



FRANKLIN TEMPLETON
INVESTMENTS

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VIA EMAIL

September 17, 2018

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward
Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Attention: Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor,
Toronto, Ontario M5H 3S8

Dear Sirs/Mesdames:

**Re: Canadian Securities Administrators Proposed National Instrument 93-101 –
*Derivatives: Business Conduct & Proposed National Instrument 93-102 –
Derivatives: Registration***

Franklin Templeton Investments Corp. (“FTIC”) is writing to provide comments with respect to the Canadian Securities Administrators’ (“CSA”) Proposed National Instrument 93-101 – *Derivatives: Business Conduct* (the “Business Conduct Rule”) and

Proposed National Instrument 93-102 – *Derivatives: Registration* (the “Registration Rule”, collectively with the Business Conduct Rule, the “Derivatives Rules”).

FTIC is currently registered in most provinces and territories in Canada as an adviser, investment fund manager, mutual fund dealer and/or exempt market dealer. FTIC is also registered with the Ontario Securities Commission as a commodity trading manager. FTIC is a wholly owned subsidiary of Franklin Resources, Inc., a global investment organization operating as Franklin Templeton Investments. Through its subsidiaries, Franklin Templeton Investments provides global and domestic investment advisory services to the Franklin, Templeton, Franklin Bissett, Franklin Mutual Series, Franklin Templeton and Franklin Quotential funds and institutional accounts. In Canada, FTIC has almost 500 employees providing services to nearly 500,000 unitholder accounts and over 100 pension funds, foundations and other institutional investors.

The Business Conduct Rule would impose a range of business conduct requirements and the Registration Rule would impose firm and individual level registration requirements on FTIC as well as its foreign affiliates engaged in the business of advising Canadian clients in connection with transacting in derivatives in any Canadian province or territory (“Jurisdiction”). FTIC and its affiliates do not engage in the business of what would constitute a “Derivatives Dealer” under the Business Conduct Rule, but we do engage in the business of what would constitute a “Derivatives Adviser”; therefore, our comments are limited to the impact of the Derivatives Rules on Derivatives Advisers.

We have reviewed and generally support the comments made by The Asset Management Group of the Securities Industry and Financial Markets Association, but we also wish to provide our own comments with respect to the Derivatives Rules.

General Comments

We support the work of the CSA to implement a comprehensive regime for the regulation of persons or companies in the business of advising on derivatives, but we see the Derivatives Rules as duplicative of existing requirements that advisers are already subject to, including under National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registration Obligations* (“NI 31-103”). We believe there is nothing inherently different about advising on over-the-counter (“OTC”) derivatives, nor do they pose a unique set of risks, that cannot be addressed through amendments to NI 31-103. Furthermore, we question the creation of new positions (e.g., Senior Derivatives Manager) and new registration categories under the Derivative Rules that seem duplicative and do not exist under NI 31-103. Therefore, FTIC strongly recommends that the Derivatives Rules be integrated with NI 31-103 to create one uniform set of rules for persons advising on both securities and derivatives.

In addition, FTIC urges CSA members to integrate their rules governing other derivatives (e.g., *Commodity Futures Act* in Ontario) into NI 31-103 to eliminate the fragmented regime and duplicative requirements that currently exist.

While FTIC supports the integration of the Derivatives Rules into NI 31-103, specific comments on the Derivatives Rules as currently proposed are detailed below.

Registration Rule

We are unable to provide meaningful comments regarding the current version of the Registration Rule since the CSA has not yet provided a completed version of Appendix G, which will list the foreign jurisdictions and requirements in those jurisdictions that a foreign derivatives adviser must comply with to be exempt from registration. We may have additional comments after the CSA publishes Appendix G.

It is our view that the foreign derivatives adviser exemption in the Registration Rule should be aligned with the international adviser exemption in NI 31-103, and should include foreign derivatives advisers that are exempt from registration in their principal jurisdiction. In its current form, the Registration Rule only provides an exemption for a foreign derivatives adviser that is registered, licensed or otherwise authorized under the legislation of the foreign jurisdiction to conduct derivatives activities. We believe it should be explicit that persons or companies exempt from registration in their home jurisdiction can also rely on the foreign derivatives adviser exemption.

We also encourage the CSA to include an international sub-adviser exemption in the Registration Rule, which is similar to the exemption that already exists in NI 31-103. In order to rely on such an exemption, a registered adviser must be responsible for the activities of the foreign sub-adviser and provide supervision and oversight of the foreign sub-adviser. For these reasons, we believe adequate protections would exist for clients and, therefore, an international sub-adviser exemption in the derivatives context is appropriate.

The foreign derivatives adviser exemption requires that a foreign derivatives adviser promptly notify the regulator of each instance of material non-compliance with a foreign requirement or guideline listed in Appendix G. We do not understand the rationale for this variation from the international advisor obligations under NI 31-103 and, depending upon how Appendix G is ultimately completed, we believe that this requirement may be overly onerous. Furthermore, it is likely that the need for the derivatives adviser to interpret the reference to “material non-compliance” will lead to different standards being applied by different participants.

As part of a global investment organization, many risk management functions for FTIC are performed by Franklin Templeton employees outside of Canada. These individuals currently perform these functions with respect to derivatives without any registration requirements. Making such individuals become an officer of a Canadian registrant in order to perform their roles under the Derivatives Rules could have unforeseen consequences for the individual and/or the registrant (e.g., tax consequences). We urge the CSA to allow individuals outside of Canada to continue performing these functions for their Canadian affiliates without requiring them to meet certain proficiency requirements or become an officer of the Canadian registrant.

Business Conduct Rule

We believe that foreign derivatives advisers and sub-advisers that are exempt from registration under the securities legislation of the foreign jurisdiction in which their head office or principal place of business is located outside of Canada should be exempt from obligations under the Business Conduct Rule in order to align the proposed exemption with the international adviser and sub-adviser exemptions from registration currently found under subsections 8.26 and 8.26.1 of NI 31-103.

Fair Dealing, Conflict of Interest, Derivatives Party Specific Needs and Objectives, Suitability and Fair Terms and Pricing

These provisions already exist for advisers under NI 31-103. These obligations are also covered by the fiduciary duty owed by an adviser to its clients. FTIC does not believe that there is any reason to, nor that it is appropriate to, impose specific and slightly different requirements in connection with these obligations in the context of derivatives. Furthermore, imposing duplicative requirements between NI 31-103 and the Business Conduct Rule that are similar, but not identical, will complicate compliance with the established standards and practices that are already observed by investment advisers.

Definition of Eligible Derivatives Party

The concept of “Eligible Derivatives Party” (“EDP”) is different from the concept of “permitted client” in NI 31-103. FTIC urges the CSA to align the EDP definition with the definition of permitted client in NI 31-103 and to add the commercial hedger definition to reflect the nature of the derivatives marketplace. We note that the commercial hedger definition should be expanded to include the hedging of an asset that the person or company uses in its business.

Conclusion

The differing concepts and protections for various types of investors under NI 31-103 and the Derivatives Rules are confusing and unnecessary. FTIC strongly urges the CSA to draft an integrated rule for all types of investments, especially since a typical client account could hold a mix of securities and derivatives. Having a different set of rules and exemptions for derivatives will increase administrative and compliance burdens for registrants, with no corresponding investor benefit.

If the CSA moves ahead without consolidating the Derivatives Rules into NI 31-103, it should insure the coordinated implementation of the Business Conduct Rule and the Registration Rule given the Derivatives Rules are so inter-connected. The CSA should also provide an appropriate transition period (at least two years) for firms to implement the Derivatives Rules once finalized.

Thank you for your consideration of this submission. Please feel free to contact me at 416.957.6010 should you have any questions or wish to discuss our submission.

Yours truly,

FRANKLIN TEMPLETON INVESTMENTS CORP.



Brad Beuttenmiller
Senior Associate General Counsel

