparence avant les opérations obligatoire obligerait vraisemblablement les PND à adopter un modèle fondé sur un registre des ordres qui peut ne pas être approprié en raison de la nature non liquide du produit.

Le CMIC est plutôt d'avis que les participants au marché doivent avoir la faculté de choisir une PND, un modèle d'exécution et des niveaux corollaires de transparence avant les opérations selon leur situation particulière. Le CMIC soutient que cette formule variable est généralement conforme aux règles de la CFTC, qui n'imposent pas d'obligations de transparence avant les opérations pour les opérations dites « autorisées », qui ne doivent pas obligatoirement être exécutées sur une PES.

Transparence après les opérations

Question 17 : Les obligations de transparence après les opérations proposées (qui comprennent la déclaration des opérations en temps réel ainsi que la déclaration quotidienne au public de certaines données) conviennent-elles aux PND?

Réponse du CMIC : Le CMIC soutient également les efforts des ACVM pour une meilleure transparence après les opérations. Le CMIC a toutefois de sérieuses réserves quant à certaines mesures proposées à cet égard, notamment l'obligation pour les PND de produire des rapports publics en temps réel.

Selon la proposition des ACVM, les PND seraient tenues « de déclarer au public les opérations exécutées sur leur plateforme en temps réel, dans la mesure où les moyens techniques le permettent ». Le CMIC observe que la proposition des ACVM est généralement muette quant au fondement de l'obligation pour les PND de produire des rapports publics en temps réel, chose d'autant plus incompréhensible que ces rapports seront déjà produits par un RC. La proposition des ACVM n'est en général pas non plus explicite quant au type d'information que les PND seraient tenues de déclarer au public, ni quant à savoir si cette obligation comprendrait les données à communiquer à l'exécution à un RC par une contrepartie déclarante aux termes du *Règlement 91-507 sur les référentiels centraux et la déclaration de données sur les dérivés* (le « **Règlement sur les RC** ») de l'Autorité des marchés financiers (ou le règlement correspondant dans les autres provinces), ou un sous-ensemble des données à communiquer à l'exécution au public par un RC aux termes du Règlement sur les RC, ou encore un autre ensemble de données. Le CMIC soutient que les ACVM doivent être plus explicites quant au type d'information que devraient contenir les rapports publics des PND afin que les participants au marché puissent en évaluer adéquatement le caractère approprié.

Si les ACVM sont d'avis que les PND doivent déclarer la totalité ou une partie des données à communiquer à l'exécution à un RC par une contrepartie déclarante, le CMIC soutient qu'une telle obligation d'information devrait autant que possible être harmonisée aux obligations de diffusion publique applicables aux RC à partir du 29 juillet 2016. Le CMIC soutient en outre qu'une telle obligation d'information n'est pas appropriée puisqu'elle ne semble pas tenir compte des rouages du processus de compensation ni des obligations d'information distincte d'une chambre de compensation aux termes du Règlement sur les RC. Le CMIC souligne qu'un swap qui est accepté aux fins de compensation – généralement appelé un swap « alpha » – est immédiatement annulé et remplacé par deux nouveaux swaps – habituellement appelés swaps « bêta » et « gamma ». Une fois le swap alpha annulé et remplacé par des swaps bêta et gamma, la chambre de compensation devient responsable de la divulgation de ces swaps conformément à la hiérarchie de contrepartie déclarante du Règlement sur les RC.

Étant donné que les swaps alpha sont annulés et remplacés par des swaps bêta et gamma entièrement assujettis aux obligations d'information de la chambre de compensation, le CMIC soutient que ni les PND, ni les contreparties ne devraient être assujetties à des obligations d'information à l'égard des swaps alpha. Le CMIC soutient qu'il n'y a pas ou pratiquement pas d'avantage à obliger les PND à déclarer des données à communiquer à l'exécution à l'égard de swaps alpha, que ce soit par l'entremise d'un RC ou directement au public, puisqu'ils sont presque immédiatement remplacés par des swaps compensés qui sont déclarés par la chambre de compensation. Obliger les PND à rendre publics d'autres rapports ne contribuerait pratiquement pas à la transparence après les opérations, ces rapports contenant essentiellement la même information que les rapports de la chambre de compensation à l'égard des swaps gamma et bêta.

Comparativement aux avantages minimes que procurerait une obligation des PND à produire des rapports publics, le coût de ces rapports serait quant à lui vraisemblablement élevé, comme en font foi les résultats de l'imposition d'une telle obligation d'information des PES aux États-Unis. En vertu des règles de la CFTC, les PES partagent la responsabilité de déclarer les opérations alpha avec des courtiers en swaps (« **CS** »)/principaux participants au marché des swaps (« **PPMS** »), les PES étant responsables de la déclaration des données à communiquer à l'exécution initiales et les CS/PPMS étant responsables de la déclaration de l'information continue. Les PES ont éprouvé énormément de difficultés à se conformer à ces règles de partage de l'obligation d'information, les PES étant tenues de déclarer des données qui ne se rapportent pas à l'exécution que les PES n'ont bien souvent pas en leur possession. Les PES et CS/PPMS seront par ailleurs souvent connectés à différents référentiels centraux de swaps (« **RCS** »), et seront par conséquent incapables d'envoyer des données au même endroit, soulevant ainsi le problème des données dites « orphelines » c'est-à-dire qu'une partie d'une opération peut être déclarée à un RCS, tandis qu'une autre partie de l'opération peut être déclarée à un autre RCS.

Afin d'éviter certaines des difficultés qu'ont soulevées les règles de la CFTC, le CMIC souligne l'importance de n'avoir qu'une seule partie responsable de la déclaration d'une même opération de swap. Pour une opération qui est exécutée sur une PND et qui est assujettie à l'obligation de compensation, le CMIC estime que la seule partie chargée de la déclaration devrait être la chambre de compensation. Selon la formule proposée par le CMIC, il n'y aurait aucune obligation de produire un rapport public à l'égard d'une opération alpha; il reviendrait plutôt à la chambre de compensation de déclarer les opérations bêta et gamma en résultant une fois l'opération alpha acceptée aux fins de compensation. Dans le cas d'une opération bilatérale non compensée qui n'est pas assujettie à une obligation de compensation et qui est exécutée sur une PND, le CMIC soutient que l'une des contreparties à l'opération devrait être chargée de sa déclaration, selon la hiérarchie de contrepartie déclarante du Règlement sur les RC.

Le CMIC fait valoir qu'une telle formule est généralement conforme aux processus de déclaration envisagés dans le Règlement sur les RC, et pourra donc aisément s'appliquer dans le cadre des systèmes d'information existants créés pour l'application de ce règlement.

Question 18 : Quelle est la meilleure méthode pour déclarer publiquement en temps réel les opérations exécutées sur une PND (p. ex., directement par la PND, par le truchement de référentiels centraux ou d'une autre façon)? Quels sont les avantages et les inconvénients de ces options?

Réponse du CMIC : Dans la mesure où les ACVM estiment que les PND doivent produire d'autres rapports publics, le CMIC croit alors fermement que ces rapports doivent être produits indirectement par le truchement de RC, plutôt que directement par les PND. Étant donné que le marché canadien peut, à terme, compter de nombreuses PND différentes, les obliger à déclarer de l'information directement au public donnerait lieu à une dispersion de l'information qui empêcherait les autorités de réglementation et les participants au marché de se faire rapidement et facilement une idée complète du marché. Obliger les PND à divulguer de l'information directement au public peut en outre compromettre la qualité des données, dans la mesure où différentes PND peuvent avoir différentes normes et pratiques en matière de déclaration.

Questions 19 et 20 : Dans quelles circonstances faudrait-il permettre de différer la publication de l'information sur les opérations? En existe-t-il d'autres que les opérations de bloc? En supposant que le report de la publication de l'information sur les opérations soit autorisé pour les opérations de bloc, de quels critères faudrait-il tenir compte pour déterminer la taille minimale des opérations?

Réponse du CMIC : Comme il l'a indiqué dans son mémoire relatif à l'avis 91-302 du personnel des ACVM, *Mise à jour – Modèle de règles sur la détermination des produits dérivés et Modèle de règles sur les répertoires des opérations et la déclaration de données sur les produits dérivés*, le CMIC croit fermement que les règles des ACVM quant à l'information du public doivent prévoir des délais pour la divulgation d'opérations notionnelles ou « de bloc » importantes. La divulgation instantanée ou en temps réel d'opérations de bloc peut nuire au fonctionnement adéquat du marché, la capacité d'un courtier de couvrir son exposition au risque étant ainsi compromise. Pour les opérations sur des produits non liquides, un courtier aura souvent besoin d'un délai plus long que celui de la date d'opération plus un jour pour couvrir son exposition au risque. Si les détails d'une opération sont diffusés au public avant qu'un courtier n'ait pu mettre au point sa couverture, il peut être exposé à une augmentation des coûts d'exécution de l'opération de couverture, les participants au marché pouvant potentiellement effectuer des opérations contre la position du courtier. Ces coûts supplémentaires peuvent soit être transférés aux utilisateurs finaux sous la forme de plus larges écarts, soit décourager des courtiers de participer à ces opérations, réduisant ainsi la liquidité dans des marchés de produits déjà non liquides. De même, dans le cas d'opérations sur des produits non liquides, les participants côté acheteur peuvent chercher à exécuter une position large en étalant l'opération entre plusieurs courtiers. Si les détails d'une opération sont diffusés au public avant que le participant côté acheteur n'ait mené à terme ses opérations, le participant côté acheteur pourrait devoir engager des frais supplémentaires dans l'exécution de ses opérations puisque les participants au marché peuvent potentiellement négocier contre la position du participant côté acheteur.

Le CMIC est d'avis que les ACVM doivent adopter des règles qui prévoient des délais quant à la déclaration d'information comparables à ceux appliqués aux États-Unis. Aux termes des règles de la CFTC, les contreparties aux opérations dont les valeurs notionnelles sont supérieures aux tailles minimales des opérations de bloc fixées par la CFTC disposeront de délais pour rendre publiques leurs opérations. Il faudra étudier en profondeur les données sur les déclarations des opérations au Canada pour formuler les limites appropriées pour le marché canadien.

Question 21 : Quels renseignements sur le marché les PND devraient-elles être tenues de fournir au public sans frais, et à quel moment? Veuillez indiquer aussi précisément que possible les éléments de données, le niveau de détail et le moment (cf. les règles de la CFTC [États-Unis] dans 17 CFR 16.01).

Réponse du CMIC : En plus des rapports publics en temps réel, la proposition des ACVM laisse entendre que les PND devraient être tenues « de rendre publics certains renseignements sur le marché que le comité déterminera, sans frais, dans un certain délai ». Selon la proposition des ACVM, les règles de la CFTC prévoient une obligation analogue selon laquelle les PES/marchés de contrats désignés (« **MCD** ») sont tenus de rendre publique « de l'information à jour sur les cours, le volume des opérations et d'autres données sur les opérations de swap ». Les renseignements que les PES/MCD doivent rendre publics sont indiqués dans 17 CFR 16.01.

Comme dans le cas de la déclaration publique en temps réel, le CMIC fait valoir que la proposition des ACVM est en général muette quant au fondement de l'obligation pour les PND de rendre de l'information publique séparément dans un certain délai, alors que cette information pourrait vraisemblablement être obtenue d'un RC en temps réel. Les ACVM ne sont encore ici pas très explicites quant à l'information que les PND devraient rendre publique dans un certain délai, les participants au marché ne pouvant ainsi pas facilement évaluer la nécessité d'une telle obligation d'information.

Dans la mesure où les ACVM ont calqué cette obligation sur l'obligation correspondante des règles de la CFCT, le CMIC soutient que les règles de la CFTC ne sont peut-être pas, en l'occurrence, la meilleure référence de comparaison. Le CMIC souligne que les MCD sont depuis longtemps tenus de déclarer cette information en vertu des règles de la CFTC, et qu'il est possible que la CFTC étende cette obligation aux PES afin de minimiser les différences dans le traitement entre les PES et les MCD. Comme le régime des ACVM ne comporte pas de pendants directs aux MCD, le CMIC ne croit pas que des considérations d'uniformisation s'appliquent au marché canadien. C'est pourquoi le CMIC recommande fortement aux ACVM d'envisager le retrait de cette obligation.

Dans la mesure où les ACVM établissent que les PND doivent rendre publique de l'information dans un certain délai, le CMIC estime que l'information que les PND seraient tenues de rendre publique doit correspondre à celle prescrite par les règles de la CFTC. L'harmonisation des obligations d'information des ACVM avec les règles de la CFTC s'inscrit dans le principe général d'harmonisation, et mettrait à la disposition des participants au marché des données uniformes sous les régimes canadiens et américains, en facilitant ainsi la comparaison et l'analyse. Cette uniformisation pourrait en outre contribuer à réduire les pratiques de négociation manipulatrices, notamment la rétroingénierie des positions d'un participant au marché possible lorsqu'il existe des divergences entre les obligations d'information canadiennes et américaines.

Question 22 : Outre la déclaration de l'information sur les opérations à un référentiel central, les PND devraient-elles être tenues de diffuser l'information directement auprès de tous leurs participants ou seulement auprès des contreparties aux opérations? Un minimum d'information après les opérations, moins détaillée que celle qui est fournie aux contreparties, devrait-elle être diffusée auprès de tous les participants? Veuillez préciser.

Réponse du CMIC : En ce qui a trait à la déclaration d'information transactionnelle aux participants à une PND, le CMIC est d'avis que les PND ne devraient pas être tenues de déclarer de l'information à leurs participants. Le CMIC propose au contraire que les ACVM adoptent des règles analogues à celles promulguées par la CFTC, qui limitent la capacité des PES de divulguer de l'information transactionnelle à leurs participants.

Aux termes des règles de la CFTC, il est interdit aux PES de divulguer de l'information transactionnelle à leurs participants *avant* d'avoir déclaré cette information à un RCS pour diffusion publique. Par dérogation à cette interdiction, les PES sont autorisées à mettre cette information à la disposition de leurs participants *en même temps* que leur déclaration à un RCS, à la condition : i) que l'information ne soit déclarée qu'aux participants à la PES; ii) que les participants en aient reçu un avis préalable; et iii) que l'information soit déclarée sans distinction (c.-à-d. qu'elle soit déclarée à tous les participants à la PES). Cette interdiction de déclaration avant la déclaration à un RCS est souvent appelée la « règle d'embargo », et vise à ce que les données sur l'opération de swap et les cours soient diffusées uniformément et non d'une manière qui procure des avantages concurrentiels injustes à certains participants au marché.

Les avantages concurrentiels et pratiques en matière d'opérations injustes étant des questions également préoccupantes dans le marché canadien, le CMIC soutient qu'une restriction analogue quant à la déclaration d'information avant sa diffusion publique devrait être adoptée. Une obligation d'envoyer des données sur l'opération de swap et les cours (exclusion faite de l'information permettant d'identifier les parties) aux participants d'une PND en même temps que la publication de cette information par le RC conformément aux obligations d'information du public du RC réduira les iniquités potentielles entre les participants au marché et contribuera à en accélérer la déclaration aux RC. Bien que le CMIC recommande de limiter le droit des PND de déclarer de l'information à leurs participants, il croit fermement que les PND devraient être autorisées à le faire. Permettre aux participants à une PND de voir les dernières informations sur les opérations contribuera en général à améliorer la transparence après les opérations et le processus de formation des cours, et pourrait potentiellement avoir des effets positifs en ce qui a trait à la liquidité.

Obligation de négociation

Question 23 : Les critères proposés pour établir si un dérivé sera visé par l'obligation de négociation sur une PND sont-ils appropriés? Faudrait-il envisager d'autres critères?

Réponse du CMIC : De l'avis du CMIC, les critères que proposent les ACVM pour déterminer si un dérivé sera visé par l'obligation de négociation sur une PND sont appropriés. Le CMIC recommande fortement aux ACVM d'envisager la pondération relative des critères et propose d'accorder plus d'importance à certains facteurs qu'à d'autres. Par exemple, la question de savoir si un dérivé est liquide peut être un facteur plus important que la question de savoir s'il est négocié sur une PES. De plus, chaque aspect des critères doit être envisagé comme une décision distincte. La question de savoir si une opération doit ou non être compensée est distincte et séparée d'une décision quant à savoir si cette opération doit ou non être négociée sur une PND, si une série de dispenses appropriées sont offertes. (Voir nos réponses à la question 25 ci-après). À cette fin, le CMIC soutient qu'une catégorie de dérivés visée par une obligation d'exécution sur des PND doit d'abord, à titre de condition préalable, être visée par une obligation de compensation applicable, peu importe les décisions prises en fonction des autres critères pour cette catégorie de dérivés.

Le CMIC soutient tout particulièrement le processus de consultation coopératif de l'ensemble des autorités de réglementation canadiennes (dont parlent les ACVM à l'article 10a) du document de consultation) pour déterminer quelles opérations devraient être visées par une obligation de négociation sur une PND.

Question 24 : Existe-t-il des dérivés de gré à gré dont il faudrait considérer qu'ils se prêtent à l'obligation de négociation sur une PND? Existe-t-il des catégories de dérivés de gré à gré pour lesquelles cette obligation nuirait aux participants au marché?

Réponse du CMIC : Comme il est indiqué dans la réponse à la question 23, le CMIC soutient qu'une catégorie de dérivés visée par une obligation d'exécution sur des PND doit d'abord à titre de condition préalable être assujettie à une obligation de compensation applicable, peu importe les décisions prises en fonction des autres critères pour cette catégorie de dérivés. Le CMIC peut donc difficilement faire des observations sur cette question sans connaître quels dérivés seront visés par une obligation de compensation. On ne dispose par ailleurs que de très peu d'information pour déterminer le niveau de liquidité. De l'avis du CMIC, le niveau de liquidité ne peut être établi que lorsque les autorités de réglementation auront à leur disposition et étudié suffisamment de données à cette fin. Par ailleurs, étant donné que les autorités de réglementation seules sont en mesure de voir l'ensemble des données sur les opérations, le CMIC estime, au stade actuel, que seules les autorités de réglementation sont en position d'établir quels dérivés se prêtent à l'obligation de négociation.

Question 25 : Existe-t-il des situations dans lesquelles on devrait permettre qu'un produit visé par l'obligation de négociation exclusive sur une PND puisse être négocié sur une autre plateforme? Faudrait-il dispenser certaines catégories de participants au marché de l'obligation de négociation?

Réponse du CMIC : En ce qui a trait à la première partie de la présente question, nous vous prions de vous reporter à notre réponse à la question 24. Le CMIC soutient par ailleurs que, tirant des leçons des problèmes qu'ont connus d'autres territoires, les opérations intégrées (au sens de *Package Transactions*) ne devraient pas être visées par une obligation de négociation sur une PND. Une opération intégrée s'entend d'une opération visant au moins deux instruments :

– exécutés entre au moins deux contreparties;
– affichés à un prix ou cotés en tant qu'une seule opération économique dont toutes les composantes sont exécutées simultanément;
– dont au moins une des composantes est visée par une obligation d'exécution sur une PND; et
– dont l'exécution de chaque composante est conditionnelle à l'exécution de toutes les autres composantes.

Une opération intégrée, telle qu'elle est décrite ci-dessus, comprend au moins une composante qui, seule, serait visée par une obligation d'exécution sur une PND. Le CMIC soutient que, lorsqu'elle fait partie intégrante d'une opération intégrée, cette composante (et l'opération intégrée dans son ensemble) ne devrait pas être visée par une obligation d'exécution sur une PND. La formule que nous recommandons ne devrait pas être un obstacle pour les plateformes étrangères qui souhaitent obtenir une reconnaissance ou une dispense de reconnaissance au Canada si les opérations intégrées sont traitées différemment en vertu des règles étrangères applicables sur ces plateformes étrangères.

Imposer une obligation d'exécution sur une PND pour chaque composante faisant partie d'une opération intégrée exposerait les participants au marché à des coûts et à des risques accrus. La négociation des composantes d'une opération intégrée séparément et sur différentes plateformes (c.-à-d. en partie sur une PND et en partie sur une autre plateforme) peut entraîner des coûts et des risques accrus en raison du décalage dans l'exécution des opérations, le marché pouvant prendre une autre direction entre l'exécution de chaque composante, et en raison des différences entre les détails de l'opération, du mode d'exécution, des flux d'opérations à compenser/régler et de la liquidité relative, comparativement à une exécution simultanée au moyen d'une même méthode d'exécution.

Si une composante d'une opération intégrée doit être exécutée séparément sur une PND, l'opération pourrait devenir non rentable en raison des coûts et des risques accrus. Cet aspect négatif n'est pas compensé par des considérations de transparence quant à la formation des cours, puisque la formation des cours d'une composante négociée dans le cadre d'une opération intégrée peut ne pas être comparable à la formation des cours du même type d'opération séparément.

En ce qui a trait aux catégories de participants au marché qui devraient être dispensés d'une obligation de négociation, le CMIC est d'avis qu'une dispense de l'utilisateur final devrait être offerte, et que la dispense devrai être harmonisée avec les dispenses de l'utilisateur final aux termes des règles de compensation obligatoires. Le CMIC appuie en outre une dispense de l'obligation de négociation sur une PND pour une opération entre membres du même groupe. Assujettir les opérations sur dérivés hors-cote entre membres du même groupe à l'obligation de négociation sur une PND imposerait des coûts inutiles et nuirait au transfert et à la gestion efficaces des risques entre les membres du même groupe, sans aucun avantage notable. L'exécution par le truchement d'un système de demandes de cotation ne serait pas efficace pour des opérations entre membres du même groupe, puisque les destinataires de la demande de cotation membres du groupe du demandeur ne pourraient être comptabilisés dans le calcul du nombre minimal de destinataires, tandis que l'exécution par le truchement d'un registre des ordres ne garantirait pas un appariement des intérêts des membres du même groupe dans l'opération. Les avantages de l'exécution sur une PND quant à la formation des cours ne sont pas probants dans le cas des opérations entre membres du même groupe, puisqu'une formation des cours concurrentielle n'est pas nécessairement un objectif principal des opérations entre membres du même groupe.

Question 26 : Faudrait-il mandater officiellement les PND pour débuter le processus visant à décider qu'une catégorie de dérivés de gré à gré est visée par l'obligation de négociation exclusive sur une PND, comme c'est le cas des PES dans le processus de « décision d'admissibilité » décrit à la page 21?

Réponse du CMIC : Comme nous l'avons indiqué dans notre réponse à la question 24, le CMIC est d'avis qu'il revient aux autorités de réglementation seules de déterminer quels dérivés doivent être visés par une obligation de négociation sur une PND et c'est pourquoi nous ne croyons pas que les PND devraient être habilitées à le faire. Le CMIC observe que les PND, de même que le public en général, auront toujours la possibilité de faire des observations sur quelque obligation de négociation proposée. Le CMIC fait en outre valoir que le processus décisionnel dont fait l'objet un dérivé aux termes des règles de la CFTC et visant à le « rendre admissible à la négociation » (une « **décision d'admissibilité** ») (qui permet à une PES de soumettre une demande de décision d'admissibilité de produits à une obligation de négociation sur une PES, la CFTC ne pouvant refuser la demande que si elle est contraire à la loi intitulée *Commodity Exchange Act* ou aux règlements de la CFTC) ne fait pas l'unanimité. Comme l'indique M. Giancarlo dans son livre blanc[6], le processus menant à une décision d'admissibilité pose problème parce qu'il peut soumettre des swaps à une obligation de négociation au moyen d'un nombre limité de méthodes d'exécution, même si ces swaps n'ont pas la liquidité nécessaire pour appuyer une telle opération. De plus, aux États-Unis, comme le processus menant à une décision d'admissibilité est contrôlé par les PES, une PES relativement nouvelle pourrait obtenir un avantage de premier arrivé et obliger qu'un produit en particulier soit négocié au moyen de

[6] Giancarlo, *supra*, note 3 à la p. 29.

méthodes d'exécution restrictives sur le PES. Autrement dit, la décision d'une plateforme pourrait lier l'ensemble du marché.[7]

Question 27 : Quelles obligations d'information avant les opérations conviennent aux dérivés de gré à gré visés par l'obligation de négociation sur une PND? Quelle information les PND devraient-elles être tenues de publier au sujet des dérivés de gré à gré visés par cette obligation? Veuillez fournir des précisions en ce qui concerne la méthode d'exécution (p. ex., registre des ordres, demande de cotation, etc.).

Réponse du CMIC : Le CMIC est d'avis que les ACVM ne devraient pas être normatives et prescrire des obligations de transparence avant les opérations. Le CMIC est d'avis qu'imposer des obligations avant les opérations réduirait la liquidité et la faculté de choisir des méthodes d'exécution.

Question 28 : Comment fixer un seuil convenable pour dispenser les ordres et cotations importants des obligations de transparence avant les opérations ou permettre de modifier l'information à fournir?

Réponse du CMIC : Le CMIC soutient que ces seuils devront être établis conjointement avec les obligations de diffusion publique applicables aux RC à partir du 29 juillet 2016. Un examen réfléchi fondé sur une analyse appropriée des données du marché canadien sur une période prolongée est nécessaire pour déterminer la meilleure formule pour la diffusion publique de l'information sur les opérations pour le marché canadien. L'analyse des données sur le marché canadien ne peut être faite que par les autorités de réglementation étant donné qu'elles seules ont à leur disposition des données sur l'ensemble du marché dans les RC. De plus, ce type d'analyse exigera l'appréciation de données confidentielles du point de vue de la concurrence, comme des données sur des opérations de bloc et des concentrations de participants. Lorsque les autorités de réglementation auront fait cette analyse fondée sur des données fiables recueillies sur une période de temps suffisante dans le cadre de la déclaration d'information sur les opérations, et établi une démarche quant à la diffusion publique de l'information sur les opérations, une consultation des participants au marché devrait alors être organisée. Le CMIC est d'avis que des entreprises faisant office de teneurs de marché seraient défavorisées si les autorités de réglementation devaient adopter au Canada les mêmes planchers et plafonds que ceux prévus par les règles de la CFTC, étant donné que la plupart des instruments au Canada ne sont pas aussi liquides que ceux aux États-Unis. Les teneurs de marché seraient défavorisés si les données pouvaient être manipulées de manière à conclure qu'une opération en particulier a été exécutée. La capacité de gestion du risque en serait compromise, ce qui nuirait à la liquidité du marché, creuserait les écarts entre les cours acheteurs/vendeurs, réduirait l'efficacité et rendrait l'opération non viable. Les utilisateurs finaux à la recherche de solutions de couverture en subiraient les contrecoups.

Question 29 : Convient-il de limiter la négociation de dérivés de gré à gré visés par l'obligation de négociation sur une PND à certaines méthodes d'exécution autorisées, par exemple, un registre des ordres ou un système de demande de cotisation combiné à un registre des ordres? Motivez votre réponse. Dans l'affirmative, quels modes d'exécution faudrait-il autoriser pour les produits visés par cette obligation? D'autres méthodes d'exécution permettent-elles d'atteindre un niveau satisfaisant de transparence avant les opérations? Quels autres facteurs devraient être pris en compte?

Réponse du CMIC : Comme nous l'avons indiqué, le CMIC est d'avis que les ACVM devraient adopter une solution variable quant aux méthodes d'exécution. Selon le livre blanc[8] de M. Giancarlo, les marchés seraient mieux servis si l'exécution des opérations n'est pas limitée à seulement certaines méthodes. Une certaine flexibilité permettra un développement « rationnel et organique »[9] des marchés en fonction de caractéristiques et de profils de liquidité de produits spécifiques. Les méthodes d'exécution pourraient par ailleurs être adaptées à des caractéristiques de liquidité d'un produit de swap en particulier.

Question 30 : À quelles autres obligations les PND devraient-elles être assujetties en ce qui concerne la négociation de produits visés par l'obligation de négociation sur une PND?

Réponse du CMIC : Le CMIC est d'avis que les ACVM doivent inclure dans leurs règles relatives aux PND la notion de compensation garantie permettant un meilleur accès au marché et un accès et un usage impartiaux

[7] Giancarlo, *supra*, note 3 à la p. 30.
[8] *Ibid*, p. 31.
[9] *Ibid*.

de la plateforme. Les participants au marché qui exécutent des swaps censés être compensés sur une PND ne devraient pas être exposés à un risque lié au marché inutile en raison d'un délai d'attente indépendant de leur volonté directe ou de défaillances de crédit au niveau de la chambre de compensation ou de leur courtier en compensation.

La CFTC a largement clarifié la situation sur le marché en publiant un certain nombre d'instructions générales, les chambres de compensation étant tenues d'accepter ou de rejeter des opérations soumises à des fins de compensation dans les dix secondes et les swaps censés être compensés qui sont exécutés sur une PES et qui ne sont pas acceptés à des fins de compensation étant nuls ab initio (comme s'ils n'avaient jamais existé). La CFTC exige que les PES aient des règles à cet effet.

La compensation garantie exige le cadre de traitement direct (« **TD** ») et le cadre opérationnel nécessaire au règlement des opérations censées être compensées rejetées en raison d'erreurs opérationnelles. L'absence de ce cadre introduit un risque dans le système. Le cadre TD nécessaire doit comprendre des vérifications de solvabilité avant l'opération afin de veiller à ce qu'une opération de bonne foi soit exécutée sur une PND, à ce qu'une opération exécutée sur une PND soit envoyée électroniquement à la chambre de compensation et à ce que la chambre de compensation accepte ou rejette l'opération dans les dix secondes. Dans certains cas, le TD est impossible, notamment dans le cas d'opérations exécutées hors-PND qui sont alors ultérieurement saisies sur la PND, ou des opérations intégrées dont une composante est sur une PND et l'autre est exécutée hors-PND, qui doivent être examinées attentivement dans ce cadre. Un cadre opérationnel qui ne traite pas des opérations qui sont rejetées aux fins de compensation en raison d'erreurs d'écritures ou d'erreurs opérationnelles crée un autre risque lié au marché et à l'exécution, s'il n'est pas possible de resoumettre l'opération. Après qu'un participant au marché exécute un swap, le participant couvre son risque avec d'autres swaps. Si le swap est déclaré nul et que le participant ne peut le resoumettre, le participant ne sera pas adéquatement couvert et sera exposé à un risque non voulu quant à l'orientation du marché et/ou à l'exécution.

Généralités

Question 31 : Veuillez décrire les caractéristiques particulières des marchés de dérivés de gré à gré du Canada dont le Comité devrait tenir compte et qui pourraient justifier une divergence entre les règles canadiennes et celles en vigueur aux États-Unis et dans l'UE, notamment en ce qui concerne les obligations de transparence et de négociation. Veuillez indiquer les conséquences particulières de ces caractéristiques.

Réponse du CMIC :

Le marché canadien, comparativement au marché mondial, est très petit et offre une liquidité limitée. Le CMIC est d'avis que les autorités de réglementation devraient évaluer le marché des dérivés de gré à gré du Canada sur une période lui permettant de recevoir suffisamment de données fiables tirées des déclarations d'opérations et leur permettant d'évaluer rigoureusement s'il est nécessaire d'établir ou non des règles relatives aux PND au Canada et quelles devraient être ces règles. Le cas échéant, le CMIC ne croit pas qu'il soit économique ni avantageux de perdre du temps à élaborer des règles relatives aux PND si aucune opération ne sera suffisamment liquide pour être assujettie à une obligation de négociation sur une PND. Il serait malheureux et contre-productif de formuler des règles relatives aux PND au Canada qui découragent des PES étrangères de participer au marché canadien.

****

Le CMIC se réjouit de la possibilité de discuter de la présente réponse avec des représentants des ACVM. Les points de vue exprimés dans la présente lettre sont ceux des membres du CMIC indiqués ci-dessous :

Banque de Montréal
Bank of Tokyo-Mitsubishi UFJ (Canada)
Caisse de dépôt et placement du Québec
L'Office d'investissement du Régime de pensions du Canada
Banque Canadienne Impériale de Commerce
Succursale canadienne de Deutsche Bank A.G.
La Fédération des Caisses Desjardins du Québec
Banque HSBC Canada
Succursale de Toronto de JPMorgan Chase Bank, N.A.
Société Financière Manuvie
Banque Nationale du Canada
OMERS Administration Corporation
Régime de retraite des enseignantes et des enseignants de l'Ontario
L'Office d'investissement des régimes de pensions du secteur public
Banque Royale du Canada
Financière Sun Life
La Banque de Nouvelle-Écosse
La Banque Toronto-Dominion

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March 30, 2015

SENT BY ELECTRONIC MAIL

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Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
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Dear Sirs/Mesdames:

I **Introduction**

CanDeal.ca Inc. **(CanDeal)** is Canada's leading online marketplace for Canadian dollar-denominated (CAD$) debt securities and CAD$ interest rate swaps **(IRS)** (www.candeal.com). CanDeal's institutional dealer-to-client request for quote **(RFQ)** marketplace provides online access to the largest pool of liquidity for CAD$ government bonds, money market instruments and CAD$ IRS. As a regulated alternative trading system **(ATS)**, CanDeal has offered fixed income and money market trading on an electronic marketplace for over a decade. Since 2011, CanDeal has also offered CAD$ IRS. CanDeal has developed fixed income trading protocols and technologies which support increased liquidity, transparency and lower risk for over-the-counter **(OTC)** markets.

CanDeal appreciates the opportunity to provide feedback on the consultation paper (**Consultation Paper**) addressing the Derivatives Trading Facility (**DTF**).

II **Interpretation**

In this comment letter:

CAD$ IRS means CAD$-denominated IRS.

Canadian CAD$ IRS means CAD$ IRS transactions to which one or both counterparties are Canadian.

Canadian IRD means IRD transactions to which one or both counterparties are Canadian (regardless of currency type).

Canadian IRS means IRS transactions to which one or both counterparties are Canadian (regardless of currency).

Committee means the CSA Derivatives Committee.

FRA means forward rate agreement.

IRD means interest rate derivative, collectively FRAs, IRS and interest rate options.

SEF means a swap execution facility.

US CAD$ IRS means CAD IRS transactions to which one or both counterparties are US persons.

III **Executive Summary**

CanDeal supports the creation in Canada of the DTF as a multilateral marketplace category for the trading of OTC derivatives. CanDeal also supports the Committee's recommendation that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF. CanDeal submits, however, that the introduction of a new marketplace for the multilateral trading of OTC derivatives must be accompanied by a concurrent obligation to trade appropriate derivative instruments on that marketplace. Available evidence supports the proposition that in the absence of a trading requirement, the proposed DTF will not be adopted by buy-side or other market participants.

If a trading obligation does not operate concurrently with the introduction of DTF trading, Canada will cede control of the market for multilateral trading of liquid derivative instruments to which one or both counterparties are Canadian (including in particular in CAD$ IRS) to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners. In addition to exporting this important sector of the Canadian capital markets, a further unintended consequence of inaction on the part of the Committee will be ceding control and regulation over a significant portion of the Government of Canada bond market to foreign regulators. The healthy operation of the Government of Canada bond market is a critical component of our Canadian financial infrastructure and essential to the funding capabilities of corporate Canada and all levels of government. The Canadian Securities Administrators (**CSA**), Bank of Canada and Canadian market leaders must not lose sight of the instrinsic, packaged nature of trading CAD$ IRS with Government of Canada bonds, and the distinct risks associated with ceding foreign regulatory control of liquidity protocols over these critically important segments of the Canadian marketplace.

The SEF framework will also be the only option available to Canadian buy-side and sell-side participants transacting in made-available-to-trade (**MAT**) derivatives with US persons. The Committee should therefore include in its recommendations a regulatory framework for DTFs that is comparable to that applicable to SEFs with respect to derivatives subject to MAT determinations in order to enable Canadian participants to use DTFs to execute cross-border transactions with US persons in MAT derivatives on the basis of substituted compliance.

Respectfully, CanDeal does not support the Committee's position regarding the need for further evidence of market size or liquidity as there is sufficient proof in a number of classes of CAD$ IRS to warrant the imposition of a trading requirement in respect of such classes at this time. CanDeal has included information in this comment letter relating to liquidity in CAD$ IRS that it believes will be of assistance to the Committee.

CanDeal submits that the Committee should clearly articulate the proposed standards for pre-trade and post-trade transparency that will apply to transactions required to be executed exclusively on DTFs. The Committee should also clearly define the execution methods that will be permitted in respect of such transactions. The Committee should include a comprehensive proposal in respect of the test for liquidity that will apply to determine whether a derivative instrument or class of derivative instrument will be subject to the requirement to trade exclusively on a DTF. In CanDeal's submission, it is neither necessary nor desirable to prescribe requirements in respect of pre-trade transparency or execution methods that would apply in the absence of a trading obligation.

IV <u>CanDeal Response to Questions</u>

Although CanDeal's comments will address a number of areas, we have re-ordered the sequencing of questions on which comment has been solicited by the Committee in order to address the topic of mandatory trading first. We believe the issue of mandatory trading is fundamental and influences the approach to be taken to other major issues.

Question 23: Trading Obligation

1. The Committee has previously released for comment a consultation paper and rule that will require the mandatory clearing of OTC derivatives. CSA member jurisdictions have also implemented or will implement rules requiring the reporting of OTC derivatives transactions to trade repositories. Accordingly, the CSA has taken steps to mandate the clearing and reporting of OTC derivatives transactions, in line with Canada's G20 commitment.

2. From a policy perspective, of the three principal elements of G20 reform (electronic trading, clearing and reporting), the most important is trading in that the supply chain of information begins with the electronic trade. It is the trade that triggers events related to reporting and clearing. It is the electronic trade that facilitates efficient reporting and efficient clearing; an electronic trade is effectively a matched trade and therefore acceptable as such for a central clearing party (CCP) (some, if not all require or at least prefer a matched trade prior to 'entry' into the CCP). Also, risk mitigation begins at the point of the trade, and the electronic trade is by far more risk compliant than a telephonic trade in terms of internal risk transparency, timeliness and error reduction.

3. With respect to the trading component of the G20 commitment, the Committee recommends in the Consultation Paper "that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF". The Committee also recommends factors that the CSA consider in determining whether to require a class of OTC derivatives to be traded exclusively on a DTF. Notwithstanding this statement of general principle, the Committee adds that it does not have "sufficient data with respect to liquidity levels in the OTC derivatives market in Canada to be able to assess whether the introduction of mandatory DTF trading for a particular class of OTC derivatives would be appropriate". The Committee goes on to state that it will not be in a position to recommend *any* OTC derivatives as suitable for mandatory trading until after trade reporting and clearing obligations have

been in effect for a period of time. The Committee further stipulates that even once sufficient information is in hand to make a determination, none shall be made until "consultation with other Canadian authorities and with the public" are completed. As will be set out in more detail below, CanDeal respectfully disagrees that there is insufficient data to assess whether mandatory trading is appropriate and submits that the introduction of a new trading venue for the multilateral platform trading of OTC derivatives must be accompanied by the concurrent imposition of an obligation to trade appropriate derivative instruments on that venue.

4. The Consultation Paper does not propose that a mandatory trading obligation accompany the creation of the DTF structure. Instead, the Committee proposes a DTF structure that is premised on the absence of a trading obligation in the first instance, with enhancement of certain standards relating to pre- and post-trade transparency and trade execution only when a trading obligation is eventually imposed.

5. In both the US and the EU, the implementation of a legislated trading obligation has driven the creation of new trading entities, not the other way around. Indeed, the trading obligation in both jurisdictions applies not only to the new categories of venues (swap execution facilities (**SEF**s) and organized trading facilities (**OTF**s) that have been created as a consequence of the trading obligation) but to existing trading venues (i.e. designated contract markets (**DCM**s) in the US, and regulated markets (**RM**s) and multilateral trading facilities (**MTF**s) in the EU). Both jurisdictions began implementation of the G20 commitment to move trading of standardized OTC derivatives onto organized platforms by requiring that sufficiently liquid OTC derivatives be traded on regulated multilateral platforms. Both jurisdictions have created new venues and their associated structures to the extent that implementation of the trading requirement has required that new trading venues be created. Simply stated, a trading obligation is the raison d'etre for such venues. Such venues have then been structured to define the parameters of the mandatory trading obligation on such platforms.

6. The purpose of a trading obligation is to increase transparency in the derivatives market, to improve the efficiency of the market by facilitating better price discovery and trade cycle processes, and to reduce risk. It is in this context that mandatory trading and associated pre-trade transparency and trade execution requirements have been prescribed. Neither of the US or EU regulators have created an entity that is to function in the absence of a trading obligation applicable to specified classes of derivatives.

7. Instead of the approach that regulators in the US and EU have taken, the recommendations in the Consultation Paper largely preserve the status quo in terms of OTC derivatives trading in Canada, at least until the specified preconditions for the imposition of a mandatory trading obligation have been satisfied. In the interim, participants will focus on satisfying foreign regulatory requirements where, for example, accessing a US person market-maker or market-taker is advantageous. Cross-border IRS transactions where at least one counterparty is a US person will gravitate to foreign-regulated electronic trading venues as an add-on where IRS subject to a MAT determination are trading. With no timetable for the imposition of such an obligation for any derivative instrument, market participants are unlikely to take any action to alter current domestic trading behaviours in anticipation of a Canadian change. The Committee's proposal leaves non-transparent single-dealer bilateral trading intact and Canada lagging.

8. In terms of what effect such a decision will have on Canadians and the Canadian OTC derivatives market, we believe that broadly speaking there will be four general impacts:

   A. In the absence of a trading requirement, the DTF framework will not be adopted by buy-side or other market participants.

B. The SEF framework will be the only option available to Canadians transacting in MAT derivatives with US persons.

C. Canada will cede control of the Canadian IRS market to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners.

D. A dangerous precedent will be set for the inevitable migration to mandatory electronic trading of all applicable OTC debt and deriviatives products.

These four impacts are discussed in more detail in paragraphs A to D below. Paragraph E discusses the existing evidence that the Canadian CAD$ IRS market is sufficiently liquid to support a trading obligation.

<u>A.In the absence of a trading obligation, the DTF framework will not be adopted</u>

9. In the absence of a trading obligation requiring Canadian participants to trade certain classes of derivatives on DTFs, existing Canadian bilateral trading facilities and relationships will be unaffected by the CSA proposals. There will be little reason for Canadian participants to abandon their current opaque bilateral trading methods and practices which are substandard in terms of risk mitigation, price discovery and transparency. It should be recalled that these characteristics are some of the very factors that contributed to the financial crisis. History has already demonstrated that OTC derivatives market participants prefer, in the absence of being required to do otherwise, to transact bilaterally and non-transparently for a variety of reasons. Nothing in the CSA proposals will provoke a positive change from the opaque telephonic market dynamic for OTC derivatives transactions to which one or both counterparties are Canadian, as there is no incentive for change in the absence of a requirement to change; whereas other jurisdictions have addressed their G20 commitments in order to mitigate risks and advance the public interest in stable financial markets.

10. The reason that the US and EU have not created new trading entities that are to function in the absence of a trading obligation is that the creation of such entities simply would not make sense in the absence of such an obligation. The derivatives market has not organically embraced multilateral trading, as has been the case from the early days in equities markets and commodity markets. The derivatives market instead organically developed around an OTC trading model where bilateral dealer-to-client trading became the norm.

11. The transition of OTC derivatives to electronic multilateral trading platforms is not a case of “if you build it, they will come”. Experience in the US and EU demonstrates clearly that participants will avoid more transparent, multilateral trading of derivatives unless it is required. Indeed, since the advent of the trading obligation in the US for MAT derivatives on SEFs, liquidity has fragmented into virtually watertight EU and US blocs as EU participants refuse to deal with US persons for fear of exposure to US SEF rules. This liquidity fragmentation is a direct result of the EU having lagged behind the US in imposing its corresponding trading obligation. EU market participants have changed their behaviour in order to avoid having to transact on SEFs, dealing more exclusively with other EU participants in EUR IRS in order to avoid dealing with US persons and the SEF trading mandate. The EU trading obligation is not scheduled to come into effect until early 2017 and EU market participants have shown that they will avoid the stiffer rules regarding pre-trade transparency and multilateral trading until it is forced on them

by EU regulators. The CFTC even offered no-action relief to EU MTFs that were prepared to adopt rules similar to US SEF rules, and no EU MTF applied to the CFTC under the relief.[1]

B.The SEF framework will be the only option available to Canadians trading MAT derivatives

12. The Bank for International Settlements' triennial survey of IRS for 2013 indicates that more than 75% of Canadian IRS trading is cross-border in nature[2] and that almost 50% of Canadian IRD trading is denominated in currency types, classes of which are included in the existing MAT derivatives list[3]. Canadian market participants who deal with US persons in MAT IRS are required to trade such derivatives on SEFs, there being no regulatory equivalent to a SEF in Canada. The CFTC has opened the door to substituted compliance in the case of SEFs by offering no-action relief to MTFs that adopt certain of the standards applicable to SEFs. Under the current proposals, the Committee is not proposing a comparable regulatory framework for a Canadian trading platform that would enable Canadian participants to use the domestic platform to enter into cross-border transactions with US persons in MAT derivatives on the basis of substituted compliance. Consequently, the Committee proposal would cede the cross-border market in MAT IRS to SEFs.

13. Of equal importance as a practical matter is that Canadian counterparties to MAT derivatives will have no incentive to use a DTF for such transactions in the absence of a regulatory requirement to trade such instruments on DTFs. By failing to enact the equivalent in Canada of the trading requirement in the US for MAT derivatives, Canadian counterparties to such transactions would continue to be required to trade through SEFs, thus driving potential Canadian business exclusively to non-Canadian platforms

14. The current proposals thus consign any multilateral Canadian platforms for the multilateral trading of liquid vanilla derivatives to also-ran status. Lacking the ability to serve Canadian participants for their cross-border transactions in mandated classes of derivatives, such platforms would essentially be empty storefronts. In proposing a DTF without a concurrent trading mandate, the Committee would create a shell without a purpose by exporting MAT derivatives trading by Canadians to US markets.

15. Given the factors stated above, any delay in imposing a trading requirement in respect of suitable classes of derivatives in Canada will seriously prejudice any Canadian trading venue operator or start-up entity that wishes to enter the multilateral derivatives trading space.

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[1] According to an ISDA study released in July 2014, the average volume of EUR IRS transacted between European dealers as a percentage of total EUR IRS volume increased from 75% in September 2013, before mandatory SEF trading, to 93% by May 2014 after the MAT determinations for SEFs came into effect. The average cross-border volume of EUR IRS transacted between European and US dealers as a percentage of total EUR IRS volume decreased from 25% in September 2013 to 6% by May 2014. Whereas the market for EUR IRS has a more global character and is thus more prone to fragmentation, the market for USD IRS is US-centric: Gyntelberg and Upper, *The OTC interest rate derivatives market in 2013*, BIS Quarterly Review, December 2013 at pp. 75-76. Accordingly, SEFs are USD-centric liquidity pools, with USD IRS trades accounting for over 80% of IRS volume traded on these platforms in December 2014: Clarus Financial, *December Volumes in Interest Rate Swaps*, January 5, 2015. Nevertheless, trading volume in EUR IRS on SEFs decreased from from 13% before the MAT determinations came into effect to only 4% in December 2014.

[2] Bank for International Settlements, *Triennial Central Bank Survey, Interest rate derivatives market turnover in 2013*, December 2013 (**BIS Report**), at p 16.

[3] BIS Report, pp. 8-13.

C.Canada will cede control of the Canadian IRS market to first-mover trading systems originated, controlled and regulated outside of Canada, essentially conceding the multilateral derivatives trading market to foreigners.

16. Experience with SEFs to date does show, however, that once mandatory trading forces participants onto a multilateral platform, those participants will execute transactions in other liquid swaps on the platform even if not subject to a trading mandate because their workflow has been designed around compliance with the rules of the platform. Data from the USA demonstrates that US persons have come to execute CAD$ IRS on SEFs in significant volumes even though such instruments are not subject to mandatory SEF trading. The compliance effort required by a mandatory trading obligation appears to “magnetize” transactions in other swaps for which liquidity is available to the platform.

17. If there is no mandatory trading obligation in Canada for CAD$ IRS, the moment US regulators decide to make classes of CAD$ derivatives MAT, the market in such classes of instruments will be ceded to foreign marketplaces and regulators. Canadian regulators will be forced to follow suit and introduce mandatory trading but, from a practical perspective, the market will already have been ceded to first-mover foreign entities who have been developing an active market in CAD$ IRS for some time. The introduction of viable DTF participants at such a point will be unlikely to gain traction.

18. The Committee proposal would also cede the cross-border market in sufficiently liquid classes of derivatives as determined by EU regulators and to which Canadian participants are counterparties to the MTFs and OTFs on which trading of such derivatives classes by EU participants will soon be mandatory.

D.A dangerous precedent will be set for the inevitable migration to mandatory electronic trading of all applicable OTC debt and derivatives products.

19. As a significant portion of Government of Canada bond secondary market activity is intrinsically linked to CAD$ IRS trading as ‘Swap Spread versus Government of Canada Bond’ trades, the Canadian marketplace for cash bonds will be influenced by the rules and regulations governing the IRS trading platforms. Hence, as the SEF model is either adopted by or forced upon Canadians as no substituted compliance alternative exists, the SEF rules will influence the trading and liquidity protocols governing a significant portion of the Canadian Government debt markets. By way of illustration, when a participant executes a swap trade in a MAT derivative against a cash bond (‘Swap Spread versus Bond’ trade), the two sides of the trade are packaged and executed simultaneously, thereby eliminating risk. Under SEF rules, a trade must go to a minimum of three dealers; as a consequence of which, the cash bond is subject to the same protocol.

20. The healthy operation of the Government of Canada bond market is a critical component of Canadian financial infrastructure and essential to the funding capabilities of corporate Canada and all levels of government. This market—which is similar to the IRS markets in Canada, being cross-border in nature—has begun to adopt electronic trading and it seems only a matter of time before either domestic or foreign regulators consider mandatory electronic trading in the OTC cash markets (see ESMA discussion paper). Ceding control of the derivatives markets at this point sets a dangerous precedent with unintended consequences in the OTC cash markets.

E.The Canadian CAD$ IRS Market is Sufficiently Liquid to Support a Trading Obligation

21. The trading of US dollar-denominated (**USD**) derivatives subject to MAT determinations on SEFs since the advent of mandatory trading in February 2014 has irrefutably established the viability of multilateral trading of MAT derivative classes, including classes of USD IRS and USD credit default swaps (**CDS**). US market participants have clearly adopted SEF trading and its benefits of risk mitigation, transparency, price discovery, and deep pools of liquidity. Data shows that while approximately $1 trillion a month in USD IRS was traded on-SEF in the first months after the MAT determinations came into effect, a significant pick-up of more than 40% in volume occurred from September onwards with approximately $1.5 trillion traded per month and record on-SEF volumes recorded in each of September, October and December.[4] Indeed, the success of SEFs in increasing buy-side trading of standardized derivatives shows that liquidity has in fact formed around these marketplaces.[5]

22. It is not only USD derivatives that are sufficiently liquid for mandatory multilateral trading. Existing data available to Canadian regulators demonstrates that there is sufficient liquidity in certain classes of CAD$ IRS to warrant a trading requirement in respect of such classes. This data is examined in detail in Appendix A to this comment letter. The Canadian CAD$ IRD market ($4 trillion in volume traded annually) is approximately half the size of the CAD$ bond market in terms of secondary market turnover. When considering the entire Canadian IRD market ($8.5 trillion in volume traded annually), it is equal in size to the CAD$ bond market in terms of secondary market turnover. [6]

23. CanDeal, which executed approximately $2.4 trillion in volume in 2014, has proven that its multilateral bond ATS can deliver risk mitigation, transparency, price discovery, and deep pools of liquidity even with a much smaller market size than that which exists for Canadian CAD$ IRD.

24. US swap data repository (**SDR**) data shows that CAD$ IRS are transacted in significant volumes on SEFs using multilateral execution methods. These include both fixed-floating and overnight index swaps (**OIS**) categories. The data shows that more than 50% of US CAD$ IRS transaction volume trades on SEFs[7]. This data is significant because the US CAD$ IRS market is virtually the same size as, in fact is even slightly smaller than, the Canadian CAD$ IRS market[8]. The existence of liquidity in the US CAD$ IRS market is therefore a sure indicator of liquidity in the Canadian CAD$ IRS market. By this measure, approximately 50% of the Canadian CAD$ IRS market by notional volume is sufficiently liquid to support the imposition of a trading obligation in Canada in respect of the instruments that comprise such volume.

25. The evidence of Canadian CAD$ IRS liquidity that may be gleaned from the US data is even stronger than this, however. US CAD$ IRS transactions are reported to US SDRs because US persons are counterparties to them. However, the other counterparty to many of these transactions is Canadian. That is because much of the volume in CAD$ IRS is cross-border. According to the BIS Report, 83% of CAD$ IRS transactions with buy-side participants were cross-border during the study period. In addition, the BIS data shows that more than 90% of cross-border CAD$ IRS transactions were executed in the US, i.e. with a US counterparty. This shows that many on-SEF US CAD$ IRS transactions are also Canadian CAD$ IRS transactions and that much of the US liquidity in CAD$ IRS is supplied by Canadian dealers. The liquidity

[4] http://www.clarusft.com/a-review-of-2014-us-swap-volumes/
[5] http://www.clarusft.com/a-review-of-2014-us-swap-volumes/
[6] http://www.bis.org/publ/rpfxf13irt.pdf
[7] See Appendix A.
[8] *Ibid.*

demonstrated by SEF trading of CAD$ IRS is therefore liquidity to which a Canadian trading obligation should apply.

26. In addition to the US data, the European Securities and Markets Authority (**ESMA**) has determined there is a liquid market in various classes of CAD$ IRS cleared by EU CCPs. The liquid classes include: (i) 6-month to ten-year tenors of fixed-floating CAD$ IRS; and (ii) one- and two-year CAD$ OIS.[9]

27. In CanDeal's submission these findings support the conclusion that there is sufficient liquidity in these classes of CAD$ IRS to warrant the imposition of a trading requirement.

Question 16: Pre-Trade Transparency

28. CanDeal is in agreement with the position taken in the Consultation Paper that pre-trade transparency requirements should not apply to transactions in OTC Derivatives on DTFs which have not been mandated to be traded on DTFs. Such OTC Derivatives will continue to trade bilaterally (voice trades, single-dealer platform, etc.) without a pre-trade transparency requirement. To prescribe pre-trade transparency requirements would disadvantage DTFs and ensure that participants continue to favour bilateral trading methods ensuring minimal participation on the DTFs.

29. With respect to pre-trade transparency for those OTC Derivatives which are mandated to trade on DTF, CanDeal accepts that while a measure of pre-trade transparency is required, it should not come at the expense of liquidity or efficient pricing. CanDeal's RFQ platform is successful because it permits buy-side participants to choose which liquidity provider or providers it wishes to secure quotes from. A buy-side participant may choose to request a quote from some, but not all, liquidity providers—or indeed even only one liquidity provider—and responding quotes are known only to the requestor. In this way, a buy-side participant is enabled to make their own decision between the benefits of more pre-trade transparency (i.e. more dealers included in the RFQ) and the detrimental effect on pricing and investment strategy resulting from excessive exposure. The CSA must be careful to calibrate pre-trade transparency requirements in such a way as to not negatively impact liquidity or make products more expensive to buy-side participants.

30. The EU approach to pre-trade transparency, for example, calibrates requirements to take into account the differing characteristics of various trading systems, including order-book, quote-driven, hybrid, periodic auction trading and voice trading systems. Where an order book is used, the venue will be required to make public the aggregate number of orders and the volumes they represent at each price level, for at least the five best bid and offer price levels. Where an RFQ system is used, the bids and offers and attached volumes submitted by each responding entity must be made public, although the quotes are executable exclusively by the requesting participant. Where streaming quotes are provided, the best bid and offer by price of each market maker in that instrument, together with the volumes attached to those prices, must be published.

31. Where a voice trading system is used, the information that must be made public is the bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system. The definition does not incorporate the concept of exclusivity in either party to the transaction, so other participants can participate in the price formation process on the basis of this

[9] See Appendix A.

information. The proposed standards do not set out a specific period of time for which such information must rest on the system before the orginal parties may execute on it. The requirement to make public bids and offers implies that the operator of a voice trading system will need to make use of electronic means in order to comply with the pre-trade transparency requirement. Each of the pre-trade transparency requirements is qualified by the condition that the trading systems to which they apply bring together multiple third-party buying and selling interests.

32. The details of the proposed EU approach to pre-trade transparency as set set out above have not been included in the Consultation Paper. Footnote 77 of the Consultation Paper makes reference to "forthcoming" ESMA technical standards. However, the technical standards were in fact published for final consultation in ESMA's *Consultation paper on MiFID II/MiFIR*, December 19, 2014, at pp. 206-208 based on draft technical standards published in ESMA's *Discussion Paper MiFID II/MiFIR*, May 22, 2014 at pp. 148-154. A more detailed summary of the EU technical standards relating to pre-trade transparency is attached as Appendix B to this comment letter. A summary of the EU technical standards related the criteria for determining whether derivatives should be subject to the trading obligation is attached as Appendix C.

33. CanDeal notes that concerns have been expressed by EU participants to the proposals in relation to RFQs, particularly with respect to making responses to RFQs public. If a liquidity provider is obligated to publish a price quote publicly and then honour that price to subsequent clients, providers will become cautious and reluctant to provide quotes, resulting in widened bid-offer spreads.

34. The US approach to pre-trade transparency obviates those concerns by stipulating that quotes provided in response to an RFQ be known only to the requester. SEFs are not required to disclose responses to RFQs to all market participants. The SEF rules ensure an adequate level of pre-trade transparency by also requiring that a SEF provide the RFQ requester: (1) with any firm resting bid or offer in the same instrument from any of the SEF's order books at the same time as the first responsive bid or offer is received by the RFQ requester and (2) with the ability to execute against such firm resting bids or offers along with the responsive orders. The requester retains the discretion to decide whether to execute against the resting bids or offers or responsive orders. This communication requirement promotes pre-trade price transparency and the trading of swaps on SEFs, as the RFQ requester will have the ability to access competitive quotes and quote providers will be able to have their quotes viewed by the RFQ requester. The SEF rules do not impose a specific requirement that the identity of the RFQ requester be disclosed or anonymous. The rules also do not provide a specific requirement regarding the publishing of the "request" for a quote. However, a RFQ system must permit RFQ requesters the option to make an RFQ visible to the entire market.

35. In the Consultation Paper, the Committee summarizes the US approach to pre-trade transparency as follows:

> The US approach to pre-trade transparency is to (i) require SEFs to provide an order book on which market participants may make executable bids or offers which are displayed to all participants, (ii) require an RFQ to be disseminated to a minimum number of liquidity providers, and (iii) require dealers to "show" other market participants the terms of a prearranged order book trade between customers or between themselves and a customer through the 15-second rule.

36. The US therefore takes the approach that the components of the prescribed execution methods determine the level of pre-trade transparency associated with each method, whereas the EU approach is to specify the information that must be made public in the case of each of several defined execution methods. Although both approaches essentially solve the same problem albeit through different methods, in Candeal's view the US approach is to be preferred for several reasons. First, the pre-trade transparency regime in respect of MAT derivatives has been in operation for over a year and is therefore a known quantity. Participants have adapted to the rules and volume has steadily grown. Second, this form of pre-trade transparency has been the standard in electronic bond trading for over a decade in Canada and the US. Thirdly, the majority of derivatives trades in Canada are cross-border and by far the majority of those trades are with US persons. Canadian participants will in many cases therefore already be familiar with the US rules through being required to execute transactions in MAT derivatives with US persons on SEFs. Fourthly, uniformity of regulation will reduce the possibility of regulatory arbitrage and minimize evasion. Finally, DTFs will have a better chance of qualifying for substituted compliance in the US as SEFs to the extent that they wish to expand their offering to US persons so that transactions with such persons initiated by Canadian persons who deal with the DTF for CAD$ denominated derivatives may also be completed on DTFs.

37. The US approach to pre-trade transparency, particularly in the context of RFQ systems, also strikes an appropriate balance between efficient price formation and pre-trade information, on the one hand, and concerns about information leakage in the event that pre-trade information was to be more broadly disseminated (subject to CanDeal's comments about a dealer minimum to be addressed below in the execution methods section of this comment letter).

Question 3: Permitted Execution Methods

38. The Committee sets out a number of execution methods that would be "permitted" to be used by a DTF in the absence of the imposition of any trading requirement: Consultation Paper on pp. 818-19. These recommendations form part of the CSA's conceptual approach to the DTF as a trading entity that is intended to operate in the first instance in the absence of any trading obligation. DTF rules relating to pre- and post-trade transparency and trade execution would be enhanced only when a trading obligation was imposed. In CanDeal's submission, permitted execution methods should only apply where a trading mandate exists.

39. In both the US and the EU, execution methods are prescribed solely in connection with a mandatory trading obligation. Neither jurisdiction prescribes "permitted" execution methods to apply where derivatives are not subject to a trading obligation. In the US, derivatives transactions that are not required to be executed on a SEF may be transacted using "any method of execution". This enables traditional bilateral methods of execution to continue to be used for derivatives transactions that are not subject to the mandatory trading obligation. Similarly, under the EU proposals, transactions that are not required to be traded on multilateral platforms (RMs, MTFs or OTFs) are not subject to execution requirements.

Question 4: Required Execution Methods:

40. For the reasons given above, the Committee should recommend that execution methods for transactions executed on a DTF should be prescribed only for derivatives transactions that must be executed exclusively on a DTF. Such execution methods should be imposed either directly or through pre-trade transparency requirements that essentially dictate the parameters of the permissible

execution methods.[10] It is submitted that the Committee's discussion of "Permitted Execution Methods" should be replaced by a more prescriptive version of the discussion of execution methods that may apply after a trading obligation is imposed, under the heading "Enhanced requirements where derivatives are subject to a DTF-trading mandate" on pp. 828-829.

41. CanDeal would not object to a provision specifying that an order book be offered by a DTF as a minimum trading methodology. Experience during the first year of mandatory trading on SEFs indicates that while order books have not yet gained significant traction per se among dealer-to-client SEFs, the ability of a requesting participant under an RFQ to execute on any resting bids or offers on an order book or, at its option, a quote in response to the request enhances competitive pricing and improves pre-trade transparency and liquidity. The SEFs that have made the most significant gains in market share and transaction volume since the initiation of mandatory trading (Tradeweb, for example) still see that liquidity makers and takers prefer RFQ as their predominant execution method. Experience to date indicates that in the dealer-to-client space, RFQ remains the overwhelming choice for execution method despite the existence of an order book. Nevertheless, an order book operating in conjunction with an RFQ system may be a valuable tool for price discovery and pre-trade transparency, and recent data indicates that order book trading is slowly increasing on SEFs, particularly as SEF trading moves products toward greater standardization.

42. In CanDeal's view, an appropriately tailored RFQ system operating in conjunction with an order book should be a permissible method for executing transactions subject to the trading requirement. As to the components of such a system, CanDeal is of the view that the applicable requirements in the US, adjusted for each currency type, are suitable for adoption in the DTF framework. In order to address concerns about liquidity and potential information leakage in the smaller CAD$ IRS market, however, it would be appropriate to limit the dissemination requirement to at least two liquidity providers, except in the case of IRS covered by MAT determinations, which would remain at a minimum of three in order to permit DTFs to qualify for substituted compliance in the US.

43. For the same reason, the US provisions relating to prearranged transactions negotiated on a bilateral basis should also apply to the DTF execution regime. Such transactions in derivatives subject to mandatory trading on DTFs should be required to be displayed on a DTF's order book for a minimum period, either 15 seconds or such other period approved by regulators, prior to execution, in order to permit best price, pre-trade transparency and multilateral trading objectives to be achieved.

Question 17: Post-Trade Transparency

44. In CanDeal's view, the Committee should address post-trade transparency in relation to DTFs by reference to the requirements of the OSC Rule *Trade Repositories and Derivatives Data Reporting* (**TR Rule**). It is essential that the Committee not create asymmetrical requirements applicable to transactions not subject to a trading mandate and those required to be executed on DTFs. An asymmetrical reporting requirement will create an unlevel playing field as well as create uncertainty and thereby disadvantage DTFs. Participants would not choose to trade on a venue that imposes different

[10] In the EU, execution methods for derivatives subject to the trading obligation are prescribed through pre-trade transparency standards applicable to each execution method. In the US, the pre-trade transparency available in the case of a mandatory trade is a function of the prescribed execution method.

and more onerous rules and requirements than those applicable in their existing bilateral relationship and to incur the infrastructure costs that would be required to interact with such a platform.

45. The approach taken in the US in the case of SEFs illustrates the approach the Committee should take in Canada to the issue of post-trade transparency. While SEF structure, required execution methods and required pre-trade transparency are specified in the final SEF Rule, post-trade transparency requirements applicable to SEFs are governed by the CFTC's regulation that sets out the framework for the real-time public reporting of swap transaction and pricing data for all swap transactions. Under the real-time reporting rule, parties to a swap are responsible for reporting swap transaction information to the appropriate registered swap data repository in a timely manner, except in respect of swaps executed on a SEF pursuant to an obligation to do so. For such publicly reportable swap transactions executed on or pursuant to the rules of a SEF (or DCM), the parties satisfy their reporting obligation by executing the transaction on or pursuant to the rules of the facility. The SEF or DCM must then report the swap transaction and pricing data to the appropriate registered swap data repository for public dissemination. It is submitted that this is the approach the Committee should use in the case of DTFs.

46. In CanDeal's view, the considerations raised by the Committee in the Consultation Paper as to whether to require a DTF to disseminate the transaction data to the public directly, or require a DTF to report the transactions to a trade repository, and require the trade repository to disseminate the trade data to the public, do not arise. CanDeal notes that while the CSA refers to the US real-time reporting rule and MIFIR provisions regarding post-trade transparency, no reference is made to the TR Rule. It is submitted that questions of this nature ought to be decided in the setting of the TR Rule, and that requirements of DTFs should not differ from those applicable from dealers or counterparties subject to trade reporting requirements. To the extent that rules applicable to DTFs impose additional or more onerous requirements in relation to post-trade reporting, participants will avoid trading on DTFs to the extent possible. Participants would not want to trade on a platform that would result in differing reporting requirements if they chose to trade on it.

Question 18

47. This should be governed by the TR Rule, with emphasis that all market participants and entities required to report should be subject to the same obligations.

Question 19

48. Section 39(3) of the TR Rule provides for times lines in public dissemination of transaction data. The purpose of the public reporting delays is to ensure that counterparties have adequate time to enter into any offsetting transaction that may be necessary to hedge their positions. These time delays apply to all transactions, regardless of transaction size. Having regard to the delays provided for in the TR Rule, it is not necessary to prescribe any rules regarding deferred publication of trade information for DTFs. Having said that, the timing of public dissemination for transactions executed on DTFs should be no earlier than the standard applicable to transactions to which a derivatives dealer is a counterparty, i.e. by the end of the day following the day on which the designated trade repository receives the data. It is essential that a level playing field among the various reporting entities be preserved in order to preserve DTF liquidity and minimize evasion.

Question 22

49. Again, this should be governed by the TR Rule. DTF rules should not be more onerous in terms of trade reporting than other derivatives transactions. The variable scope of pre-trade transparency depending on execution method reflects the appropriate balance of policy considerations in terms of the benefits of disclosure relative to the risks associated with information leakage and associated potentially abusive trading strategies such as front-running, painting the screen or pre-arranged trading.

Question 1: Definition of DTF

50. The proposed definition is too narrow as it encompasses a facility that operates an order book only. It is overly reliant on para. (a)(iii) of the definition of “marketplace” in National Instrument 21-101 *Marketplace Operation*, which is appropriate to the trading of equities on an order book but does not capture more non-traditional execution methods used in respect of derivatives transactions, such as voice RFQ. The proposed definition is inconsistent with the proposals in the paper regarding permitted execution methods and is further inconsistent with the definitions of similar multilateral trading facilities for derivatives in the US and EU. Compare the US SEF definition, which takes into account the predominant RFQ execution method as well as other execution methods that incorporate “any means of interstate commerce”: “a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce”; and the EU OTF definition: “a multilateral system… in which multiple third party buying and selling interests in [derivatives] are able to interact in the system in a way which results in a contract”, which captures a broad range of execution methods and is expressly intended to capture all existing and foreseeably future ways in which derivatives transactions may be included. The key limiting factor applicable to the definition is the multilateral character of the facility. The definition in all other respects must be sufficiently broad to capture a wide range of trading methodologies and means of execution, including for example voice and email components.

Question 2: Discretion

51. In CanDeal’s view, a DTF should be based exclusively on an agency model and not permit discretion on the part of the operator of the platform.

We thank you for the opportunity to comment on the Consultation Paper and would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact Aubrey Baillie [redacted] [redacted] [redacted] or Debra MacIntyre [redacted] [redacted] [redacted].

Yours very truly,

“Aubrey Baillie”

Aubrey Baillie
Chief Financial Officer & Chief Compliance Officer
CanDeal.ca Inc.

Appendix A—Liquidity Analysis of Canadian CAD$ IRS Market

There is a wealth of existing data available to the Committee from authoritative sources that supports the conclusion that there is liquidity in certain classes of Canadian CAD$ IRS sufficient to impose a trading obligation at this time in respect of such instruments.

The market for IRS is by far the largest segment within the global OTC derivatives market[11].

Some of the sources CanDeal reviewed that support these conclusions include:

(i) Bank for International Settlements, *Triennial Central Bank Survey, Interest rate derivatives market turnover in 2013*, December 2013 (**BIS Report**)[12];

(ii) Bank for International Settlements, *Triennial Central Bank Survey OTC interest rate derivatives turnover in April 2013: preliminary global results*, September 2013 (**Preliminary BIS Report**);

(iii) Gyntelberg and Upper, "The OTC interest rate derivatives market in 2013", *BIS Quarterly Review*, December 2013, pp. 69-82 (**Gyntelberg**).

(iv) Futures Industry Association *SEF Tracker, Issue #9, October-December 2014*, February 2015 (**FIA SEF Tracker**);

(v) Clarus Financial, *A Review of 2014 US Swap Volumes* (**2014 SEF Report**);

(vi) Clarus Financial, *January Volumes in Swaps*, February 4 2015 (**January 2015 SEF Report**);

(vii) Clarus Financial, *February 2015 Review: ICAP vs. Bloomberg*, March 3, 2015 (**February 2015 SEF Report**);

(viii) Clarus Financial, SDRview database, http://sdrview.clarusft.com/# (**SDRview**);

(ix) ESMA, *Consultation Paper MiFID II/MiFIR*, December 19, 2014 (**ESMA CP**);

(x) European Central Bank, OTC Derivatives and Post-Trading Infrastructures, September 2009 (**ECB Report**);

The data reviewed by CanDeal from these sources supports the following findings:

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[11] ECB Report at p. 16.

[12] The BIS Report contains data concerning Canadian IRS and CAD$ IRS as of April 2013. Included in the BIS Report is detailed data on global, country-specific, currency-specific, and counterparty-specific turnover in IRD in April 2013. The BIS Report further segregates counterparty-specific data into domestic and cross-border volume by currency. The unit of measure in the BIS Report is average daily turnover, which may be annualized through simple extrapolation. The data is further broken down among the various classes of IRD, namely, IRS, FRA and IRS options.

1. The market for CAD$ IRS is undeniably large enough to sustain a liquid market. When one compares the known market for the two most standardized classes of IRS, fixed-floating and OIS, to other liquid markets in Canada, the answer seems obvious.

2. CAD$ IRS are transacted in significant volumes on SEFs using multilateral execution methods. These include both fixed-floating and OIS categories.

3. Canadian participants executed significant portions of their IRS trade volume in currencies which are included in the MAT list, as the BIS Report shows.

4. The demand for CAD$ IRS comes predominantly from the US and Canada, with smaller participation from EU participants, as the BIS Report shows.

5. European Securities and Markets Authority (**ESMA**) research has determined there is a liquid market in various classes of CAD$ IRS. The liquid classes include: (i) 6-month to ten-year tenors of fixed-floating CAD$ IRS; and (ii) one- and two-year CAD$ OIS.

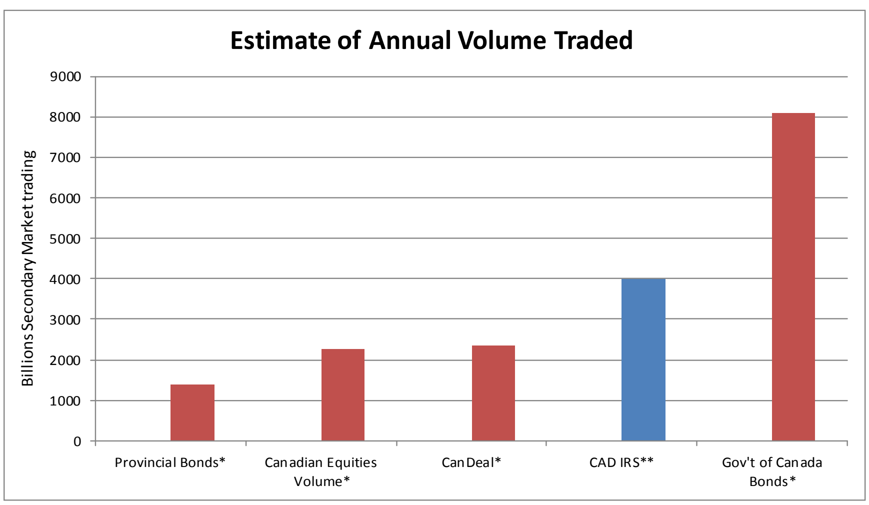
In CanDeal's submission these findings support the conclusion that there is sufficient liquidity in these classes of CAD$ IRS to warrant the imposition of a trading requirement in respect of such classes applicable to Canadian counterparties.

The basis for each of these findings is set out below.

1. The market for CAD$ IRS is undeniably large enough to sustain a liquid market.

A review of secondary market trading across a number of Canadian markets shows that the CAD$ IRS market is one of the largest markets by dollar volume in Canada (Figure 1).

Figure 1

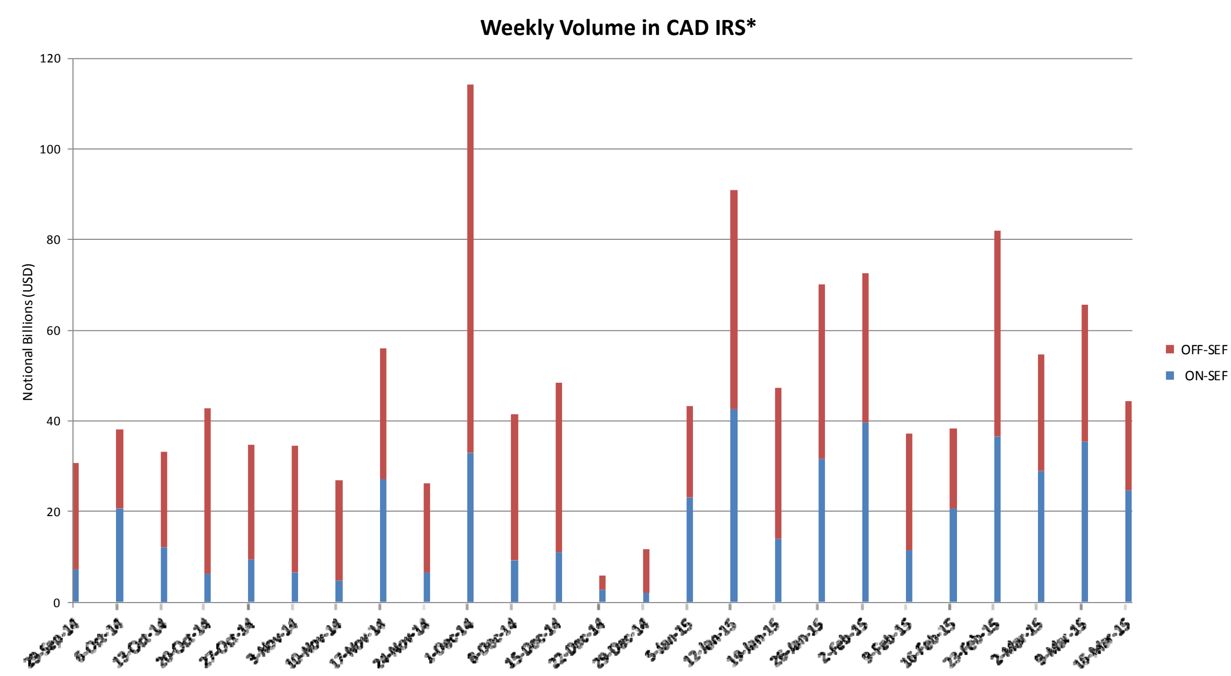


* Based on published actual 2014 volumes, various sources
** Annualized estimate based on CAD$ Fixed-Float IRS and OIS trade data collected from ESMA report on trades from March 1 - May 31, 2014.

2. CAD$ IRS are Transacted in Significant Volume on SEFs

US swap data depository (SDR) data sets out the current volume of CAD$ IRS transactions reported by US dealers to which one or both counterparties are US persons (**US CAD$ IRS**). According to the SDR data, $1.2 trillion was transacted in US CAD$ IRS during the past 6 months[13]. Of this total, $850 billion was in fixed-float IRS and $354 billion in OIS. Over that period $483 billion or 40% of that volume was executed on-SEF (Figure 2).

Figure 2



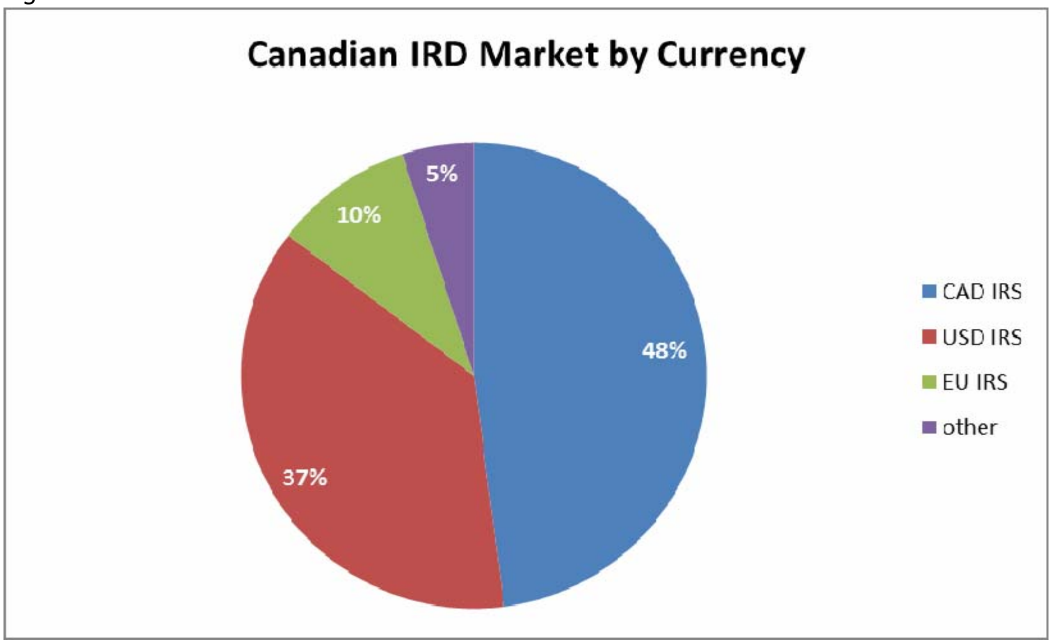
* CAD IRS SWAP: FixedFloat and CAD IRS SWAP: OIS. Source is Clarus SDR View application.

[13] The 126-trading-day period from October 1, 2014 to March 25, 2015.

3. Canadian participants executed significant portions of their IRD trade volume in currencies which are included in the MAT list

The BIS Report was based on one month of data (April 2013). This data states that 37% of IRD volumes executed by a Canadian (Canadian IRD) were denonimated in USD, 10% of IRD volumes executed by Canadians were denominated in Euro and 3% were denominated in GBP. At the time the volume in these MAT currencies executed by Canadians was about $17 billion daily or over $4 trillion annualized (Figure 3).[14]

Figure 3



[14] BIS Report, pp. 8-10, 13.

4. The demand for CAD$ IRS comes predominantly from the US and Canada with smaller participation from EU participants, as the BIS Report shows

The US data is significant because the volume of US CAD$ IRS is virtually the same as, in fact even slightly smaller than, the size of the Canadian CAD$ IRS market. Accordingly, the existence of liquidity in the US CAD$ IRS market is a sure indicator of liquidity in the Canadian CAD$ IRS market. The US SDR data shows that more than 50% of US CAD$ IRS transaction volume is sufficiently liquid to trade on SEFs. Given that the Canadian CAD$ IRS market is the same size, or perhaps slightly larger, it follows that approximately 50% of Canadian CAD$ IRS volume is sufficiently liquid to support the imposition of a trading obligation in Canada in respect of the instruments that make up that volume.

The evidence of Canadian CAD$ IRS liquidity is in fact even stronger than that indicated by the above analysis would indicate. US CAD$ IRS transactions are reported to US SDRs because a US person is a counterparty to them.[15] However, the other counterparty to many of these transactions is Canadian. That is because much of the volume in CAD$ IRS is cross-border. According to the BIS Report, 83% of CAD$ IRS transactions with buy-side participants were cross-border during the study period[16]. In addition, 88% of Canadian IRS transactions with buy-side participants were cross-border.[17] This data suggests that much of the liquidity provided for US CAD$ IRS is from Canadian dealers. Many US CAD$ IRS transactions would also therefore be Canadian CAD$ IRS transactions. The liquidity indicated by SEF trading is therefore directly applicable to CAD$ IRS transactions to which a Canadian trading obligation would apply. It may therefore also be concluded that the US data in fact directly reflects the liquidity of Canadian CAD$ IRS.

[15] The data on US CAD$ IRS consists of transactions reported by US dealers under CFTC real-time swap reporting rules. The data does not include dealer-reported Canadian CAD$ IRS transactions as these are not yet subject to public dissemination.
[16] BIS Report, p. 2, "other financial institutions" breakdown between local and cross-border.
[17] BIS Report, p. 16, "other financial institutions" breakdown between local and cross-border.

5. EU Data Confirms Liquidity of Classes of CAD$ IRS

The ESMA CP contains extensive analysis as to whether a "liquid market" exists in IRS of nearly every class and currency based on data reported to trade repositories by EU CCPs (including by LCH.Clearnet, the global IRS clearing market leader. The volume of CAD$ IRS transactions included in the ESMA data (approximately $14 billion per day) represents more than half of the global CAD$ IRS volume of approximately $26.8 billion per day. Among the conclusions drawn by ESMA from this data set are the following[18]:

(i) there is a liquid market in 6-month to ten-year tenors of fixed-floating single-currency CAD$ IRS;.

						Criteria applied for liquidity classification	Min values across liquid classes
Num of trades per day						2.00	1.20
Notional Amount per day						100,000,000	76,167,945
FIXED TO FLOAT SINGLE CURRENCY SWAPS	Num of trades	Num of trades per day	Num of days traded	Notional Amount	Notional Amount per day	Liquidity Flag	Final Liquidity Flag
FIXED-FLOATING__CAD__2 years	1,368	21.05	65	172,222,033,191	2,649,569,741	Liquid	Liquid
FIXED-FLOATING__CAD__3 years	1,638	25.20	63	162,934,502,383	2,506,684,652	Liquid	Liquid
FIXED-FLOATING__CAD__4 years	1,037	15.95	63	87,376,711,838	1,344,257,105	Liquid	Liquid
FIXED-FLOATING__CAD__5 years	1,741	26.78	63	111,125,983,859	1,709,630,521	Liquid	Liquid
FIXED-FLOATING__CAD__6 years	2,193	33.74	64	116,948,924,404	1,799,214,222	Liquid	Liquid
FIXED-FLOATING__CAD__7 years	491	7.55	58	28,735,026,157	442,077,325	Liquid	Liquid
FIXED-FLOATING__CAD__8 years	341	5.25	59	24,592,149,074	378,340,755	Liquid	Liquid
FIXED-FLOATING__CAD__9 years	451	6.94	62	15,487,704,002	238,272,369	Liquid	Liquid
FIXED-FLOATING__CAD__10 years	1,104	16.98	61	25,665,969,552	394,861,070	Liquid	Liquid
FIXED-FLOATING__CAD__11 years	1,698	26.12	64	37,963,663,410	584,056,360	Liquid	Liquid
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FIXED-FLOATING__CAD__6 months	499	7.68	53	101,803,198,464	1,566,203,053	Liquid	Liquid
FIXED-FLOATING__CAD__1 year	719	11.06	64	108,972,568,520	1,676,501,054	Liquid	Liquid

(ii) nd there is a liquid market in one- and two-year tenors of CAD$ OIS.

						Criteria applied for liquidity classification	Min values across liquid classes
Num of trades per day						1.00	0.58
Notional Amount per day						50,000,000	58,031,528
OIS SINGLE CURRENCY SWAPS	Num of trades	Num of trades per day	Num of days traded	Notional Amount	Notional Amount per day	Liquidity Flag	Final Liquidity Flag
OIS__AUD__1.5 months	47	0.72	11	14,793,308,660	227,589,364	Illiquid	Illiquid
OIS__AUD__3 months	79	1.22	16	22,837,989,511	351,353,685	Liquid	Illiquid
OIS__AUD__6 months	225	3.46	47	102,098,499,731	1,570,746,150	Liquid	Illiquid
OIS__AUD__1 year	390	6.00	53	218,232,960,861	3,357,430,167	Liquid	Illiquid
OIS__AUD__2 years	60	0.92	33	18,769,152,684	288,756,195	Illiquid	Illiquid
OIS__AUD__3 years	4	0.06	4	773,288,555	11,896,747	Illiquid	Illiquid
OIS__BRL__3 months	5	0.08	2	1,238,816,652	19,058,718	Illiquid	Illiquid
OIS__BRL__6 months	2	0.03	2	999,944,069	15,383,755	Illiquid	Illiquid
OIS__BRL__1 year	246	3.78	20	9,547,376,473	146,882,715	Liquid	Illiquid
OIS__BRL__2 years	79	1.22	30	4,608,934,438	70,906,684	Liquid	Illiquid
OIS__BRL__3 years	355	5.46	41	3,021,912,980	46,490,969	Illiquid	Illiquid
OIS__BRL__4 years	7	0.11	5	661,794,900	10,181,460	Illiquid	Illiquid
OIS__BRL__5 years	1	0.02	1	4,092,987	62,969	Illiquid	Illiquid
OIS__BRL__6 years	1	0.02	1	6,615,001	101,769	Illiquid	Illiquid
OIS__BRL__7 years	157	2.42	23	348,417,391	5,360,268	Illiquid	Illiquid
OIS__BRL__9 years	4	0.06	2	164,696,779	2,533,797	Illiquid	Illiquid
OIS__CAD__1.5 months	20	0.31	6	16,336,548,982	251,331,523	Illiquid	Illiquid
OIS__CAD__3 months	10	0.15	6	10,627,773,336	163,504,205	Illiquid	Illiquid
OIS__CAD__6 months	52	0.80	17	41,608,467,354	640,130,267	Illiquid	Illiquid
OIS__CAD__1 year	152	2.34	38	98,990,133,944	1,522,925,138	Liquid	Illiquid
OIS__CAD__2 years	135	2.08	40	40,279,958,093	619,691,663	Liquid	Illiquid

ESMA qualifies these findings by stating that, while the criteria for determining which classes of derivatives should be subject to the EU trading obligation should follow a similar approach to that used for the determination of whether a "liquid market" exists, the thresholds should not necessarily be the

[18] ESMA CP, pp. 179-180, 195. Trade data collected from March 1 – May 31, 2014.

same.[19]. Nevertheless, the ESMA "liquid market" analysis is highly persuasive in determining whether there is sufficient liquidity in comparable classes of Canadian CAD$ IRS to support a trading obligation. This is because, of Canadian IRS transactions, $16.3 billion per day are CAD$ IRS, while the ESMA data covers approximately $14 billion in CAD$ IRS, or virtually the same volume.[20] Given that the notional volumes are nearly identical, the liquidity of the equivalent classes of Canadian CAD$ IRS is likely to be identical to the CAD$ IRS classes analyzed in the ESMA CP. In fact, a significant volume of Canadian CAD$ IRS is cleared by CCPs whose data was included in the ESMA analysis (e.g. LCH.Clearnet, recognized as a clearing agency by the OSC, AMF and other CSA jurisdictions, and of which all six major Canadian chartered banks are clearing members) and is thus directly reflected in the ESMA liquidity analysis.

[19] ESMA CP, pp. 337, 341.
[20] BIS Report, p. 8; ESMA CP, pp. 179-180, 191, 195, 199, 200, 204.

Appendix B: ESMA Technical Standards Relating to Pre-Trade Transparency

CanDeal provides the following summary of ESMA's *Consultation paper on MiFID II/MiFIR*, December 19, 2014, at pp. 206-208 (**EU Consultation Paper**) and the earlier technical standards proposals set out in ESMA's *Discussion Paper MiFID II/MiFIR*, May 22, 2014 at pp. 148-154 **(EU Discussion Paper)**.

The EU Consultation Paper summarizes the EU approach to pre-trade transparency as set out in the MIFIR text as follows:

> [T]he EU will require each regulated venue, including an OTF, to make public current bid and offer prices, and the depth of trading interests at those prices, for derivatives traded on its platform. An OTF must make this information available to the public on a continuous basis during normal trading hours; however, the requirement for public dissemination will not apply to hedging transactions. The range of bids and offers, and the depth of trading interest at those prices, to be made public for each class of financial instrument, including derivatives, is to be specified by ESMA in forthcoming technical regulations.
>
> Article 8(1) of MIFIR provides that the transparency requirements will also apply to actionable indications of interest. MIFIR further provides in Article 8(2) that the transparency requirements are to be calibrated by the trading system or protocol used by the trading venue in order to bring together multiple third-party buying and selling trading interests in a derivative. The different types of trading systems for which the requirements are to be calibrated include order-book, quote-driven, hybrid, periodic auction trading and voice trading systems.

In the EU Discussion and Consultation Papers, ESMA has taken the directive in the second paragraph above-quoted as the starting point for determining the appropriate level of pre-trade transparency. The same pre-trade transparency requirements, defined at the trading system level, are to apply equally to regulated markets, MTFs and OTFs. ESMA notes that in non-equities trading — often characterised by low and episodic trading activity – a variety of trading systems or protocols are commonly used and need to be defined. ESMA regards the definitions of RFQ and voice trading systems as key in determining the minimum amount of pre-trade information that must be offered. In the Consultation Paper, ESMA defines an RFQ system as:

> …[a] trading system where a quote or quotes are published in response to a request for a quote submitted by one or more other members or participants. The quote is executable exclusively by the requesting member or market participant. The requesting member or participant may conclude a transaction by accepting the quote or quotes provided to it on request.

ESMA regards the definition of RFQ as sufficiently broad to capture a variety of trading protocols sharing the same core characteristics. The definition would, for example, include request-for-stream systems whereby market makers provide continuous streaming of firm quotes to buy and sell financial instruments for a predefined period of time based upon the client's request.

ESMA defines a voice trading system as:

> [a] trading system where transactions between members are arranged through voice negotiation.

ESMA regards a voice trading system as a system where members or participants agree to conclude transactions on the basis of voice negotiation. Apart from the use of designated telephone lines, voice trading systems may include venues based on 'open outcry' trading floors. ESMA clarifies that in its view a voice trading system includes a system where technological assistance by way of, for example, texting, electronic chat rooms and instant messenger systems is employed in the negotiation and conclusion of transactions so long as the voice element is the essential or core part of the system.

A trading system that does not fall within the definition of RFQ or voice trading system and is of a hybrid or bespoke character falls into a further separate category for purposes of pre-trade transparency. ESMA has created this category to take into account the complexity of the non-equity markets and their possible evolution in the years to come.

Where a venue uses an order book, ESMA will require that the aggregate number of orders and the volumes they represent at each price level, for at least the five best bid and offer price levels, be made public.

Where streaming quotes are provided, the best bid and offer by price of each market maker in that instrument, together with the volumes attaching to those prices, must be published.

With respect to a RFQ system, the bids and offers and attaching volumes submitted by each responding entity must be made public. Although the quotes are executable exclusively by the requesting participant, the other participants see the quotes in real time.

In the case of a voice trading system, the information that must be made public is the bids and offers and attaching volumes from any member or participant which, if accepted, would lead to a transaction in the system. Since the definition does not incorporate the concept of exclusivity in either party to the transaction, presumably other participants can participate in the price formation process on the basis of this information. The proposed standards do not set out a specific period of time for which such information must rest on the system before the orginal parties may execute on it.

The requirement to make public bids and offers implies that the operator of a voice trading system will need to make use of electronic means in order to comply with the pre-trade transparency requirement to broadcast those bids and offers to the wider public and not only to the members or participants of the trading platform). However, use of electronic means does not imply that a hybrid system (as described above) is operated by a trading venue: the electronic means are used only to fulfil the pre-trade transparency requirements to the public.

Each of the foregoing pre-trade transparency requirements is qualified by the condition that the trading systems to which they apply be operated in line with the definition of the trading venues under MiFIR. In other words, the content of the requirements must be consistent with the fundamental characteristic of such multilateral trading venues that they bring together multiple third-party buying and selling interests.

ESMA goes on to prescribe technical standards that are to govern exceptions to the pre-trade transparency requirement. Although it is not necessary to go into any detail as to those in a comment letter, examples of situations in which exceptions will be available include block trades.

Appendix C: EU Criteria for determining whether derivatives should be subject to the trading obligation

Whether or not a class of derivatives subject to the clearing obligation should also be made subject to the trading venue will be determined by two main factors:

(a) The venue test: the class of derivatives must be admitted to trading or traded on at least one admissible trading venue; and
(b) The liquidity test: whether the derivatives are 'sufficiently liquid' and there is sufficient third party and selling interest.

ESMA has drafted technical standards to specify the criteria to be used in determining whether there is sufficient third-party buying and selling interest in a class of derivatives that the class is considered "sufficiently liquid" to trade on trading venues only.

MiFIR requires ESMA to consider a list of further criteria when making a determination regarding whether the class of derivatives (or subset) is "sufficiently liquid" to be subject to the trading obligation. In summary, these are: the average frequency and size of trades, the number and type of active market participants, the average size of spreads, the anticipated impact of the trading obligation on liquidity and the size of the transactions to which it should apply.

The definition of the liquidity test for the trading obligation is very similar to the definition of 'liquid market' for non-equities under the section of MIFIR relating to exemptions from pre-trade transparency requirements. ESMA proposes that the assessments for determining whether there is a 'liquid market' under the pre-trade transparency exemption and for the trading obligation should follow a similar approach but the thresholds should not necessarily be the same.

ESMA's preferred approach for calculating the average frequency of transactions criterion will be to set thresholds for both a minimum number of trades per day and a minimum number of days on which trading took place, over an 'assessment reference period', or specified period of time. ESMA considers that MiFIR does not intend to include portfolio compression and intragroup transactions within the scope of the trading obligation assessment or the transparency thresholds for exemptions.

ESMA's preferred approach for calculating the average size of transactions criterion will be the division of notional size by number of trading days during the specified period.

ESMA considers that the assessment reference period may need to vary depending on the class of derivatives. ESMA does not intend to introduce hard timeframes within its draft technical standards but allow maximum flexibility, noting that the assessment reference period will depend on both the class and the quantity and quality of data available for such classes.

ESMA will assess the criterion of number and type of active market participants by giving consideration to the number of members or participants of a trading venue involved in at least one transaction in a given market or where any member or participant of a trading venue has a contractual arrangement to provide liquidity in a financial instrument at least on one trading venue.
ESMA considers that the end-of-day spread provides a very limited snapshot as to average size of spreads. Therefore, ESMA proposes to use the average size of weighted spreads over different periods of time.

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30 March 2015

Re: Canadian Securities Administrators (CSA)
CSA Consultation Paper 92-401 – Derivatives Trading Facilities

The Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA) welcomes the opportunity to comment on behalf of its members on the Consultation Paper issued by the Canadian Securities Administrators on the 29 January 2015.

The GFXD was formed in co-operation with the Association for Financial Markets in Europe (AFME), the Securities Industry and Financial Markets Association (SIFMA) and the Asia Securities Industry and Financial Markets Association (ASIFMA). Its members comprise 24 global FX market participants,[1] collectively representing more than 90% of the FX inter-dealer market.[2] Both the

[1] Bank of America Merrill Lynch, Bank of New York Mellon, Bank of Tokyo Mitsubishi, Barclays Capital, BNP Paribas, Citi, Credit Agricole, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Lloyds, Mizuho, Morgan Stanley, Nomura, RBC, RBS, Société Générale, Standard Chartered Bank, State Street, UBS, Wells Fargo and Westpac.
[2] According to Euromoney league tables

GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

Introduction

The FX market is the world's largest financial market. Effective and efficient exchange of currencies underpins the world's entire financial system. Many of the current legislative and regulatory reforms have had, and will continue to have, a significant impact upon the operation of the global FX market, and the GFXD wishes to emphasise the desire of our members for globally co-ordinated regulation which we believe will be of benefit to both regulators and market participants alike.

The FX market is the basis of the global payments system. The volume of transactions is therefore very high and these transactions are often executed across geographical borders. As reported by the Bank of International Settlements in their Triennial Central Bank Survey: Foreign Exchange Turnover in April 2013[3] over 75% of the FX activity was executed by market participants across 5 global jurisdictions, hence the continued view from the GFXD that regulations should be harmonized at the global level. Cross border markets cannot operate in conflicting regulatory landscapes and the natural outcome, should this be the case, is unwanted fragmentation of what is an already highly automated and transparent FX market. Canada presents a more granular harmonization challenge and we recommend that the CSA prioritises the harmonisation of legislation, both across provinces and at the international level.

Many of the current legislative and regulatory reforms will have a significant impact upon the operation of the global FX market and we feel it is vital that the potential consequences are fully understood and that new regulation improves efficiency and reduces risk, not vice versa. The GFXD welcomes the opportunity to set out its views in response to your consultation paper.

****

Q1. Is the DTF category appropriately defined? If not, what changes are needed and why?

We support the submission made by the International Swaps and Derivatives Association, Inc (ISDA).

Q2. Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

We support the submission made by ISDA.

Q3. Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

We acknowledge that the permitted execution methods outlined in the paper are only examples, rather than an exhaustive list. In order to prevent market disruption due to the application of conflicting regulatory obligations in one region versus another, we believe it is important that the final text recognises such challenges.

[3] http://www.bis.org/publ/rpfx13fx.pdf

The FX derivative market is largely OTC, operating on a Request for Quote (RFQ) basis and on a discretionary execution basis, i.e., market participants choose with whom they trade with, rather than being 'directed' by a broker.

Request for Quote (RFQ)

In an RFQ system, the quote should be disclosed only to the requesting party, as the responding entities take on risk which would be increased if those quotes were seen by other responding entities and, more importantly, third parties. We believe that the exposure of a liquidity providers position to the market would have the following impacts: i) the provider might be unable to effectively hedge their position; ii) the costs of executing would be increased and these costs would be reflected in wider spreads to the client; and iii) the provider might decide to stop offering quotes in certain instruments should they be unable to effectively manage their subsequent position. It is therefore important that market makers on venues operating an RFQ protocol are not required to disclose pre-trade prices to other market makers (i.e., other price makers).

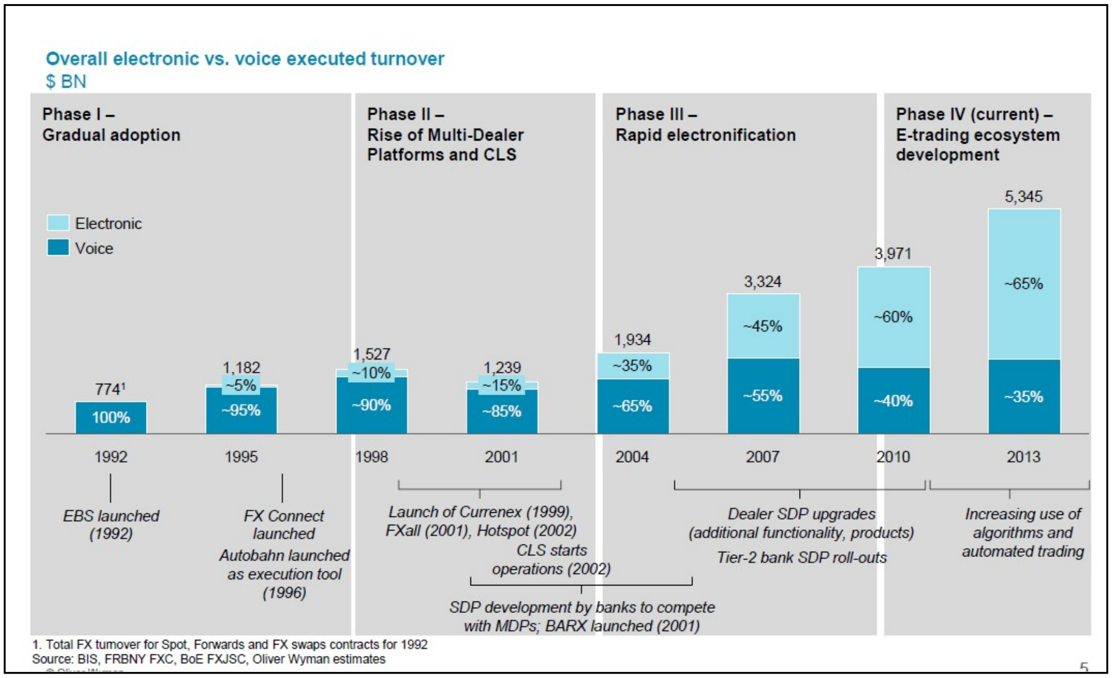
Request-for-stream (RFS)

The GFXD does not agree with the definition provided by the CSA. If the firm responds to the client with quotes, which are indicated as such (for a predefined period of time), the system would fall under the request for quote system notation. If the stream provided is indicative, we believe that RFS should not fall under the RFQ trading system notation. This is because the firm is not responding to the client with quotes but indicative prices.

Hybrid

We support the inclusion of hybrid system but note that for FX derivatives, the multi-multi venues typically operate though one model or another, either via voice or an electronic platform. However this may not the case for other derivative instruments. A recent study of the FX market by GFXD and Oliver Wyman showed that the FX market is ~65% electronic and ~35% voice traded, illustrated in Figure 1. We therefore agree with the CSA's inclusion of hybrid systems in the permitted execution methods.

Figure 1: Overall electronic v voice executed turnover in the Global FX market (Oliver Wyman)



Q4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

We support the submission made by ISDA.

Q5. Is the proposed regulatory framework for DTFs appropriate?

We support the submission made by ISDA.

Q6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

We support the submission made by ISDA.

Q7. To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?

We support the submission made by ISDA.

Q8. What factors are relevant in defining the proposed best execution duty?

We support the submission made by ISDA.

Q9. Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

We believe that it is not appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared.

We believe that this would amount to DFTs having the ability to establish a mandatory clearing requirement and we consider that such a determination should be made by the regulators following wider consultation with the market.

FX is a largely OTC market, and whilst parties execute via a platform, the platform itself is never a counterparty to the trade. The parties to the trade manage their risk, which is largely settlement risk[4], via a Credit Support Annex (CSA). It would therefore be inappropriate for a venue to determine whether a trade should instead be cleared - the choice of whether or not to clear, and through which CCP, should remain with the counterparties to the trade, who carry the risk.

As previously mentioned, the FX market is cross-border and global in nature. Trading obligations and clearing mandates should be globally aligned and we note that deliverable FX forwards and FX swaps, following the 2012 US Treasury exemption[5], are currently excluded from the definition of "swaps" in the Commodity Exchange Act in order to exclude these transaction types from the application of SEF rules and clearing obligations within the US. In addition to these harmonization challenges, physically settled FX instruments also present other challenges, noticeably the role the CCP plays in ensuring the correct funds are paid to the correct party at the correct time. The GFXD conducted a study[6] to size the liquidity shortfall that represented the minimum, baseline capabilities CCPs must demonstrate for converting funds, same day, into the currencies which its other (non-failing) clearing firms were expecting to receive on that date in satisfaction of the FMI Principles "cover 2" liquidity requirement. The study, which analysed 5 years of FX option trade information of 22 global banks, showed that the gross shortfall amounted to $161bn (equivalent) per day across 17 currencies.

NDFs have been voluntary cleared within the FX market for several years, but cleared volumes are believed to be 0.5-4% of the FX NDF market (itself 3-4% of the global FX market). ESMA summarised in their recent response[7] to their FX NDF Clearing Consultation, that they did not support the extension of a mandatory clearing obligation of FX NDFs in Europe due to the lack of global harmonization of clearing mandates, the lack of client clearing solutions and the limited number of CCPs offering FX NDF clearing.

Q10. Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

We support the submission made by ISDA.

Q11. Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

We support the submission made by ISDA.

4 http://www.bis.org/publ/bcbs229.pdf
5 US Exemption at http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf; GFXD views at http://gfma.org/correspondence/item.aspx?id=479
6 http://gfma.org/Initiatives/Foreign-Exchange-%28FX%29/FX-Options-Clearing/
7 http://www.esma.europa.eu/system/files/2015-esma-234_-_feedback_statement_on_the_clearing_obligation_of_non_deliverable_forward.pdf

Q12. Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

We support the submission made by ISDA.

Q13. Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

We support the submission made by ISDA.

Q14. Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

We support the submission made by ISDA.

Q15. How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

We support the submission made by ISDA.

Q16. Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

We do not believe that pre-trade transparency requirements should apply to OTC derivatives which trade on DTFs but have not been mandated to be traded on DTFs. Only instruments subject to the trading mandate are sufficiently liquid so that pre-trade transparency requirements would not cause the unwarranted exposure of a liquidity provider's position to the market.

Furthermore, we believe that the trading mandate itself should only be considered for instruments already subject to a clearing mandate and are thus by default deemed liquid.

The FX market is largely OTC and is ~65% electronically traded, with ~30% of volume conducted on multi-dealer platforms[8]. This already provides the market a high degree of transparency, even for instruments that are not subject to a trading mandate. Requiring additional transparency for instruments which are voluntarily traded on venue would be detrimental, as these would be instruments that have not been subject to a liquidity assessment. For instance, the inclusion of footnote 88 within the CFTCs SEF trading rules (17 CFR part 37) requires permitted (i.e., non-mandated) instruments, such as FX NDFs, that are traded on a multi-multi basis in the US (by a US person) to be traded on SEF and therefore required to comply with the SEF rules. Due to well published challenges with the legal certainty of transactions executed on SEF, a large percentage of the market has moved trading away from the SEF environment and executed away from the US, as reported by ISDA[9]. It should also be noted that the CFTC has issued no-action-relief (14-108)[10] to help the market work through these challenges.

[8] According to analysis conducted by Oliver Wyman

[9] http://www2.isda.org/functional-areas/research/research-notes/ (Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-year 2014 Update)

[10] http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-108.pdf

Additionally, in a market such as the Canadian FX market, with relatively few participants and comparatively low trading volumes in relation to the global market, greater thought must be given to the effect of pre-trade transparency requirements, as the impact of publication will be much greater. For example, in an RFQ system where multiple quotes were required to be shown, it is highly likely that the number of quotes published could equate to a number equal to a significant percentage of the market makers in the Canadian markets. As such, the calibration of what is required to be published needs to be carefully considered.

We would therefore recommend that pre-trade transparency is restricted to derivatives that are subject to the trading mandate only, consideration for which should in turn be limited to those derivatives subject to a clearing mandate.

Finally, it is critical that any trading mandates have suitable mechanisms built into them to allow for the suspension of obligations in times of market stress. This suspension of requirements would protect market liquidity and stability until such a time as normal market levels resume.

Q17. Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

As we have previously mentioned, the FX market is global in nature and transacts across borders. As such, any efforts to implement regulatory transparency obligations needs to be considered with other jurisdictions in mind. It would not be appropriate for information to be made publically available in one jurisdiction before another. This would allow market sensitive information to be determined and will impact the ability of market participants to hedge positions.

For instance, the GFXD supports the CFTCs use of block-trade rounding/notional capping in order to prevent illiquid positions being published, thus aiding market makers in managing their risks, yet we note that such an approach has not been leveraged in Europe under MiFID. Given that MiFID goes live in January 2017, we are not yet able to assess the market impacts of such regulatory discrepancies in the publication of trade data and respectfully suggest that the CSA is be sensitive to the specific characteristics of the FX market during finalisation of transparency rules.

We are also concerned that the CSA does not appear to consider in this consultation the post trade transparency obligations under rules 91-507 and 96-101. We suggest that any DTF transparency obligations should not duplicate the obligations from other Canadian regulations.

Q18. What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

We support the submission made by ISDA.

Q19. When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

The GFXD believes that there are circumstances in which deferred publication of trade information should be permitted. In addition to large/block trades, trades in illiquid instruments should also be granted a deferral.

An effective deferral regime addresses the risks of pre and post trade transparency, ensuring that market makers facilitating transactions by committing capital have sufficient time to hedge and unwind their risk. For instance, in the Mergers and Acquisitions (M&A) world, information relating to deal-contingent trades could be made public before they are executed. These transactions are usually large in size and would inform the markets of the potential or conclusion of an M&A trade, allowing the market to trade ahead of the conclusion of the deal.

The length of deferral period may depend on the nature of the trade. For example, trades that are both large and illiquid should be granted a longer publication deferral. In the recent submission to ESMA in response to the December 2014 MiFID consultation paper, both AFME and ISDA recommended that there should be a 12 week deferral for those trades which would expose market makers to undue risk.

Whatever determination is made, the size and liquidity thresholds and length of deferrals should be reasonable, reviewed annually and applied consistently across provinces to prevent exposure of positions or regulatory arbitrage.

Q20. Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

We support the submission made by ISDA.

Q21. What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

In order to prevent regulatory arbitrage and to ensure that the public has access to globally consistent data, we would encourage the CSA to consider the approaches of the US and Europe and align the reportable data fields and schedules where possible.

We are concerned by the inclusion of the phrase "although not required to, a DTF would not be prohibited from disseminating real-time data". Consistency of reporting across the market is highly important and the publication of data should not be determined by individual institutions, especially those with commercial objectives.

We would also encourage the CSA to ensure that any requirements for public dissemination of information under trading mandate rules to not contradict or duplicate similar obligations already in force under trade reporting.

Q22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

We support the submission made by ISDA.

Q23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

Whilst we generally support the criteria proposed, we are finding that it is a challenge to implement these criteria in practice. Specifically, our experiences with the MiFID consultations in Europe demonstrate that is a very complex exercise to define liquidity and more specifically measure it.

Liquidity has different meanings for different market participants, typically determined on their ability to make markets. It is a subjective term.

We suggest that the CSA leverages its international network and the experiences of peers in other global jurisdictions in order to help frame a liquidity proposal on an instrument by instrument basis.

We believe that the experiences in Europe would provide a helpful guide especially given that some of the measures proposed, such as the number of market participants, are incredibly difficult to quantify. We also suggest that any liquidity definitions need to be flexible enough to accommodate real-time events that impact the liquidity of the market (e.g., geo-political events) and must include a process for suspension of transparency obligations in the event of market disruption. This would be particularly important to the Canadian market, due to its smaller size relative to other jurisdictions – it would be challenging for market makers to meet their obligations during a period of market stress.

Q24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

We do not believe that there are currently any classes of FX OTC derivatives which should be considered suitable for mandatory trading on a DTF, and believe that any trading obligation should be assessed on an instrument by instrument basis. Currently there are no mandatory trading obligations applied to FX instruments in any other global jurisdiction.

We support the view that a trading obligation should only apply to those instruments that are suitable for the mandatory clearing obligation, and as such would like to draw reference to our response to CSA paper 91-406 (June 2012), as there are a number of characteristics which still apply and set the FX market apart in terms of the effects of mandatory clearing:

1. Mandatory clearing is predominately concerned with reducing market risk. For FX, the predominant risk is settlement risk. Following extensive study of settlement risk by the central banks as a source of systemic risk for the FX market and therefore the global financial markets, the FX market went to considerable lengths to address this risk, ultimately leading to the creation of CLS Bank (CLS) in 2002. CLS' settlement system today eliminates virtually all settlement risk to its participants. Additionally, CLS' activities are subject to a cooperative oversight protocol arrangement among 22 central banks whose currencies are settled.

2. Canadian market regulators should take into account the systemic relevance of the relevant market in order to help ensure that the application of a clearing obligation would not result in undue risk being assumed by the market and overall financial system. Size should be measured not only in terms of volume, but also values. Unique characteristics of the derivative product, e.g. the physically delivery aspect to FX forwards, FX swaps and FX options, must also be taken into consideration.

    - <u>FX is at the heart of all international commerce</u>. Corporations and investors regularly participate in the market for real operational needs: to reduce risk by hedging currency exposures; to convert their returns from international investments into domestic currencies; and to make cross-border investments and raise finance outside home markets. The FX market, which is the world's largest financial market, is a central component of the global payment system. It also underpins other financial markets and the global economy generally. The Bank for International Settlements estimated that average daily market turnover in FX increased to $5.3 trillion in April 2013, up from $4trillion in April 2010.[11]

- FX markets are different from other derivative markets. The majority of FX trades are simple exchanges of currency. There are no contingent outcomes for FX forwards and swaps (cash flows are known at the outset of the trade) and they are overwhelmingly short-term in nature. For example, latest analysis conducted by Oliver Wyman of the BIS 2010 survey and the FXJSC/FXC figures (both collected in April 2010), estimates the following global maturity profile for FX forward and swap trades:

  - Up to 7 days maturity = 68.0% of daily traded volumes;
  - 7 days – 1 month = 13.3%; and
  - 1 month – 6 month = 16.2%

  This evidences a global FX forwards and swaps daily traded market total of 81.3% under 1 month maturity and 97.5% under 6 months, with 1.5% maturity between 6 months and 1 year and only 1% over 1 year. And unlike other OTC derivatives which are typically settled on a net, cash-settled basis, FX forwards and FX swaps are typically physically settled by delivery of the underlying currency.

- FX faces different and specific risks when considering counterparty credit risk. In FX forwards and swaps market, the main counterparty risk is settlement risk, not mark-to-market risk (settlement risk is the risk that one counterparty does not deliver their side of the currency exchange while the other counterparty has delivered their side). Unlike most derivatives markets where trades are settled financially, the FX market is currently predominantly physical, i.e., trades settle via exchange of currencies. For FX instruments with maturity less than 6 months: 94% of max loss exposure is settlement risk; mark-to-market risk is only a residual risk (6%).[12]

- CCPs are designed to mitigate "mark-to-market" risk – not settlement risk. In FX markets, the residual mark-to market risk is today mitigated through credit support annexes (CSAs).

- Mandatory clearing in FX markets could have unintended consequences whilst addressing a disproportionately low residual credit risk exposure. The rules of the Canadian market regulators should specifically recognize that in some classes of OTC derivatives, such as FX, the CCP clearing mandate/solution may not be the optimal solution for dealing with the predominant risk for that market, such as settlement risk. Key unintended consequences of mandating clearing for FX forwards and FX swaps include potentially undermining the efforts that have been made in addressing settlement risk to date; creating a single point of failure where none exists today; and increasing costs and risk for corporate and buy-side end-users of FX.

In addition, it is worth noting that the US Treasury has issued a determination to exempt FX forwards and swaps from the definition of a 'swap'[13]. The determination recognises the different

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[11] http://www.bis.org/publ/rpfx13fx.pdf
[12] According to analysis conducted by Oliver Wyman
[13] US Exemption at http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf; GFXD views at http://gfma.org/correspondence/item.aspx?id=479

characteristics of FX instruments and the way the market functions at present. We support this determination, and urge the CSA to implement a similar determination in the interests of global regulatory harmonisation.

Q25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

We believe that there are certain situations which require an exemption from a trading mandate and note that such examples should be considered by Canadian authorities in order to promote global harmonization of regulatory obligations.

For example, these could include, but are not limited to:

1. Intra-group transactions;
2. Transactions involving a non-financial counterparty whose positions do not meet a specified clearing threshold – i.e., relating to those transactions for instance defined under EMIR Article 10 "which are not objectively measurable as reducing risks directly related to the commercial activity or treasury financing of the non-financial counterparty or of that group";
3. Illiquid trades in instruments that have been determined as liquid, such as 'block trades'; and
4. Package transactions.

Q26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 19?

We do not believe that a DTF should have sole discretion as to determining what is appropriate to be mandated to be traded on a DTF. We believe that it may be appropriate for a DFT to put forward a class of OTC derivatives for consideration by the regulator for a trading mandate. However, the ultimate decision should be made by the regulators following wider consultation with the market and not based on the commercial considerations of a DTF.

As the FX market is the basis of the global payments system, the volumes of transactions is very high, and are often executed across geographical borders. Allowing DTFs to specify that a class of OTC derivatives should be mandated to trade exclusively on a DTF would result in a lack of global harmonisation in mandatory trading obligations. This in turn could lead to trading in these instruments moving away from Canadian markets. For instance, the inclusion of footnote 88 within the CFTCs SEF trading rules (17 CFR part 37), required permitted instruments (e.g., FX NDF) that are traded on a multi-multi basis in the US (by a US person) to be traded on SEF. Due to well published challenges with the legal certainty of transactions executed on SEF, large percentages of the market have moved trading away from the SEF environment and executed away from the US.

Q27. What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

FX derivatives are largely traded using an RFQ model and we believe that this would be the primary execution model for those instruments included in the mandatory trading obligation. We too share the concerns noted by the CSA in the consultation paper with respect to the content of pre-trade transparency obligations for instruments executed via RFQ.

Whilst a solution offered in the consultation leans towards a process where the RFQ is sent to a number of dealers, we would be concerned with the impact of this given the comparatively small number of market makers in the Canadian FX markets. For example, if multiple quotes were required to be shown, this might equate to information that would reveal the positions of a high proportion of Canadian market makers and as previously discussed may lead to a reduction in the number of participants wanting to make markets in certain instruments, reducing liquidity.

An alternative proposal may be to publish the average bids and offers for each RFQ and attaching a volume band – this was the final proposal included in our recent response to ESMA on their December 2014 MiFID consultation. Or, as mentioned with reference to the US SEF rules, RFQ and the existence of an order-book may also provide the required transparency.

Q28. For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

We support the submission made by ISDA.

Q29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

We support the submission made by ISDA.

Q30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

We support the submission made by ISDA.

Q31. Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

We do not believe that there are specific Canadian market characteristics that would require a divergence between the US and European regulatory obligations.

****

We appreciate the opportunity to share our views on this consultation paper issued by Canadian Securities Administrators. Please do not hesitate to contact Fiona McKane on [redacted] or Andrew Harvey on [redacted] should you wish to discuss any of the above.

Yours sincerely,

[redacted]

James Kemp
Managing Director
Global Foreign Exchange Division, GFMA

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March 30, 2015

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Re: CSA Consultation Paper 92-401 – Derivatives Trading Facilities

The Investment Industry Association of Canada ("IIAC") appreciates the opportunity to provide comments on CSA Consultation Paper 92-401 – Derivatives Trading Facilities (the "Paper"). Our comments reflect the views of the IIAC Derivatives Committee which is comprised of senior professionals with responsibilities for derivatives markets activities and compliance for dealer members of the Investment Industry Regulatory Organization ("IIROC").

The IIAC is the professional association for the securities industry, representing close to 150 investment dealers regulated by IIROC. Our mandate is to promote efficient, fair and competitive capital markets for Canada and to assist our member firms across the country.

Our comments pertain exclusively to products offered by IIROC registered IIAC members and are not meant to reflect the views of their non IIROC affiliates dealing in other products.

IIAC members participate in the over-the-counter (OTC) derivatives market, primarily in contracts for differences (CFDs) and foreign exchange (FX). IIAC members offer CFDs and FX contracts ("IIROC Regulated OTC Derivatives") primarily to retail investors in Canada, an activity which is subject to strict terms and conditions of their registration, including capital, segregation, supervisory, reporting and proficiency requirements and benefits from protection of client assets through the Canadian Investor Protection Fund ("CIPF").

IIROC Regulated OTC Derivatives are traded on single-dealer platforms of a handful of IIAC members that offer full transparency, client documentation and reporting and a complete audit trail to regulators for surveillance purposes. Despite the fact that, in many cases, their dealer also offers access to listed products that provide the same exposure, clients often prefer to trade on CFDs and FX on their dealer's platform for a variety of reasons.

IIAC members also occasionally offer bespoke OTC derivatives contracts to high net worth and institutional clients. Although they originate from IIROC dealer member clients, these transactions will often be effected in an account opened for the client with a non-IIROC banking affiliate.

General Comments

The IIAC has argued in past submissions to members of the Canadian Securities Administrators ("CSA") that IIROC Regulated OTC Derivatives should be excluded from the scope of the CSA's OTC derivatives reform initiative. We have engaged discussions with IIROC on that subject. Meanwhile, we will continue to comment proposed rules and consultation papers as they are published.

We note that the "…proposed definition (of a derivatives trading facility ("DTF")) is not intended to capture…single-dealer platforms." And that "A participant providing trading services to its clients via a single-dealer platform would instead be subject to dealer registration requirements." We are supportive of this approach as our members are already subject to registration requirements as noted above.

Answers to selected questions from the consultation paper

As our comments pertain to IIROC Regulated Derivatives traded on single-dealer platforms which the definition of DTF does not intend to capture, we will address the specific questions in the paper only to the extent that our answers provide relevant information to members of the CSA.

Question 1: Is the DTF category appropriately defined? If not, what changes are needed and why?

From the point of view of our members' activities, we believe the DTF category is appropriately defined in that it does not capture single dealer platforms.

Question 23: Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

We believe the proposed criteria are appropriate. However, in considering "…whether the class of derivative is…mandated to be traded on a regulated venue in other jurisdictions…" the CSA should take into consideration differences in regulatory structure. In particular, the absence of a self-regulatory organisation in certain jurisdictions may lead to a different approach to contracts offered on single-dealer platforms.

Question 24: Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

Consistent with our above comments, we believe a mandatory trading obligation of IIROC Regulated OTC Derivatives would be detrimental to market participants. IIROC Regulated OTC Derivatives are bilateral in nature, with the dealer continuously quoting a two-sided market for clients to execute online. Transactions are conducted between dealer and client on a principal basis under strict IIROC rules in accounts that benefit from CIPF protection.

In practice, trading on a DTF would require a CCP in order to clear transactions executed against orders represented by a dealer other than the client's. This would bring no benefit to clients who currently trade on tight and visible spreads. However, the cost of building and maintaining the required trading, market data and clearing infrastructure would clearly harm the regulated industry's competitiveness against unregulated entities.

We welcome the opportunity for an ongoing dialogue with the CSA on this important initiative and would be pleased to discuss this submission should you have any questions.

Best regards,

[redacted]

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March 30, 2015 S9279

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RE: CSA Staff Notices 92-401 *Derivatives Trading Facilities*

SaskEnergy Incorporated ("SaskEnergy") and TransGas Limited ("TransGas") welcome the opportunity to comment on CSA Staff Notice 92-401.

About SaskEnergy and TransGas

SaskEnergy is a Saskatchewan Crown Corporation and operates as a natural gas distribution utility. TransGas is a wholly owned subsidiary of SaskEnergy and operates primarily as a natural gas transmission and storage utility.

SaskEnergy serves in excess of 380,000 customers in approximately 93% of Saskatchewan's communities.

CSA Executive Summary

The executive summary to CSA Staff Notice 92-401 provides in part as follows:

> "Any DTF, regardless of whether it offers trading in OTC derivatives that are mandated to be traded on a DTF, would require an authorization from the securities regulatory authority in each jurisdiction in which it operates, or an exemption from such requirement.
>
> DTFs generally would be regulated similarly to an exchange. For example, all DTFs would be required to have rules governing the conduct of participants, designed to ensure compliance with applicable legislation, prevent fraud and manipulative acts and practices, and promote just and equitable principles of trade.
>
> . . . In determining whether to require a class of OTC derivatives to be traded exclusively on a DTF, the Committee recommends that the CSA consider factors including whether the class of OTC derivatives is: subject to a clearing mandate, sufficiently liquid and standardized, subject to a similar trading mandate in other jurisdictions, or already trading through the facilities of a DTF or foreign trading platform.

Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

Canada is likely not unique, but the number of provincial regulatory regimes and disparate resources and interests of different provinces could create a challenge.

Moreover, based on our extremely limited experience with existing trading platforms, we have some concern that DTFs will be motivated to obtain authorization, or an exemption order, from security regulatory authorities in all provinces, in the same way and in a timely way.

A particular province might have to have a differing regulatory regime, or a delayed regulatory regime, simply out of necessity. Alternatively, it may have to defer to the decisions made solely in another province, where different factors are in play, so as to encourage DTFs to apply and to diligently work through the application or exemption process.

In terms of mandatory trading on a DTF, one might even foresee disparate treatment of commodity derivatives, for example, from province to province simply because no DTF is available.

If DTFs become the norm, a province without a DTF or with a slightly different regime, may have liquidity issues for its consumers.

Derivatives trading provides a real public benefit to gas consumers in Saskatchewan. It is a key component in reducing gas price volatility for residential and small commercial users, for example.

A working trading regime in natural gas and natural gas derivatives existed prior to this regulation. Where any doubt exists that the benefits of the new regulatory regime will not warrant its cost, or any uncertainty as to the effect on the Canadian market as a whole, SaskEnergy would argue for some caution, some care, and potentially a narrower scope initially.

Anything that can be done to ensure that DTF proponents apply in all participating provinces would be helpful.

SaskEnergy and TransGas are thankful for the opportunity to provide these comments, and we hope they are of some assistance.

Respectfully submitted,

SASKENERGY INCORPORATED

[redacted]

Terry D. Jordan
Senior Legal Counsel

TJ/lh

cc: Mark H. J. Guillet, Vice President, General Counsel & Corporate Secretary
Christine Short, Vice President, Finance and CFO
Dean Reeve, Executive Vice President
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March 30, 2015

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Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

RE: Canadian Securities Administrators ("CSA") – Consultation Paper 92-401 – Derivative Trading Facilities

Dear Sirs/Mesdames:

TMX Group Limited ("**TMX Group**") welcomes the opportunity to comment on CSA Consultation Paper 92-401 (the "**Consultation Paper**")[1] regarding Derivative Trading Facilities ("**DTFs**") and is pleased that,

[1] References to the Consultation Paper throughout this letter refer to the version published on the OSC website - (2015), 38 OSCB 801. Online at: https://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20150129_92-401_derivatives-trading.pdf.

consistent with Canada's G20 commitments at the Pittsburgh Summit, the CSA is proposing a regulatory framework to govern mandatory trading of OTC derivatives on exchanges or electronic trading platforms. We have set out our responses to the CSA's questions below. Our most substantial concerns with developing this instrument are that: (i) the definition of DTF is not so broad as to capture smaller broker-type intermediaries; (ii) DTF regulations allow continued or increased liquidity in the OTC derivatives market; and (iii) volumes do not migrate from exchanges, which are more tightly regulated, to DTFs, which may have more flexibility.

TMX Group

TMX Group's key subsidiaries operate cash and derivative markets for multiple asset classes, including equities, fixed income and energy. Toronto Stock Exchange, TSX Venture Exchange, TMX Select, Alpha Exchange, The Canadian Depository for Securities Limited, Montreal Exchange, Canadian Derivatives Clearing Corporation, Natural Gas Exchange ("NGX"), Boston Options Exchange, Shorcan, Shorcan Energy Brokers, Equicom and other TMX Group companies provide listing markets, trading markets, clearing facilities, data products, and other services to the global financial community. TMX Group is headquartered in Toronto and operates offices across Canada (Montreal, Calgary and Vancouver), in key U.S. markets (New York, Houston, Boston and Chicago), as well as in London, Beijing and Sydney.

Response to Questions

What follows in this comment letter are responses to the questions listed in the Consultation Paper.

1. **Is the DTF category appropriately defined? If not, what changes are need and why.**

Please see our response to question 5 below regarding the DTF framework.

2. **Is it appropriate to permit DTF operators a degree of discretion over the execution of transactions? Why or why not? IF discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?**

No, it is not appropriate. To allow DTF operators to exercise discretion over the execution of transactions confuses the role of market and intermediary and puts the DTF operator in a conflict of interest situation. Like exchanges, DTFs should have self-regulatory obligations to protect the confidentiality of participant information and not express an opinion or provide participants with market advice or colour, or perform any other traditional broker activity. The trading platform itself should be run in a non-discretionary manner, by parties that do not have an interest in the transactions, in a way that allows for maximum accessibility for participants. We do not believe that DTFs should offer voice or hybrid voice-electronic execution methods, as described in the Consultation Paper, where those methods allow for DTF discretion. Introducing brokers should be permitted to use discretion to facilitate trades off of the platform and bring the trades to the DTF for execution. Introducing brokers which do not offer OTC derivative trade execution facilities should not be required to be recognized as DTFs.

3. **Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?**

DTFs should be permitted to offer execution through an order book and an RFQ system. They should not be permitted to use hybrid execution methods such as voice brokering.

4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

The minimum trading functionality prescribed for DTFs should be the same as that prescribed for SEFs in the United States as described in the Consultation Paper – i.e. an order book or an RFQ system offered in conjunction with an order book[2] for mandated trades and any execution mode for non-mandated trades.

5. Is the proposed regulatory framework for DTFs appropriate?

TMX Group agrees that DTFs should be recognized and generally be regulated similarly to exchanges. Broadly, TMX Group believes the following changes should be made to the regulatory framework for DTFs:

(i) The definition of DTF should be narrower to allow for additional intermediary types

Generally, it appears that the CSA has followed the European model in defining a DTF broadly, similar to the organized trading facilities ("OTFs") in Europe. TMX Group believes that Canada should follow a model more similar to the US swap execution facility ("SEF") definition such that only intermediaries which actually execute a trade are captured.

The proposed definition of DTF is "a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of the trades".[3]

The phrase "buyers and sellers agree to the terms of the trade" is too broad in scope. This definition could also capture brokers and other entities that merely facilitate or match, but do not execute, trades. We propose replacing "agree to the terms of the trades" with "execute the trade." Other entities can use various methods to bring together or match buyers and sellers to agree on terms of a trade outside of the DTF. Entities that do not provide execution facilities should not be captured by the definition nor should these entities represent a regulated status that confuses the services and regulatory oversight for the market.

The CSA also states in the Consultation Paper "that the application of the proposed DTF regulatory regime be limited to those systems and/or facilities that bring together multiple buying and selling interests leading to the execution of OTC derivatives transactions"[4] To the extent this language is provided in any final guidance, we propose removing "leading to the execution of" and replacing it with "to execute".

Similar to the regulatory structure in the US, the definition of a DTF should be narrower and there should be a separate category for intermediaries such as introducing brokers. If necessary for clarity, brokers should be explicitly carved out of the definition. Under the Commodity Exchange Act, for example, certain brokers are explicitly carved out of the term "trading facility" which forms part of the definition of SEF.[5]

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[2] Consultation Paper at 813.
[3] *Ibid.* at 803 and 817.
[4] *Ibid.* at 816.
[5] The term "trading facility" does not include—

Brokers provide valuable liquidity and matching services in the market, but do not provide a trade execution facility and, due to the nature of their business and the costs to develop one, may not wish to do so. These participants should be permitted to continue to operate without recognition as a DTF. If counterparties wish to execute their OTC derivatives transactions on a DTF or if counterparties are trading OTC derivatives products which are mandated to trade on a DTF, a broker could then bring the transaction to a DTF for execution.

A very broad definition of DTF will likely require all market intermediaries in the OTC derivatives space to be recognized as DTFs. Brokers do not execute trades, but they do arrange or match trades before reporting them to trading platforms. Many brokers, some of which are not large entities with financial resources, may wish to continue their existing activities without becoming a DTF.

SEF set-up costs have been estimated by ISDA to be approx. $7.4 million, with ongoing operating costs estimated at nearly $12 million per annum. While costs in Canada pursuant to the proposed DTF rules may not be as high, there are substantial costs to bring systems into compliance, management time to oversee the transition and marketing efforts to educate clients regarding the changes will be required.

In the US, introducing brokers are able to continue carrying out their activities and report matched trades to registered SEFs instead of themselves registering as SEFs. TMX Group believes that the CSA should follow the US model with respect to this issue and with respect to DTF regulation generally for the reasons set out below.

(ii) Canada should more closely follow the US model

TMX Group believes that the Canadian rules should generally more closely emulate the US rules to address the issues described below:

(a) ***Market fragmentation*** - differences in regulations in multiple jurisdictions and the challenges relating to complying with multiple different regulatory regimes may cause derivatives markets to fragment along jurisdictional lines causing markets to become more national in scope and less international. The derivatives market in Canada is currently more inter-dependent with the US. As such, significant divergence from US regulation may pose significant risks in terms of disruption to commercial activity in Canada. Canadian market participants are already accustomed to US regulation of swaps and SEFs and have adjusted their operations accordingly. As such, a significant regulatory adjustment for North American participants to the US framework may cause confusion and harm economic activity levels in Canada. The European swap transaction level rules are not yet in effect and it is not yet clear how effective the

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(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;
(ii) a government securities dealer or government securities broker…
Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term "trading facility" for the purposes of this chapter without any prior specific approval, certification, or other action by the Commission. (See 7 U.S. Code § 1a (1)(51)(B))

European model will be in practice. Canadian regulations should not diverge significantly from the US regulations unless there are very strong investor protection or capital market efficiency reasons to do so.

(b) ***Detrimental to participants*** - Forcing brokers to be DTFs may lead to significant confusion of roles and creates problems with overall market structure. For example, brokers serve an important role in emerging markets today through acting in the best interests of their clients (one counterparty to a transaction) while trading platforms are marketplaces and for public interest reasons have broader responsibilities such as providing equal access, facilitating transparency, best pricing, etc. It is not clear how these two roles can be reconciled in one entity.

Further, a broad definition of DTF capturing almost all intermediaries is likely to drive many smaller intermediaries, which play an important role in generating market liquidity, out of the market due to costs of compliance and inability to recover those costs. This may result in less market liquidity as only a few large entities with significant financial resources are able to comply with the DTF requirements and remain in business and may also leave participants with fewer options to generate liquidity due to the more limited number and type of intermediaries. This may also result in a less competitive DTF market. A smaller number of DTFs/intermediaries are likely to result in higher fees for participants.

Much of the Canadian derivatives market may be smaller in size and less liquid than comparable markets in other countries. As such, it is important that, for particular product markets, an ability to trade certain OTC derivatives, that are not yet ripe for regulation and less liquid and subject to negotiation, off exchanges or DTFs is preserved and that existing intermediaries be able to provide liquidity to these markets.

(c) ***Detrimental to brokers*** – As already described, because of the way in which a DTF is currently defined and described in the Consultation Paper, many introducing brokers may be required to register as DTFs. The costs of becoming a DTF is likely to be too high for many smaller brokers..

(iii) Standardized derivatives should be required to trade on an exchange

Regulators may wish to reconsider the framework underlying the current approach to OTC derivative reform through establishing a regulatory framework for derivatives that ensures standardized derivatives transact in the most transparent and secure model (exchange-traded and cleared). Under US law it is illegal to transact in a future (standardized derivative) off exchange unless in a block or otherwise exempt. Swaps evolved off exchange as non-standardized negotiated contracts and serve an important role in the evolution of markets and facilitating market needs. Regulation appropriate for transaction venues for futures, however, will contain meaningful differences from those appropriate for OTC derivatives.

Regulators should reconsider alignment in the law with the US framework that requires futures be transacted through central limit order book models (futures exchanges) and cleared. OTC derivatives frameworks, including that for SEFs in the US, emerged to address a regulatory gap for OTC derivatives (traditionally non standardized, negotiated or emerging derivative products) that warranted a regulatory framework appropriate for their role in markets. This proposal eradicates the higher purpose of futures exchanges in the markets and overlooks the incentives underlying this regulated structure to develop markets that serve the public interest the best. From the perspective of participants, there may also be little incentive to trade standardized derivatives products on an exchange, when they could trade analogous OTC derivatives more flexibly through a DTF. Under this framework, what is the value in being an exchange? If there is no concept of having to trade standardized derivatives on exchange (futures), it is unclear why a futures exchange would continue to operate when it could take advantage of the greater flexibility afforded DTFs and arguably be subject to a lower standard of regulation.

(iv) Securities regulators should define the term "exchange"

Securities regulators should provide a definition of "exchange" in the provincial securities regulation to clarify the distinction between an exchange, a DTF and other forms of platforms or intermediaries that may or may not require registration or regulatory oversight as a marketplace for derivatives.

(v) Exchanges should be permitted to offer OTC derivatives without DTF recognition

In the United States regulatory regime, as noted in the Consultation Paper,[6] designated contract markets are permitted to offer OTC derivative products. The same structure should be permitted in Canada. Exchanges are, and will continue to be, the marketplaces subject to the highest order of regulation. It would be inefficient for exchanges to have to comply with an additional regulatory framework to offer OTC derivatives and inefficient for regulators to separately monitor their compliance with the DTF framework. If an exchange wishes to offer the flexibility of a DTF, this could be done through a separate affiliate registered as a DTF so that the distinction between the two recognition statuses are preserved and it is clear to participants whether an entity is operating as an exchange or a DTF.

Whether an entity is recognized as an exchange or a DTF should be based upon the characteristics of its platform and operations and not on the basis of the products it offers. The products an entity is permitted by regulation to offer should depend upon its recognition status – *i.e.*, an exchange can offer derivatives and OTC derivatives while a DTF can only offer OTC derivatives.

(vi) The concept of an exchange and a DTF should be uniform across provinces

TMX Group is pleased that the CSA's intention is that the features and requirements of DTFs will be harmonized across the various jurisdictions in Canada.[7] The Consultation Paper, however, also notes that the Committee anticipates that in some jurisdictions a DTF may be recognized as an exchange.[8] Allowing an entity to qualify as an 'exchange' in one jurisdiction and as a 'DTF' in another creates confusion as to what level of regulation each category is held

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[6] Consultation Paper at 812.
[7] *Ibid.* at 819.

[8] *Ibid.*at 803, footnote 3.

to. It should be clear to the market, across provinces, that exchanges are held to the same high standards which have historically been imposed. Entities that permit greater flexibility and are held to the DTF regulations should be recognized as DTFs in every province, not as exchanges.

(vii) Spot and forward products should be carved out of the definition of OTC derivative

Similar to the US regulatory framework, trading of spot and forward products should not be captured by this instrument. Forwards are currently explicitly included in the definition of "derivative" in many provincial securities acts. The proposed definition of "OTC derivative" in the Consultation Paper is "a derivatives contract that is traded other than on a formal exchange." Assuming the definition of derivative from the provincial securities act is applied to the use of the term derivative in DTF regulation, forward contracts may be caught by this definition. Many end users, particularly in the commodities industry, transact in forward products for commercial, non-speculative purposes. Subjecting these products to the DTF regulatory regime would be confusing and disruptive to longstanding commercial practice and at odds with the US approach to this issue. Forward and spot products should be explicitly carved out of the definition of OTC derivative.

6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions?

TMX Group does not believe that DTFs should be permitted to exercise discretion in the execution of transactions.

As also addressed in our response to question 5, the inherent conflicts of interest that would exist if a DTF were to also be a dealer are too great to allow a DTF to exercise discretion in the execution of transactions and, in so doing, act as a dealer. A DTF should be a neutral trade execution facility. If it were to also act as a dealer, it may actively be acting against the interests of certain counterparties. Market participants will have less trust in a DTF if this were permitted, which will reduce volumes and liquidity. As noted earlier, an 'introducing broker' concept should be added to Canada's current registration rules similar to that used in the United States. Introducing brokers would be registered dealers permitted to solicit and accept orders for execution on a DTF using a variety of discretionary methods.

7. To address conflicts of interest should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity?

Yes. The DTF itself should not be permitted to exercise discretion.

Strict conflict of interest regulations should apply to any organization operating both a facility and a trading/dealing/brokering arm, including separation of operations in two different entities. An operator acting as a dealer or broker on its own platform, as the Consultation Paper suggests[9] may occur, fosters unfair trade practices and may jeopardize investor confidence in Canada.

8. What factors are relevant in defining the proposed best execution duty?

We would suggest that the IIROC Rulebook adequately summarize best execution duties. With respect to certain products, such as fixed income, size of the trade is a more relevant measure of best execution than price. Again, however, DTFs themselves should not be permitted to exercise execution transaction and

[9] Consultation Paper at 819.

thereby act as dealers or brokers.

9. Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

TMX Group believes it is appropriate to allow, without mandating, DTFs to require clearing of all trades on the DTF that are capable of being cleared. Some trades may also be subject to a clearing obligation pursuant to applicable securities legislation, as addressed in proposed National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives (the "Clearing Rule"), in which case the DTF would have no choice. Given the costs associated with clearing and the potential impact of such a requirement on market liquidity, particularly in certain product markets (such as certain energy products), however, it may well be that a DTF would not choose to require clearing unless mandated under the Clearing Rule due to the risk participants may avoid trading on a DTF that requires clearing of all trades.

10. Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

When establishing the rules, the CSA should keep in mind cost effectiveness and fairness considerations for the participants, DTFs, clearing agencies and trade repositories.

11. Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

A DTF should not be allowed to exercise discretion in trade execution on its facility. Prior to execution, brokers should be permitted discretion in the manner of trade matching. Access to the trading platform should be motivated by principles of fairness and market transparency rather than potential conflicts of interest between a DTF operator and participants on the platform. Additionally, the minimum requirements for dealers engaged in bringing trades to the platform (the introducing broker concept) should be dealt with through broker/dealer registration requirements.

12. Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

The organizational and governance requirements for DTFs should ensure a level playing field between DTFs and other marketplaces. To the extent it is possible, the same organizational and governance requirements that apply to exchanges should be applied to DTFs.

13. Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

DTFs should not be allowed to exercise execution discretion and should be permitted, as exchanges are, to perform their regulatory and surveillance functions themselves, provided they are subject to appropriate SRO/market oversight obligations.

14. Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

TMX Group agrees with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts. However, a separate legal entity affiliated with a DTF operator should be allowed to enter into trades as principal, on its own account, on the DTF platform operated by its affiliate, provided regulatory requirements in place would prescribe the implementation of safeguards for the appropriate management of potential conflict of interests.

15. **How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.**

The sufficiency of a DTF's financial resources should be evaluated in a similar fashion to the sufficiency of exchange's financial resources is evaluated, in order to ensure a level playing field between DTFs and exchanges and to offer an equivalent protection to the DTFs participants.

16. **Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs?**

As consistent with the SEF rules in the US, no they should not.

17. **Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?**

DTFs should be required to provide post-trade transparency to their trade repositories as soon as technologically possible.

18. **What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?**

TMX Group does not have a view on this matter.

19. **When should deferred publication of trade information be permitted? Are there circumstances other than block trades?**

In addition to block trades, deferred publication of trade information should be allowed for exchange for risk and exchange for physical trades, where applicable, in a manner similar to deferred publication allowed for marketplaces.

20. **Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?**

The threshold may be different depending on the class of derivative.

21. **What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).**

Generally, TMX Group believes these requirements should be consistent with those applicable to US SEFs.

Pre-trade information should only be required to be made available to participants, not the public generally.

The following post-trade information could be provided without charge to the public at the end of the day: instrument, quantity, open, high, low, settlement and volume.

22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

Real-time post-trade data should be made available for any participant willing to pay for such data. The information disseminated should include the post-trade data addressed in our response to 21.

We note that identity of counterparties should not be disseminated to participants or the public. Trade information dissemination is important for market efficiency and integrity, but the identification of counterparties could be detrimental in the context of relatively small and illiquid markets, as Canadian OTC derivatives markets can be.

Given the necessity for counterparties to remain anonymous, the CSA might need to take into consideration, in determining what level of trade transparency is beneficial for a given market, the numbers of players involved, the frequency of trading, the size of trades and other similar factors that may allow identification of the counterparties even if the information is not actually disseminated. For some specific markets, not disseminating post-trade data may foster market integrity and efficiency even more than mandated dissemination.

23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

Generally, yes. Regulators should also consider whether an analogous product is already listed on an exchange. If an analogous product has sufficient standardization and liquidity to be traded on an exchange, this is a strong indication that it may be appropriate for mandated trading on a DTF (or exchange).

24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

In the absence of clearer rules regarding DTF regulation, it may not yet be appropriate to suggest which products should be subject to the mandatory trading obligation.

25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

Any product mandated to trade on a DTF should also be permitted to trade on an exchange as explained in the response to question 5.

Generally, the CSA may want to consider exempting end users from the mandatory trading obligation.

26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 813?

Yes, with regulators having the ability to evaluate classes of OTC derivatives if it appears that DTFs are not doing so or if such products may pose systemic risk. Reliance upon the market to initiate proposals would put less pressure on regulatory resources. Regardless of which market players initiate the evaluation process, however, there could also be a public comment period (with well-defined timelines) before determining that any product should be mandated to trade. This would allow regulators to get the broad perspective necessary to make an appropriate determination on the matter.

27. **What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).**

There should either be order book level transparency or RFQ-level transparency for mandated trades. The bid-ask and size should be displayed.

28. **For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?**

This should be similar to determination of block sizes as discussed in question 20.

29. **Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?**

OTC derivatives that have been mandated to trade on a DTF should be executed on an order book with certain limited exceptions. Block trades and RFQ execution may also be permitted in certain instances. TMX Group believes these requirements should align with US requirements regarding SEFs. It would also be challenging to achieve the appropriate level of transparency without order book execution.

30. **What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?**

TMX Group believes that the Canadian regulatory approach should be aligned with the US approach.

General

31. **Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.**

As discussed in the response to question 5, the Canadian rules should generally more closely align with the US rules regarding SEFs.

Further, while market rules and market models may vary between DTFs and exchanges, a level regulatory playing field should be established for the trading of listed derivatives and the trading of OTC derivatives for exchanges and DTFs. Exchanges are, and should continue to be, subject to similar, but stricter regulations than DTFs. However, the regulators should be mindful not to create a regulatory framework that could encourage the migration of activity from exchange-traded markets to DTFs with significantly lower regulatory and compliance requirements.

We would also note that regulators should be mindful that as the Canadian market is smaller than some comparable jurisdictions, such as the US, it may also be less liquid and this should be taken into consideration when drafting any rules or mandating that any particular OTC derivatives be required to trade on a DTF.

TMX Group appreciates the opportunity to provide comments with respect to the Consultation Paper and looks forward to further dialogue on this matter. We hope that you will consider our concerns and suggestions and would be happy to discuss these at greater length. Please feel free to contact Jennifer Oosterbaan, Legal Counsel, at [redacted] if you have any question regarding our comments.

Respectfully submitted,

TMX GROUP LIMITED

[redacted]

[redacted]

James Oosterbaan President, NGX and Group Head of Energy	Alain Miquelon President and Chief Executive Officer, Montréal Exchange Group Head of Derivatives

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2015-03·30

To each of:
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Autorite des marches financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services
Commission (New Brunswick)
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Re. CSA Consultation Paper 92-401 - *Derivatives Trading Facilities*

Ladies and Gentlemen:

TriOptima AB ("TriOptIma") is pleased to submit the following comments in connection with CSA Consultation Paper 92-401- Derivatives Trading Facilities (the "Proposal"). As discussed below in further detail, TriOptima is a provider of post-trade services to major market participants in the OTC derivatives markets.

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Any defined terms used have the meaning prescribed to them in the Proposal, unless otherwise specified herein.

TriOptima

TriOptima offers post-trade services in the OTC derivatives markets. TriOptima is headquartered in Stockholm and also conducts its business through its four subsidiaries in New York, London, Singapore and Tokyo. The company's client base is made up of major broker/dealer banks and other financial institutions globally.

TriOptima currently offers three post-trade services for the OTC markets:

triReduce: a service for early termination of OTC derivatives - so called portfolio compression,[1]

triResolve: a service for the reconciliation of counterparty positions in OTC derivatives and other financial products, margin management and operational risk management; and

triBalance: a service for the mitigation of portfolio risk imbalances across bilateral and cleared OTC derivative exposures.[2]

TriOptima previously offered a trade reporting repository for interest rate derivatives, which has been wound down.

TriOptlma's comments on the Proposal

Post-trade risk reduction services are not trading activities

Post-trade risk reduction services, such as bilateral and multilateral trade compression, multilateral counterparty credit risk/portfolio rebalancing and multilateral basis risk reduction, can be clearly differentiated from trading activities in that they do not involve the interaction of buying and selling interests and are not price-forming. Instead, they are designed to reduce counterparty credit risk, basis risk and/or operational risk. Post-trade risk reduction services operate with some variation but there are common parameters that reflect their risk-reducing function and differentiate them from trading activity:

- They are typically multilateral and they need to be executed in bulk as a single compound transaction[3] to achieve the identified risk-reduction result and cannot be executed in part by any individual participant;
- There is no price negotiation – participants are not able to post bids or offers to enter into specific positions;
- They are designed to provide a result which is overall market risk neutral for each participant;
- They are designed to reduce unwanted secondary risks, such as counterparty credit risk, basis risk and/or operational risk – these risks have arisen as a result of contracts already entered into by the participants (e.g. because of their normal trading activities);

[1] See Annex 1.
[2] See Annex 2.
[3] See Annex 3.

- They are non-continuous and non-real time - they operate on an overnight or intra-day basis using stale valuations.

Providers of post-trade risk reduction services are not party to any trades and do not provide advice in relation to any trades. Rather, providers of post-trade risk reduction services perform a calculation exercise based on parameters received from participants participating in the service and report the calculated results back to the participants, who verify the results and decide whether or not to implement the calculated results. It is important to note that the results can only be implemented in full or else the post-trade risk reduction event will be deemed null and void (i.e. aU-or-nothing compound transaction).

Defining "Derivatives Trading Facility Question 1

TriOptima acknowledges that the Canadian Securities Administrators Committee (the "Committee") has clarified in the Proposal that "/../the proposed definition would not capture facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confinmation services, *or portfolio compression, which reduces nan-market risks in existing derivatives* portfolios *without changing the market risk of the portfolios".* TriOptima encourages the Commission to also clarify that other post-trade risk reduction services that reduce, rebalance or eliminate non-market risk in existing derivatives portfolios without changing the overall market risk would not be captured by the proposed definition of a Derivatives Trading Facility.

As described above, post-trade risk reduction services are risk reduction tools designed to reduce second order risks such as counterparty credit risk, operational risk and/or basis risk and thus systemic risk. As such, and because these services can be clearly differentiated from trading activities (no price discovery, the services are designed to be overall market risk neutral and the services' compound transaction nature). it is not appropriate to classify them as trading venue activities. It should also be noted that it has been clarified in recital 8 of MiFIR that the European organized trading facility category shall not be deemed to capture compression services. Also, recital27 of MiFIR clarifies that (i) trade execution requirements should not apply to the components of non-price forming post-trade risk reduction services which reduce non-market risk in derivatives portfolios without changing the market risk of the portfolios, and (ii) MiFIR is not intended to prevent the use of post-trade risk reduction services.

Based on the above.we would ask the Commission to clarify that providers of post-trade risk reduction services delivering compound transactions are not captured by the Derivatives Trading Facilities category,and accordingly not subject to the license requirements for Derivatives Trading Facilities.

Trading Mandate, Questions 23, 24 and 25

When determining which derivatives must be traded on a Derivatives Trading Facility, for reasons explained above TriOptima would encourage the Commission to make it clear that any derivatives trades resulting from post-trade risk reduction services should not be subject to the trading venue execution obligation. This is particularly important because post-trade risk reduction services are typically multilateral in the sense that several participants from different jurisdictions in different time-zones participate in one and the same service run. The efficiency of a service run is directly related to the number of participants and the number of trades that are submitted to the service run; the greater the number of participants and trades, the more risk reduction can be achieved. A service run can only be effected in full, i.e. all component transactions proposed to reduce risk by the service must be executed for it to have the intended risk-reducing effect. If one or several component transactions do not execute pursuant to the risk reduction optimization calculation, the risk reduction is not achieved. With respect to post-trade risk reduction services, trading venue obligations in different jurisdictions would mean that these services could not be delivered in more than one jurisdiction at a time, which would materially impede post-trade risk reduction efficiency.

It should be noted that trades resulting from post-trade risk reduction have been exempted from trading venue execution obligations in other jurisdictions.[4] Therefore, TriOptima would encourage the Commission to make it clear that any derivatives trades resulting from post-trade risk reduction services should not be subject to the trading venue execution obligation.

Market Transparency, Question 16, 17, 19, 27 and 29

As discussed above, post-trade risk reduction services can be clearly differentiated from trading activities in that they do not involve the interaction of buying and selling interests and are not price-forming. As such, no price discovery takes places which make price transparency irrelevant since there are no prices readily available to make transparent. For purposes of post-trade transparency, the market would be misled should prices derived from post-trade risk reduction services - if prices at all could be derived - be required to be made public and such prices would not have any relevant information value.

Under the Proposal, a DTF would be required to report to the public transactions executed on its facility in as close to real-time as technically feasible. In this context, and should transactions resulting from post-trade risk reduction services be required to trade on a DTF, it should be noted that transactions resulting from post-trade risk reduction services are executed in bulk and such bulks could consist of many thousands of individual transactions. DTFs are likely to face considerable operational and technological constraints, making it impossible to report such transactions in real-time. In the derivatives market generally, there is comparatively low transaction volumes and as systems are not designed to instantly process thousands of transactions, it is not technologically practicable to report thousands of transactions in real-time or close to real-time.

[4] See e.g. Art 31 and recital 27 of MiFIR.

For these reasons, TriOptima encourages the Commission to, to the extent transactions entered into as part of post-trade risk reduction services would be mandated for trading on a DTF, exempt such transactions from future pre- and post-trade transparency requirements.[5] It should be noted that transactions resulting from post-trade risk reduction services should not be subject to pre- and post-trade transparency requirements under MiFIR.[6]

We are happy to provide further information on the above, if and as required.

Yours faithfully,

TriOptima AB

[redacted]

Per Sjoberg
Chief Executive Officer

[redacted]

Christoffer Mohammar
General Counsel

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[5] Please also refer to TrlOplima comment letter dated September 11,2013.
[6] See Art 31 and recital27 of MIFIR.

Annex 1

Because of the interconnectedness of derivatives trading, active market participants have at any one time large numbers of contracts outstanding with multiple counterparties, each creating counterparty credit risk and an operational burden to manage and oversee. However, when these risks are viewed on a portfolio basis and compared against the portfolios of other participants, there are ready opportunities to reduce certain risks without changing one's market risk. triReduce compression allows participants to terminate contracts early in order to eliminate counterparty credit risk, lower the gross notional value of outstanding contracts, and reduce operational risks by decreasing the number of outstanding contracts. triReduce is operated for rates, credit and commodity derivatives and has helped remove in excess of $500 trillion of gross notional exposure from the financial system since its launch in 2003 including, more recently, cleared transactions. triReduce has approximately 180 subscribing legal entities.

Annex 2

The objective of the G20 commitments adopted in Pittsburgh 2009 is to mitigate systemic risk, and the actions supported by the G20 (including mandatory clearing) are means toward that end. While many OTC derivatives will be suitable for central clearing, some OTC derivatives will remain bilateral and not be cleared, and the combination of cleared and uncleared components in a portfolio may create risk imbalances within such portfolios and increase initial and variation margin requirements. The portfolio imbalances can however be efficiently rebalanced by lowering counterparty risk/DV01 in a portfolio.

Injections of off-setting trades between specific counterparties can rebalance risk exposures across multiple CCPs and bilateral counterparties alike. Proactive risk rebalancing helps reduce systemic risk and is a valuable tool for both CCPs and their members in the administration of their default recovery and resolution situations. In a multilateral context, these trades can be generated without changing participants' market risk and funding risk. TriOptima's triBalance (counterparty risk rebalancing) service was launched to enable rectification of such portfolio imbalances.

Annex 3

Compound transaction

A compound transaction may be delivered to participants by a service provider as part of a risk reducing exercise.
The differences between compound transaction services and trading are:

A compound transaction is market risk neutral for each of the compound transaction participants:

Participants are indifferent to the price at which the components in the compound transaction are concluded, since overall the compound transaction is balanced;

Participants do not submit bids and offers to enter into a specific position, but rather indicate tolerances (e.g. maximum change in counterparty credit exposure) which the compound transaction must satisfy;

The compound transaction and its components are not price-forming events. Normally, the compound transaction is effected several hours after the marks-to-market or the pricing curves are determined and, consequently, a compound transaction is calculated on basis of stale and irrelevant market data:

A compound transaction is designed to reduce second order risks emerging from existing OTC derivatives, such as counterparty credit risk, operational risk and/or basis risk;

A compound transaction is multilateral and not bilateral (i.e. there are more than two parties to the transaction);

All participants in the compound transaction must accept the transaction in full or it will not be executed. Unlike trading activities, it is an "all or nothing" proposal, arranged by the post-trade risk reduction service provider (e.g. TriOptima), where several thousands of individual transactions are components of the overall compound transaction. The individual component transactions are irrelevant in their own right and cannot be executed separately to achieve the desired risk reduction effect. If one party fails to accept, the entire proposal is declared null and void and no changes to the participants' portfolios take place;

Periodicity of arranging a compound transaction is not continuous, but rather cycle-based and a cycle extends over more than a trading day;

The service provider is not party to the compound transaction; nor is it involved in settlement of the compound transaction.

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FORTIS BC™

DELIVERED VIA ELECTRONIC MAIL

March 31, 2015

British Columbia Securities Commission
701 West Georgia Street
Vancouver, BC
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Attention: Mr. Michael Brady, Senior Legal Counsel

Dear Mr. Brady:

Re: FortisBC Energy Inc. (FEI) and FortisBC Inc. (FBC), (together, FortisBC) Comments re CSA Staff Consultation Paper 92-401: Derivatives Trading Facilities

1. Introduction

FortisBC Energy Inc. and its affiliate FortisBC Inc. (collectively FortisBC) hereby respectfully submit comments on the Canadian Securities Administrators (CSA) Staff Consultation Paper 92-401 Derivatives Trading Facilities published on January 29, 2015. The Consultation Paper discusses the development of a regulatory framework for OTC derivatives trading platforms, to be referred to in Canada as "derivatives trading facilities" or "DTFs". The Consultation Paper also discusses the proposed approach for requiring market participants to use DTFs to enter into certain classes of OTC Derivatives. This initiative is in furtherance of Canada's G20 commitment to require standardized OTC Derivatives to be traded over exchanges or electronic platforms where appropriate. The Consultation Paper notes that the primary objective of imposing DTF trading obligations in respect of particular classes of OTC Derivatives (Mandatory DTF Trading Requirement) is to enhance the transparency and efficiency of OTC Derivatives markets for the benefit of all market participants. FortisBC appreciates the opportunity to submit these comments on Derivatives Trading Facilities and looks forward to further working with the Committee as it moves forward to implementing Canada's G-20 commitments that relate to the regulation of the trading of derivatives in Canada through the British Columbia Securities Commission.

2. FortisBC Use of Derivatives

In order to mitigate the risk of market price movements on its natural gas rates for customers, FEI has actively engaged in OTC natural gas commodity hedging in the past. FEI has undertaken hedging to mitigate market price volatility to support customer rate stability and not for speculative purposes.

FortisBC has also engaged in physical commodity (gas and electricity) trading for the purposes of managing costs for customers. FortisBC believes that these types of transactions should not be classified as derivatives per the Model Rules definitions and therefore not subject to the pending derivatives legislation.

FortisBC's financial hedging and physical commodity purchases and trading strategies and plans have been subject to acceptance by the British Columbia Utilities Commission on a regular basis before their implementation.

3. Comments Regarding CSA Derivative Trading Facilities Section 7(k) Confidential treatment of trading information

The Consultation Paper proposes to define derivatives trading facility (DTFs) to mean a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades. Under Section 7(k) the proposed rules states that a DTF would be required to implement reasonable safeguards and procedures to protect a participant's order or trade information. Among other things, a DTF would be prohibited from releasing a participant's order or trade information to a person or company other than the participant, a securities regulatory authority or a regulation services provider unless the DTF participant has provided prior written consent to the release of the information; the release of information is required by applicable law; or the information has already been publicly and lawfully disclosed to another person or company. However, subject to certain conditions, we anticipate that a DTF would be permitted to release trading data for use in research.

FortisBC would like to express its concerns regarding pre-trade and post-trade data transparency and making transaction data available to the public. FEI purchases natural gas at a number of market hubs in B.C. and uses financial hedges to manage price risk at these hubs. While some market hubs are very liquid, such as the AECO/NIT market hub proxy for Alberta gas, others are not so liquid. For example, the Sumas market hub is relatively illiquid, with a small number of buyers and sellers. As part of its previous price risk management strategy, in the past FEI typically hedged its Sumas price exposure for each winter period. FEI is concerned that, given the small amount of trading at this hub, making the derivatives data available to the public for this hub, or any other relative illiquid hubs, could compromise FEI's hedging position or strategy if it needed to hedge the hub price in the future. FEI would prefer that this data is made public in such a manner that protects FEI's positions and strategies to manage price risk and costs for its customers. FortisBC is also concerned with the public availability of any pricing data associated with its forward electricity contracts as these are usually negotiated in confidence with the counterparty. If this pricing is made available to competing counterparties, it could compromise FortisBC's ability to competitively enter into pricing power supply that assists in managing costs for its customers.

4. Comments Regarding Exemption

FortisBC requests that the Committee ensures the proposed rules are clear, concise and consistent with other previously published model rules. The Consultation Paper does not mention End-User Exemption. For example, it should be noted that Consultation Paper 91-406 Derivatives Central Counterparty Clearing proposed an exemption will be made available if a party to a Mandatorily Clearable Derivatives transaction is: 1) one of the counterparties is not a financial entity and 2) that counterparty is entering into the transaction to hedge or mitigate commercial risk related to the operation of its business. We believe that exemptions applicable in the context of mandatory clearing should be included in the DTF rules.

5. Clarity Regarding Roles and Responsibilities

FortisBC hopes that the Committee will provide more clarity and a schedule outlining the key roles and responsibilities for various market participants. This will assist in navigating through the various compliance rules and regulations and effectively meeting key deadlines.

6. Conclusion

FortisBC appreciates the Committee's consideration of comments in developing the derivatives regulation. FortisBC has submitted its concerns and comments in the interests of managing its gas and power supply and costs for its customers. FortisBC welcomes further discussion of these comments and concerns if it is required and would like to have the opportunity to review and comment on future papers and provincial rules.

Please direct any further questions to [redacted]

[redacted]

[redacted]

[redacted] Energy Supply and Resource Development

FortisBC Energy Inc.

STATE STREET.

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Delivered via E-mail

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

c/o Josée Turcotte, Secretary
Ontario Securities Commission
E-mail: comments@osc.gov.on.ca

c/o Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
E-mail: consultation-en-cours@lautorite.qc.ca

Re: Comment Letter on CSA Consultation Paper 92-401 – *Derivatives Trading Facilities*

Dear Sir/ Madam:

State Street Corporation ("**State Street**")[1] appreciates the opportunity to comment on CSA Consultation Paper 92-401 – *Derivatives Trading Facilities* (the "**Consultation Paper**").

State Street is one of the largest providers of trade matching, trade processing and clearing and settlement solutions for derivatives transactions, and as such, we have been active in the policy discussions about platform trading and central counterparty clearing of derivatives in different jurisdictions around the world. We support derivatives clearing and execution regulatory initiatives which we believe will reduce global systemic risk and, when properly implemented, will also benefit our institutional investor customer base.

Background regarding Our Derivatives Trading Activities and Platforms

State Street is the indirect parent company of SwapEx, LLC ("**SwapEx**"), a Delaware limited liability company that is provisionally registered as a swap execution facility ("**SEF**") with the United States Commodity Futures Trading Commission (the "**CFTC**") which has been exempted by the Ontario

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[1] With $28.19 trillion of assets under custody and administration and $2.45 trillion of assets under management at December 31, 2014, State Street is a leading specialist in meeting the needs of institutional investors worldwide. Our customers include mutual funds, collective investment funds and other investment pools, corporate and public retirement plans, insurance companies, foundations, endowments and investment managers. We operate in more than 100 geographic markets worldwide. We conduct our business primarily through our principal banking subsidiary, State Street Bank and Trust Company, incorporated under a special act of the Massachusetts legislature.

Securities Commission (the "**OSC**") on an interim basis from the requirement to obtain recognition as an exchange under the *Securities Act* (Ontario).[2] SwapEx lists for trading foreign exchange non-deliverable forwards ("**NDFs**") that are not presently listed for clearing by a clearing agency (and thus are settled bilaterally) as well as interest rate swaps for which the Chicago Mercantile Exchange acts as a CFTC-regulated derivatives clearing organization ("**DCO**").

State Street and its subsidiaries also engage in derivatives and foreign exchange trading as principals and agents and we maintain electronic communications and trade matching platforms which facilitate communications related to spot foreign exchange transactions, deliverable foreign exchange forwards and deliverable foreign exchange swaps[3] that are not regulated as exchanges, alternative trading systems, SEFs or in other relevant trading platform categories.

Introductory Comments and Policy Discussion related to Trading Facility Rule Harmonization

State Street welcomes the efforts of the Canadian Securities Administrators (the "**CSA**") and the CSA Derivatives Committee (the "**Committee**") to strengthen OTC derivatives markets as reflected in the consultation papers and rules that have been introduced since 2009, including the current proposal to create a framework for regulating derivatives trading facilities ("**DTFs**") and trading on DTFs.

Our primary recommendations below emphasize the importance of ensuring international alignment of rules governing electronic platforms. We believe that care must be taken to avoid imposing any unnecessary incremental regulatory burdens on electronic platforms given that oversight and regulation in foreign jurisdictions may in relevant cases often be fully sufficient. Even minor incremental regulatory burdens can be counterproductive from the standpoint of international regulatory harmonization and may have significant detrimental impacts on Canadian access to international markets. Unless there is a clear and pressing need to diverge from international standards, incremental burdens typically only to serve to increase market fragmentation and will ultimately increase the trading costs borne by Canadian market participants. In particular, given the highly integrated North American derivatives trading market, the extensive regulation imposed by the CFTC and US laws, the potential costs to non-Canadian DTFs to effect changes to their systems, rules and procedures to meet incremental requirements and the relatively limited size of the Canadian market, there is a risk that incremental regulatory obligations imposed in Canada will result in foreign DTFs electing not to offer access to their platforms in Canada, particularly where such incremental requirements are viewed as providing little or no incremental regulatory benefits in light of the existing U.S. regulatory system in which such platforms are currently operating.

We specifically discuss below the importance of aligning the regulation of electronic trading platforms for deliverable foreign exchange transactions in order to ensure that efficient access to existing international trading platforms is maintained. In our view and the view reached by the United States Department of the Treasury ("**Treasury**") following extensive consultation and study, deliverable FX trading on electronic

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[2] We refer to the order of the OSC granted to SwapEx dated October 29, 2013 (the "**OSC SwapEx Exemption Order**"), as amended by an order of the OSC dated September 30, 2014 extending the termination date of such order and analogous orders issued by the OSC to other SEFs. The terms and conditions of the OSC SwapEx Exemption Order are set out in Schedule "A" thereto.

[3] We refer to these terms in the sense they are defined in the United States *Commodity Exchange Act*, as amended (the "**CEA**"). "**Foreign exchange forward**" is defined in Section 1a(24) of the CEA as "a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange." "**Foreign exchange swap**" is defined in Section 1a(25) of the CEA as "a transaction that solely involves: (A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and (B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange."

platforms already functions very well in a highly transparent market with minimal risks and are subject to adequate internationally coordinated oversight from central banks and prudential regulators.

In our view, imposing DTF recognition requirements on international electronic platforms for deliverable foreign exchange trading would likely cause significant and unwarranted regulatory burdens, potential withdrawal of platforms from the Canadian market and an unwarranted increase in costs to Canadian market participants that would erode a well-functioning market.

As noted in the OTC Derivatives Regulators Group's August 2013 *Report on agreed understandings to resolving cross-border conflicts, inconsistencies, gaps and duplicative requirements*: "The adoption of consistent, effective and, to the extent practicable, non-duplicative standards in and across jurisdictions is of paramount importance in achieving the G20 regulatory reform objectives." This recognition of the importance of international harmonization of rules and the importance of deference to home country regulations has been recognized repeatedly, including in the Communiqué of the July 2013 meeting of G20 Finance Ministers and Central Bank Governors representatives who agreed "that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulations and enforcement regimes, based on essentially [identical] outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes."

It has been specifically recognized that differences in the way derivatives rules are being implemented could cause market disruption and fragmentation, reduced liquidity in certain markets and the concentration of risks within certain jurisdictions.[4] In our view, the risks of market fragmentation and the limited benefits of imposing incremental regulatory burdens that may not ultimately provide tangible improvements in market regulation are particularly acute in the case of the regulation of electronic trading platforms.

Specific Comments and Submissions in Response to Questions Posed by the Committee

We are providing below responses to specific questions raised by the Committee in the Consultation Paper. For ease of reference, the text of questions that we are responding to are set out in full below.

Question 1: Is the DTF category appropriately defined? If not, what changes are needed and why?

As noted in the Consultation Paper, the proposed definition of "derivatives trading facility" is similar to the definition of a SEF that applies in the United States under the CEA and we generally agree with this approach, subject to the comments below.

Exclusion of Physical FX Trading from the Scope of OTC Derivatives Definition for the DTF Rule

It is important to note that the definition of "derivatives trading facility" turns on the definition of "OTC derivatives" since a facility or market is only a DTF if it involves "orders of multiple buyers and multiple sellers of OTC derivatives".

We strongly believe that the definition of "OTC derivatives" used in the DTF Rule should be narrowed to be better aligned with the definition of "swaps" used under US law by clarifying that spot foreign exchange

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[4] As noted by the OTC Derivatives Regulators Group: "As our jurisdictions implement OTC derivatives reforms, local market conditions, domestic legal frameworks and varying implementation schedules have resulted in differences in the way these reforms are being implemented. These differences create a risk that conflicts, inconsistencies, gaps or duplicative requirements would reduce the effectiveness of OTC derivatives reforms. The Principals recognise that absent appropriate co-ordination, our respective cross-border rules and implementation schedules could cause market disruption and fragmentation, reduced liquidity in certain markets, and the concentration of risks within certain jurisdictions" (OTC Derivatives Regulators Group's August 2013 *Report on agreed understandings to resolving cross-border conflicts, inconsistencies, gaps and duplicative requirements*).

transactions, deliverable foreign exchange forward transactions and deliverable foreign exchange swap transactions ("**Physical FX Transactions**") are not "OTC derivatives" for the purposes of this rule. By narrowing the definition in this manner, a platform that only facilitates Physical FX Transactions will not be caught within the "derivatives trading facility" definition under applicable Canadian DTF Rules or the "SEF" definition under US rules.[5] The policy arguments for this approach are set out below.

This alignment of the definition of OTC derivatives in the DTF Rule with the CEA swaps definition would best allow Canadian market participants to have access to existing trading platforms that permit participants to enter into ordinary course deliverable foreign exchange transactions. Requiring Physical FX Transaction platforms to register as DTFs could very likely cause these platform providers to not provide access to Canadian market participants given the significant new compliance costs for platforms that do not require direct regulation in the United States. Erecting barriers to access to established electronic trading platforms for Physical FX Transactions may thus have a material adverse impact on liquidity and pricing in the Canadian market.

As noted in the Consultation Paper, a key objective of the G20 mandate and the CSA's implementation thereof is to enhance the transparency and efficiency of OTC derivatives markets for the benefit of all market participants. Electronic trading in particular brings additional benefits to the swaps markets. Electronic systems increase the size of the market by permitting geographically remote market participants to submit and respond to orders. Electronic trading also generally increases the integrity of the market by reducing human errors that may occur through manual trading processes and by providing a transparent, non-discretionary algorithm to match bids and offers. Receiving, matching, and routing orders electronically can also facilitate the international goal of straight-through processing.

Physical FX Transactions were among the first OTC asset classes to migrate to electronic trading on electronic communications networks ("**ECNs**"). Since the early 2000s, the number of ECNs for FX derivatives has increased substantially and includes a number of single-dealer and multidealer request-for-quote ("**RFQ**") platforms. A significant consequence of the widespread use of ECNs in the FX derivatives market is the wide availability of pricing, which contributes to the narrow spreads and deep liquidity that characterizes this market. The increased number of ECNs has led to a corresponding increase in the redundancy, and hence resiliency, of the FX derivatives markets: in the event of disruption to a given ECN, traders can readily move their trading to another operational platform that lists the same or similar FX products for trading.

With average daily turnover of approximately US$4 trillion,[6] the foreign exchange market is widely acknowledged to be the largest financial market in the world. Unlike certain other over-the-counter derivatives markets, the liquidity, transparency and strong operational infrastructure of the foreign exchange markets have allowed them to continue to operate in a safe and sound manner, despite wrenching market disruptions, such as the currency crises of the 1990s, the bursting of the high-tech

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[5] The CEA is already harmonized with Canadian trade reporting rules proposed or in force in relevant CSA jurisdictions in respect of trade reporting in respect of Physical FX Transactions. Notwithstanding that Physical FX Transactions are excluded from the CEA definition of "swaps" (as provided under the CFTC definition on the basis of a determination by the Secretary of the U.S. Treasury as described in section 1a(47)(E)(i) of the Commodity Exchange Act (and also further discussed later in this comment letter), deliverable FX forwards and swaps must be reported to a swap data repository in accordance with CFTC Rules (see CEA s. 1a(47)(E)(iii)). Moreover, swap dealers and major swap participants registered with the CFTC must comply with conduct of business standards in respect of their transactions in deliverable FX forwards and swaps (see CEA s. 1a(47)(E)(iv)) other than specific requirements to provide a pre-trade mid-market mark to a counterparty, on the basis that the pre-Dodd-Frank market infrastructure was liquid enough to ensure ready availability of prices for market participants (see CFTC No-Action Letters 12-42 (December 6, 2012) and 13-12 (May 1, 2013)).

[6] Bank for International Settlements, Triennial Central Bank Survey – Report on Global Foreign Exchange Market Activity in 2010, at 6-7 (December 2010).

bubble in 2000-2001 and the financial crisis of 2008-2009. As the Foreign Exchange Committee of the Federal Reserve Bank of New York has observed:

> The [foreign exchange] marketplace itself is spread across a series of liquid trading centers in different time zones and operates twenty-four hours a day, each business day. Absent such consideration of these key characteristics of the foreign exchange market, the potential for negative unintended consequences of any efforts to improve market resiliency is quite large…
>
> The market functioned well [during the 2008 financial crisis], despite strains seen in international funding and credit markets, and enabled participants to measure and mitigate risk dynamically in a global marketplace… [S]ystemic risk mitigants built into the OTC FX market structure over the years proved successful in providing a liquid and continuous market despite the volatility, defaults, and disruptions of [2008 and 2009].[7]

State Street is concerned that including Physical FX Transactions within the definition of "OTC Derivatives" in the DTF Rule would materially and unnecessarily disrupt the market, with important implications for overall efficiency, stability and costs. Indeed, any presumption in favor of standardization, central clearing, and exchange trading in the highly customized FX market would greatly reduce its effectiveness as a source of funding and/or hedging for corporations, financial institutions, pension funds and registered funds. Moreover, it would have an especially detrimental impact on funding markets, where FX swaps are a low-cost, low-risk instrument used extensively by banks, including central banks, for short-term funding needs, such as currency mismatches. Reducing the availability of customized FX swaps could result in greater reliance on short term placements and/or deposits, thereby creating increased credit risk.

US Department of Treasury Analysis of Physical FX Trading and Regulation

Under the *Dodd-Frank Act*, the Treasury was given the authority to conduct a review and determine whether it was appropriate to require Physical FX Transactions and exchange-trading and central clearing of Physical FX Transactions to be regulated in the same manner as traditional OTC derivatives.

As discussed in detail in its final determination (the "**Treasury Final Determination**"),[8] Treasury determined that Physical FX Transactions should not be subject to U.S. exchange-trading and clearing rules that apply to swaps. This determination was based on a through market and policy review in which Treasury concluded that Physical FX Transactions have distinctive characteristics which differentiate them from other types of swaps (these findings relate to the fact that physical FX markets are highly liquid and transparent, and Physical FX Transactions have fixed payment obligations and are predominantly

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[7] Foreign Exchange Committee of the Federal Reserve Bank of New York, Overview of OTC Foreign Exchange Market: 2009, at 7 (November 9, 2009). The Bank of England's Foreign Exchange Joint Standing Committee reached a similar conclusion regarding the performance of the FX derivatives markets during the financial crisis. Please see Bank of England Foreign Exchange Joint Standing Committee, "FXJSC Paper on the Foreign Exchange Market" (September 2009).

[8] The Treasury Final Determination is available at http://www.treasury.gov/press-center/press-releases/Documents/11-16-2012%20FX%20Swaps%20Determination%20pdf.pdf and provides a detailed discussion of electronic FX trading market and policy matters. The document includes the following discussion of the prevalence and efficiency of electronic platform trading for FX without being subject to the SEF Rule: "Foreign exchange swaps and forwards already trade in a highly transparent market. Market participants have access to readily available pricing information through multiple sources. Approximately 41 percent and 72 percent of foreign exchange swaps and forwards, respectively, already trade across a range of electronic platforms and the use of such platforms has been steadily increasing in recent years. The use of electronic trading platforms provides a high level of pre- and post-trade transparency within the foreign exchange swaps and forward markets. Thus, mandatory exchange trading requirements would not significantly improve price transparency or reduce trading costs within this market" (*pp. 20-21, footnotes omitted)*.

short-lived). Treasury further noted that the most significant risk posed by FX transactions is typically settlement risk, which is addressed through the Continuous Linked Settlement ("**CLS**") system, and there are long-established procedures for mitigating counterparty credit exposure in this market. Furthermore, the current FX system has worked well throughout the recent financial crisis, with little evidence of the sort of dislocation encountered in certain segments of the OTC derivatives market and in wholesale funding markets generally. Ultimately, any potential systemic risk concerns in the FX market have already been adequately addressed.

We believe that the findings of Treasury are directly relevant to the policy issues that the Committee and the CSA will wish to consider in determining whether Physical FX Transactions should be included in the DTF Rule's definition of OTC derivatives. We note that Treasury's fact sheet regarding the Treasury Final Determination (available at http://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx) provides a useful summary of the analysis performed and conclusions reached by Treasury in connection with this key decision.

Additional Comments on the Definition of "Derivatives Trading Facility"

The proposed definition includes a possible requirement that the facility or platform "uses methods under which the orders interact with each other". If retained, it would be useful to clarify or define the meaning of this phrase. For example, it is unclear whether a RFQ system "uses methods under which the orders interact with each other" and it will be important for the rule to clearly indicate whether pure RFQ systems are DTFs.

We would also recommend that the definition of DTF clearly exclude programs and facilities that route orders or RFQs to a DTF, assuming that the DTF to which the order or RFQ is routed is itself recognized or exempt in the relevant Canadian jurisdiction. We expect that this is the Committee's intention, given that different programs or facilities may provide an interface with a DTF but only the DTF itself is providing a many-to-many platform or providing the facility that permits and evidences trade execution.

Question 2: Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

From our perspective, it is critically important that if there are any consequences to the use of discretion, then the DTF Rule should provide a very clear and narrow definition of "discretion" in order to limit the risk that platforms will be subject to unintended additional regulatory requirements in Canadian jurisdictions that do not apply outside of Canada. For example, a DTF operator may exercise discretion in respect of trading that impacts all DTF participants (e.g., decisions to introduce trading limits, close a market earlier or publish a calculated market value). We assume that these are not types of discretion that should trigger additional regulatory requirements and so it will be important to eliminate any relevant ambiguity in the definition of discretion that might impair Canadian market participants' access to DTFs or unnecessarily increase compliance costs.

Question 4: Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

We agree with the Committee's recommendation that permitted execution methods should include both systems that do and those that do not disclose counterparty identities and we specifically confirm that the various identified types of execution methods (i.e., order book systems, hybrid system and RFQ systems) should each be permitted to operate independently or in combination. Any restrictions could potentially have material impacts on market access.

Question 5: Is the proposed regulatory framework for DTFs appropriate?

We would encourage the Committee to exempt from mandatory registration obligations those DTFs that do not permit trading of derivatives that are subject to mandatory trading requirements. These platforms do not warrant regulation from the perspective of the G20 commitments' policy objectives or from an investor protection standpoint.

Furthermore, our view is that for transactions that are not subject to mandatory DTF execution requirements, DTFs should in no case be subject to more stringent regulatory requirements than are imposed on single-dealer platforms and individual dealers. This would be contrary to the spirit and intention of the G20 commitments since it would introduce costs and compliance issues only on many-to-many platforms that would skew trading towards dealers and single-dealer platforms, thereby potentially reducing liquidity and impairing efficient pricing and market transparency. Accordingly, we encourage the CSA to exempt from mandatory registration obligations those DTFs that do not permit trading of derivatives that are subject to mandatory trading requirements and we further we recommend that the CSA should not impose mandatory DTF registration obligations prior to the introduction of derivatives dealer registration requirements that ensure a level playing field for dealers and DTFs.[9]

Foreign-Based DTFs

We are supportive of the position that foreign-based DTFs that are registered by their home regulator should be eligible for exemptive relief. We would also suggest that the DTF Rule should provide an automatic full exemption from DTF registration requirements so long as the SEF is registered with the CFTC and is in compliance with specified Canadian reporting and compliance requirements. We believe that the process for granting exemptions to registered SEFs on a case-by-case basis would provide no real benefits to Canadian market participants and would increase compliance costs and potentially limit market access.

We commend the Ontario Securities Commission on accommodating registered SEFs (including State Street's SwapEx platform) with exemptions from Ontario exchange requirements, and we agree that the scope of reporting applicable under the relevant Ontario exemption orders could reasonably be imposed as a condition to exempting CFTC-registered SEFs from Canadian DTF registration requirements. It is our view that that set of requirements could be codified and applied on a blanket basis for registered SEFs in order to eliminate unnecessary uncertainty and cost. Setting out a codified exemption regime is also in keeping with efforts to provide clear and predictable requirements for electronic trading platforms.[10]

Setting standards of fair access to DTFs for Canadian market participants would likely also be a reasonable compliance requirement (as referred to in Footnote 91 to the Consultation Paper) but it is not clear if there are additional Canadian market integrity requirements that need to be imposed on SEFs beyond the requirements applicable under CFTC rules.

Question 14: Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

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[9] Even those regulatory burdens that do not have an obvious direct cost to many-to-many platforms may ultimately still have an anti-competitive impact. For example, single-dealer platforms may take advantage of mandatory pre-trade price disclosure imposed on many-to-many platforms by minimally undercutting available pricing, thereby taking trading volume from more transparent markets and skewing trading economics significantly in favour of the single-dealer platforms to the ultimate detriment of the market and the pricing that will be available.

[10] As agreed by the OTC Derivatives Regulators Group Principals: "whenever possible, and consistent with applicable laws and regulations, the details of laws and regulations applicable to foreign organised trading platforms, including registration requirements, should be made clear before their implementation. Enhancing clarity and predictability of the details of applicable laws and regulations for various stakeholders should help reduce regulatory uncertainty and avoid unnecessary burdens and unintended consequences" (OTC Derivatives Regulators Group's September 2014 *Report on Cross-Border Implementation Issues*).

Our view is that it is important to permit DTF operators and their affiliates to trade on the related DTF in order to ensure sufficiently deep liquidity pools and to avoid having DTFs either excluding Canadian participants or providing Canadian participants with curtailed trading options. Unnecessary restrictions on operator and operator-affiliate participation in trading could substantially decrease the liquidity available on the DTF and interfere with brokers' ability to obtain the best possible price for its customers' orders. We recommend that conflict of interest provisions be used to address perceived risks.

Question 16: Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

We agree that the Committee is considering relevant factors in its discussion of pre-trade transparency. We also agree with the Committee's recommendations that pre-trade transparency requirements apply only to those products that are sufficiently liquid to ensure that the information is of benefit to market participants and the price formation process.

We also note that if the DTF pre-trade transparency requirements imposed on registered SEFs are more extensive or worded differently than those that apply under CFTC Rules, then that could of course introduce a risk that the SEF would restrict Canadian market access It is important to note that preferential transparency could not be provided to Canadian market participants (other than, for example, requirements that are in effect imposed on the Canadian participant itself such as an obligation to solicit quotations from a minimum number of quote providers on an RFQ platform) and some SEFs may not wish to alter their existing pre-trade transparency models from those used under CFTC rules.

Question 17: Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

We believe that DTFs should be permitted to satisfy post-trade transparency requirements by reporting to a trade repository, since that is a central venue for information which may be accessed by market participants on an equal footing.

* * *

State Street appreciates your consideration of these comments and submissions. If Committee members or regulatory staff have any questions concerning the matters discussed in this letter including regarding the regulatory approach in the United States, you are encouraged to contact our legal counsel, Justin McCormack, by phone at [redacted] or by email at [redacted].

Sincerely,

[redacted]

Lawrence Lee
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2 April 2015

VIA EMAIL

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British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

Re: Comments on Consultation Paper 92-401 - *Derivatives Trading Facilities*

Ladies and Gentlemen:

Bloomberg L.P. **("Bloomberg")** appreciates the opportunity to comment on Consultation Paper 92-401 - *Derivatives Trading Facilities* (the **"Consultation Paper"),** which was issued by the Canadian Securities Administrators (the **"CSA")** on January 29, 2015.

We welcome the CSA's decision to include in its proposed regulatory framework a comparability regime for OTC derivatives trading platforms that are registered with approved foreign regulators. We believe it is important to the stability of the Canadian derivatives market that non-Canadian trading platforms be able to offer access to participants located in Canada without needing to obtain separate authorization from the Canadian regulators, so long as these platforms remain appropriately regulated in their home jurisdictions. Requiring the operators of non-Canadian trading platforms to go through a separate authorization process in order to make their services available in Canada would represent a serious barrier to entry, one which could lead to the fragmenting of liquidity among various derivatives trading venues throughout the world.

The establishment of a comparability regime in the CSA's final regulatory framework would ensure that Canadian market participants are able to enjoy full access to the liquidity offered by non-Canadian trading platforms without experiencing any interruption in their current trading access. We strongly encourage the CSA to include provisions establishing a comparability regime for foreign regulated OTC derivatives trading platforms in its final regulations.

Bloomberg is eager to work closely with the CSA in the coming months as the CSA continues to develop its new regulatory framework. Please do not hesitate to reach out to me at [redacted]

[redacted]ly,

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Dear Sirs/Mesdames:

CSA Consultation Paper 92-401 – *Derivatives Trading Facilities*

This letter is in response to the request for comments regarding the above-noted CSA Consultation Paper (the "**Consultation Paper**"). As counsel to global financial institutions, pension plans, commodity producers, investment funds and derivatives trading platforms, Osler has extensive involvement with derivatives transactions and derivatives regulation. This comment letter is also informed by input from clients that trade derivatives or that would be subject to regulation as derivatives trading facilities (a "**DTF**"). We have responded to a selection of the questions posed by the CSA Derivatives Committee (the "**Committee**") in the Consultation Paper that are most relevant to our clients.

1. *Is the DTF category appropriately defined? If not, what changes are needed and why?*

In our view, the DTF category is appropriately defined. The definition is flexible and takes into account a variety of trading platforms and execution methods. We are also supportive of the enumerated exclusions from the DTF definition. In particular, we think that it is appropriate to exclude: (i) purely bilateral trading, (ii) one-to-many facilities such as single-dealer platforms and (iii) facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards, electronic post-trade confirmation services and portfolio compression services. For example, portfolio compression service providers such as TriOptima, Creditex and Markit should not be subject to DTF regulation in Canada. We recommend that these exclusions should be included in companion policy guidance that accompanies any future DTF rules.

4. *Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?*

In our view, there should be no minimum trading functionality prescribed for DTFs. If an entity satisfies the definition of DTF by virtue of the modes of execution it makes available to Canadian participants, then it will need to be regulated as a DTF but should not be required to add modes of execution to its facility. For example, it would not be appropriate to require a small DTF that offers RFQ functionality in a particular asset class to also offer a central limit order book ("**CLOB**"), particularly if that asset class is not well-suited to trading via a CLOB.

Also, we note that the request-for-stream execution method would depend on market makers to provide continuous streaming quotes. It would be helpful for the Committee to define market making activity in the context of request-for-stream execution methods, and whether such activity would be considered to be the business of dealing in derivatives as a dealer under futures derivatives registration rules, particularly if the market maker is located outside of Canada and provides market-making services only on foreign-based DTFs.

5. *Is the proposed regulatory framework for DTFs appropriate?*

The proposed regulatory framework for DTFs is appropriate. We applaud the Committee for stating the intention to regulate DTFs under new rules appropriate for derivatives trading, and to not regulate DTFs under the existing regulatory framework for securities and futures exchanges, ATSs and QTRSs in NI 21-101.

Also, it is appropriate for the Committee to recommend that DTFs may be authorized or exempt from authorization. We are supportive of the proposal to grant exemptive relief to foreign-based DTFs that are subject to comparable regulation in their home jurisdictions. Given the cross-border nature of derivatives trading, it is important to support harmonized rule making, substituted compliance and regulatory reciprocity wherever possible.

Finally, we encourage the Committee to follow a principles-based approach to regulation of DTFs. A principles-based approach will encourage effective regulatory oversight while preserving needed flexibility for DTFs to operate their businesses in a dynamic and competitive market.

6. *Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)*

Without a derivatives dealer registration regime in Canada, it is not possible to comment on the possible application of dealer requirements on a DTF that exercises discretion. The requirements of a derivatives dealer regime may be unduly onerous for a DTF. For example, in our view it would not be appropriate to require that a DTF become a member of IIROC simply because it exercises discretion in the execution of transactions.

There are many alternatives for regulating DTFs that exercise discretion, such as specific business conduct requirements in the future DTF rule. The Committee should adopt a flexible approach to regulating DTFs that exercise discretion. It may be necessary and valuable to Canadian derivatives markets to permit a DTF to exercise discretion, particularly if the DTF facilitates trading of bespoke derivatives that may not otherwise be suitable for electronic trading. Regulation of DTFs that exercise discretion must be appropriately balanced between limiting the potential for conflicts of interest and permitting worthwhile activity.

7. *To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?*

No, a DTF that exercises discretion in the execution of transactions should not be required to exercise this functionality in a separate affiliated entity. Requiring the functionality in a separate affiliated entity would be unnecessarily costly and burdensome. Consider the example of securities marketplace regulation, where there are examples of firms carrying on business as a brokerage firm and an ATS out of the same entity (with appropriate policies and procedures to manage against conflicts of interest). Similar requirements should be adopted for DTFs that exercise discretion.

8. *What factors are relevant in defining the proposed best execution duty?*

Any duty of best execution of a DTF that exercises discretion in respect of derivatives trading should be clearly distinguished from best execution in respect of securities trading. Given the unique characteristics of derivatives products and various execution methods, even if traded on a DTF, a best execution duty may be very difficult to define and enforce. Further study and harmonization with international approaches is necessary.

10. *Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?*

Should it be decided that DTFs must engage in trade reporting to trade repositories, then a DTF should have the right to choose the trade repository to which it will report (assuming that the repository is appropriately recognized in the Canadian jurisdiction).

We also note that a DTF should not be required to provide access and trading feeds to all regulated clearing agencies. A DTF should have the right to choose to connect to certain clearing agencies and not others. If a DTF does not connect to a particular clearing agency that is preferred by a participant, then that participant is free to trade on other DTFs that connect to the preferred clearing agency. However, if a DTF connects to multiple clearing agencies, then participants should have the right to choose the clearing agency they wish to use to clear a transaction.

11. *Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?*

We do not have a view on whether a DTF that exercises discretion should be permitted to limit access to its facility. However, more generally, all DTFs should have some grounds for limiting trading access to certain types of participants in order to ensure the integrity of the transactions that take place on the DTF's system. For example, in the US, a swap execution facility has to ensure that every participant is an eligible contract participant, i.e., a sophisticated investor. A DTF should be permitted to restrict trading access to those types of sophisticated investors. Since most derivatives trading is institutional, DTFs should be permitted to refuse access to retail investors. However, we acknowledge that similarly situated groups of participants that meet prescribed sophistication or asset thresholds should be treated the same and benefit from the same access rights.

12. *Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?*

Most of the proposed organizational and governance requirements for DTFs are appropriate. However, we recommend that the Committee place reasonable limits on any transparency requirements. Any requirements for a DTF to make public disclosure (such as on a website) of order execution process, access requirements or technology requirements should be limited so as to not require DTFs to disclose any commercially sensitive confidential information. Also, with respect to record keeping, we note that many jurisdictions in which foreign-based DTFs operate require records be kept for five years, not seven. In our view, future DTF rules should require records to be kept for five years and should permit records to be kept in various mediums, such as written records or voice recordings.

With respect to confidential treatment of trading information, we agree that DTFs should be prohibited from releasing a participant's order or trade information to a person other than the participant, a trade repository, the trading counterparty of the participant, other derivatives trading facilities, a securities regulatory authority or a regulation services provider without consent of the participant. There should also be allowance for information to be released to vendors that provide outsourcing services to DTFs without the need for participant consent, provided that any vendors that receive confidential information are under duties of confidentiality to the DTF.

13. *Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.*

A DTF should be permitted to choose whether to perform its own regulatory or surveillance functions or engage a third-party regulation services provider. For smaller DTFs, the costs of engaging a third-party provider could be prohibitive and impact the commercial viability of the facility.

Also, if a Foreign-Based DTF uses a foreign-based third-party service provider to monitory compliance by participants with DTF rules and appropriately discipline participants in the event of non-compliance, the foreign-based third-party service provider should not require any authorization from Canadian regulatory authorities.

16. *Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?*

In our view, pre-trade transparency requirements should not apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs. There are many options for price discovery in the market, such as bulletin boards, single dealer pages and RFQ facilities. Also, certain swaps trade infrequently and a pre-trade transparency requirement for such swaps may preclude maintaining confidentiality, thus adversely affecting the price to the customer. Pre-trade transparency requirements could significantly raise transaction costs for end-users with little benefit to price discovery.

17. *Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?*

If it is decided that a DTF will be required to report to a trade repository, then the DTF should be permitted to choose the trade repository to which it chooses to report.

Since 2013, Canadian derivatives market participants have made significant investments of time and resources to develop systems for reporting derivatives transactions in Canada. These systems are based on a reporting counterparty waterfall that involves only clearing agencies, dealer counterparties, Canadian financial institution counterparties and non-dealer counterparties. If that reporting waterfall were to be amended to include DTFs, all market participants would need to undertake costly reporting system modifications. We therefore recommend that the Committee consult with market participants and DTFs as part of a cost/benefit exercise to determine whether DTF reporting to trade repositories would be worthwhile. For DTFs, there would be a significant cost to collect jurisdiction information (such as guaranteed affiliate information) from its participants for reporting purposes and code that information into trade reporting systems. These costs could be avoided if the Committee preserves the status quo in Canada and doesn't require DTF reporting to trade repositories.

18. *What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?*

See comments above in response to question 17.

19. *When should deferred publication of trade information be permitted? Are there circumstances other than block trades?*

There should be exceptions from real-time public reporting by DTFs for block trades.

20. *Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?*

Canadian regulators should attempt to harmonize block trade threshold sizes with international standards whenever possible. This would mean that if deferred publication is permitted for a block trade in the United States or another comparable jurisdiction, then deferred publication of the block trade should be permitted in Canada.

23. *Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?*

We agree with the criteria for determining whether a derivative should be subject to a DTF trading mandate, however we caution that some criteria should carry more weight than others. In particular, if there is no mandate for trading a particular derivative in the United States then there would be significant obstacles to making the derivative subject to a Canadian DTF-trading mandate. Cross-border flow and activity should be carefully studied prior to making any derivatives subject to a Canadian DTF-trading mandate.

Canadian market liquidity could evaporate if US counterparties are resistant to a DTF-trading mandate when trading with a Canadian counterparty.

25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

Commercial end-users should be exempt from the trading mandate.

29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

It is not appropriate to require specific execution methods for the OTC derivatives that have been mandated to be traded on a DTF. Participants should not be restricted in their execution methods and must be able to use their expertise to determine how to execute their orders. Also, we agree with the proposal to allow market participants to enter into pre-arranged transactions that have been mandated-to-trade and then 'expose' those transactions to the market.

30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

DTFs, whether authorized or exempt from authorization, should not be required to trade products that have been mandated to trade on a DTF. For example, it would not be appropriate to require a DTF that specializes in commodity derivatives to trade interest rate swaps, or a DTF that specializes in security-based swaps to trade currency swaps.

* * * *

Thank you for the opportunity to comment on the Consultation Paper. We would be pleased to discuss our thoughts with you further. If you have any questions or comments, please contact Blair Wiley [redacted]

Yours very truly,

Osler, Hoskin & Harcourt LLP