September 17, 2018

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

Me Anne-Marie Beaudoin
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Autorité des marchés financiers
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Montréal (Québec) H4Z 1G3

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

Dear Sirs / Mesdames:

Re: CSA Notices and Requests for Comment ("CSA Notices") on Proposed National Instrument 93-101 Derivatives: Business Conduct (the "Business Conduct Rule" or "93-101") and Proposed National Instrument 93-102 Derivatives: Registration (the "Registration Rule" or "93-102") and the related Companion Policies ("93-101CP" and "93-102CP")

Custom House ULC operating as Western Union Business Solutions ("**Western Union**") appreciates the opportunity to comment on the Business Conduct Rule, the Registration Rule and the related Companion Policies. Capitalized terms used in this letter and not defined herein will have the same meaning as in the CSA Notices.

General Comments

1. Uniform approach across Canada

Western Union is supportive of the CSA's attempts to ensure that a uniform approach to derivatives market conduct regulation is achieved in Canada. Adopting a regime that is applied and interpreted consistently across the country for financial institutions, provincial credit unions and other market participants is welcomed and we believe it will assist in ensuring an even, competitive playing field for all market participants, inclusive of the FX asset class.

However, the risks of over-regulation are significant and could create undue costs and risks for both derivatives firms and corporate end-users of hedging products. We highlight below a number of proposed provisions in the rules considered unduly burdensome which we feel have little or no practical benefit to counterparties, thereby increasing the threshold costs involved in servicing customer needs, ultimately resulting in a decrease in liquidity and an obstacle to efficient pricing.

2. Broadening the category of hedger eligible derivatives party

We previously requested that the CSA consider broadening the definition of "eligible derivatives party" ("EDPs") to include a hedging exemption similar to the "hedger" category under the "accredited counterparty" definition in the Quebec Derivatives Act and the hedger exemption included as a class of "qualified party" in the various provincial OTC derivatives blanket orders that are currently in force. As highlighted in past CSA Notices, derivatives are different than securities and the risks associated with such products are also different.

In our experience, when commercial enterprises enter into FX derivatives to hedge FX risk, they do so based on detailed knowledge of their business needs and expectations, and related currency exposures. As such, corporate practitioners are using FX hedging products as a risk management tool and not for speculative purposes. This type of hedging activity is a large component of all OTC FX derivatives trading, and complements corporate users' spot market activity for commercial payments and risk management. As these hedges are related to underlying foreign currency assets and liabilities, they do not introduce systemic risk and other regulatory concerns associated with speculative derivatives trading. Given the volume of FX hedging conducted in Canada's economy, the demonstrated sophistication of FX hedgers and the need to have FX derivatives serve as a practical adjunct to spot market trading, this specific sophisticated use of FX derivatives in a commercial context is best served by permitting commercial hedgers the widest range of potential hedging counterparties by eliminating unnecessary regulatory barriers.

To the extent the CSA considers that additional customer protections need to be layered on when dealing with smaller hedgers, we suggest that the asset threshold required for a hedger to qualify as an EDP should roughly align with the analogous US "eligible contract participant" (ECP) hedger category established under the Commodities Exchange Act. Under the US provisions, a corporation or other entity that has a net worth in excess of US$1,000,000 is permitted to enter into swaps, including foreign exchange options, for the purpose of hedging commercial risk.[1] We believe that setting a threshold more in alignment with the US ECP test for commercial hedgers would be most appropriate. Alternatively, we believe *total* assets of C$10 million would be a more reasonable threshold for commercial hedgers than the current proposal of C$10 million of *net* assets.

3. Implementation Timeline

We appreciate the inclusion of a one year implementation period in Section 45(1) of the Business Conduct Rule. Upon further review of the regulatory, operational, logistics and training requirements required to properly implement the Business Conduct Rule in an orderly manner, we consider that the minimum implementation period should be 24 months. A lengthy implementation period is needed to ensure compliance with the new rules, including time for amending existing policies and procedures, implementing operational measures to ensure requirements are reflected in the trading process (including potential IT operational build-out), training staff on new policies and procedures, amending existing documentation, collecting any new executed customer documentation and developing new reporting requirements.

A full 24 month implementation period is also requested in respect of the Registration Rule given the staffing, hiring and training decisions that will need to be made once a business model is finalized, given the operational and systems measures which will need to be taken to implement the requirements and put appropriate controls in place, and given the need to produce policies and procedures and complete the registration process.

[1] See 7 U.S. Code Sect 1a(18)(A)(v)(iii). The US ECP test applies only to options, as the U.S. Treasury has excluded FX forwards from application of the provision and entities may enter into FX forwards without meeting any asset qualification. See, https://www.treasury.gov/press-center/press-releases/Pages/tg1773.aspx.

Business Conduct Rule Comments

4. Description of the Scope of the Business Conduct Rule Fair Dealing Requirement in the Companion Policy – Suitability and "Fair Pricing" Obligations

We recognize the policy rationale for including a fair dealing obligation in the Business Conduct Rule that is aligned with the obligation imposed on registered securities dealers "to deal fairly, honestly and in good faith with its clients".

However, it is important not to expand this obligation to include suitability obligations that are properly addressed under Business Conduct Rule section 11. Moreover, it is not appropriate to add general fair pricing obligations which are inconsistent with securities laws, market practice and customs, free market policies and the nature of typical negotiated derivatives transactions between a buyer and seller where both parties are dealing at arm's-length having confirmed their ability to represent their own best interests.

Fair Dealing and Suitability: In respect of suitability, the fair dealing section of the Business Conduct Rule Companion Policy (93-101CP s. 8) states that:

> "...deliberately selling a derivative that is not suitable for a derivatives party, would not be considered to be "fair" and, in our view, would be a breach of the fair dealing obligation."

We believe that consideration of suitability is more properly addressed under Section 12 (Suitability). Our understanding is that dealers should not be expected to conduct suitability analysis in respect of EDP counterparties, but this Companion Policy statement could improperly require dealers to consider suitability when dealing with EDPs which would be a new, inappropriate and burdensome obligation.

Fair Dealing and Pricing Obligations: The draft Business Conduct Rule Companion Policy (93-101CP s. 8) suggest that dealers would be constrained in determining the pricing that may be quoted to particular counterparties, and that a specific fair and "rational" basis for pricing each transaction must be established. These statements include the following:

> "As part of the policies and procedures required under section 30, a derivatives firm is expected to be able to demonstrate that it has established and follows policies and procedures that are reasonably designed to achieve fair terms, in the context, for the derivatives firm's derivatives parties..."

> "We interpret the fair dealing obligation to include determining prices for derivatives transacted with derivatives parties in a fair and equitable manner."

Our view is that there should be no fair dealing pricing obligation for dealers negotiating pricing terms with a counterparty in an open and competitive market on an arm's-length basis, nor should there be an obligation to establish policies and procedures designed to achieve fair terms. Mandatory legal obligations describing pricing levels that should be offered are not consistent with open market practices where competition is readily available and de facto fair pricing between parties to bilateral negotiations exists as a foundational element of open market trading. We do however support a requirement that dealers adopt policies designed to prevent predatory or manipulative pricing behaviours and high-pressure sales tactics.

We note that no such requirement is reflected in the CFTC's Business Conduct Standards applicable for swap dealers. The CFTC Standards recognize that fair dealing is achieved through disclosure to counterparties of material information concerning the transaction, a fair and balanced communications requirement, and the prohibition of fraud, manipulation and other abusive practices.

Dealers are compelled by competitive pressures to provide pricing on a competitive basis in the context of the market, but dealers compete on a very broad range of factors that define their service offerings including for example the platform and execution venue, the certainty and finality of execution, the time that offers are left open, the number of quotations that are provided by voice or through a price streaming service, the extent to which credit or leverage is provided, the reporting and post-transaction support that is provided, and the integration of derivatives transactions with other services provided by the dealer. Any specific pricing obligations for arm's-length voluntary bilateral transactions are inconsistent with free market principles and the current operation of derivatives markets and would reduce liquidity and improperly suggest to customers that they can automatically rely on dealers for determining fair pricing.

We recognize that there are important policy grounds for protecting vulnerable Non-EDPs from improper sales practices including high-pressure sales tactics and "predatory" behaviours such as making misrepresentations and providing misleading scenario analyses. However, this does not mean that some ideal of fair pricing is appropriate, or even possible.

We note that there are no analogous obligations imposed on securities dealers. For example, securities dealers are not obliged to provide spot FX transaction pricing "on fair terms" or to sell securities or issue loans at specific interest rates that are determined in a fair and equitable manner. We believe that if it is not appropriate to impose specific pricing obligations on spot FX transactions that may often

involve customers with less sophistication and less bargaining power than derivatives parties, then it is not appropriate to impose these pricing obligations on FX derivatives transactions.

FX dealers quote both spot and forward prices to clients competitively based on numerous market considerations and their clients choose services based on a consideration of a broad range of factors. This is of course a large market that functions with minimal regulation and as a result is very efficient and highly competitive. It would be fundamentally anti-competitive if FX spot providers could not quote prices in such an unrestricted manner. In the same way, FX swap providers need this flexibility to supplement FX spot pricing with FX forward pricing which is determined without any fair pricing restriction.

If a dealer has taken the time to satisfy its disclosure obligations in good faith, and the client has the opportunity to consider pricing (including competitor offerings) and consult third parties prior to committing to a transaction, then there should be no sweeping obligation to "determine prices in a fair and equitable manner" or to establish methods for tracking compliance with this nebulous concept. If there are concerns about counterparties not understanding derivatives pricing, then that should addressed through Business Conduct Rule section 19 (Pre-transaction disclosure).

Disclosure of "Implications of Terminating a Transaction": Business Conduct Rule Companion Policy section 8 (fair dealing) includes the statement that: "[The CSA] also expect the derivatives firm to provide a derivatives party with information about the implications of terminating a derivative prior to maturity, including potential exit costs."

We ask for this sentence to be clarified to state that it only applies when a termination is being discussed or negotiated. Our concern here is that this sentence might be interpreted as imposing an additional pre-transaction disclosure obligation that applies in respect of every individual transaction. The implications of terminating a derivative, including costs, are wholly dependent on market conditions existing at the time of termination and it is not practicable to meaningfully disclose such implications prior to entering into the transaction.

5. Obligations to Assess a Client's Needs and Objectives and the Application of the Suitability Requirement to Dealers Contracting at Arm's Length

Western Union anticipates entering into FX forward and option transactions with a broad range of business clients which are fully capable of assessing the merits of hedging FX risks and managing their own FX needs and exposures. We consider that it is imperative that clients be permitted to make their transacting and hedging decisions free from Western Union interference. We do not second-guess clients that enter into spot FX contracts and we believe the same principle should apply in

respect of FX forwards and options. However, certain provisions included in the proposed Business Conduct Rule in respect of suitability obligations and the need to establish suitability run counter to this basic commercial premise.

We recognize that in order to qualify a client as an EDP under the commercial hedger category, we should confirm that the client has commercial exposures to a particular currency, but we do not consider that this means that the particular hedging decisions being made by a client each time it transacts need to be recorded. In our view, so long as the transaction fits the client's hedging profile (e.g., managing USD exposure in an amount of less than $200 million notional), then there should be no further requirement to confirm hedging criteria in respect of each individual transaction. We expect this makes sense both from a policy perspective and a practical implementation standpoint, and provides adequate protections for clients which have asserted that they should be treated as hedging EDPs.

Dealers generally transact at arm's length with counterparties. It would be helpful for the CSA to confirm in 93-101CP s. 11 that when entering a transaction with a counterparty that is requesting to enter into an FX transaction, there is no need to go further and inquire as to the nature of the counterparty's commercial objectives such as the basis on which the counterparty determined the size, timing and tenor of the transaction. – Such an inquiry is not appropriate to arm's-length negotiations. However, the current Companion Policy discussion seems overly skewed towards considering cases where a dealer or adviser is providing advice or execution services to a client (as opposed to simply acting as an arm's-length counterparty), which improperly suggests that additional actions need to be taken even by an arm's-length dealer. For example, 93-101CP s. 11 provides that:

> "Derivatives parties may have a variety of execution priorities. For example, a derivatives party may have as their primary objective the objective of having the transaction executed as quickly as possible rather than trying to obtain the best available price. Factors to consider when evaluating execution include price, certainty, timeliness, and minimizing the impact of making a trading interest public.
>
> Before transacting with a derivatives party, we expect a derivatives firm to have the appropriate information to assess the derivatives party's knowledge, experience and level of understanding of the relevant type of derivative, the derivative's party's objective in entering into the derivative and the risks involved, in order to assess whether the derivative is suitable for the derivatives party. The derivatives-party-specific KYC information is obtained with this goal in mind."

Ultimately, a dealer that is quoting prices on an arm's-length basis should not be subject to this scope of KYC burdens including in particular the obligation to

determine "the derivative's party's objective in entering into the derivative and the risks involved". The dealer should only need to confirm that the counterparty appears to have the competence to understand the terms of the relevant transactions and to use derivatives as part of its business. It is not appropriate to ask a counterparty to disclose additional commercial information as a condition to transacting and we do not consider that in this situation it would be appropriate to advise a counterparty, as suggested in 93-101 s. 12(2) and 93-101CP s. 11, that "the information is required to determine whether the derivative is suitable for the derivatives party, and without this information there is a strong risk that [the dealer] will not be able to determine whether the derivatives party has the ability to understand the derivative and the risks involved with transacting the derivative". If the counterparty and the dealer agree that the dealer will not be responsible for determining suitability, then the dealer should focus on transaction terms and not ask questions which suggest that the dealer is determining suitability.

We would like to emphasize that this is consistent with the international approach to conduct regulations. In particular, we note that CFTC Conduct Rule 23.434 (Recommendations to counterparties -- institutional suitability) only applies where a dealer or adviser recommends a transaction or trading strategy, and a safe harbour is provided that disapplies the provision if a dealer discloses in writing that it is acting in its capacity as a counterparty and is not undertaking to assess the suitability of the swap or trading strategy involving.

6. Overlapping KYDP Requirements in Business Conduct Rule section 10

Section 10 of the Business Conduct Rule imposes certain KYDP obligations which appear to be loosely based on anti-money-laundering legislation but not strictly consistent with existing legal requirements and there does not appear to be a strong policy justification for imposing such additional requirements under the Business Conduct Rule. Although the related Business Conduct Rule Companion Policy refers to dealers having a "gatekeeper role" which requires derivatives firms to establish the identity of, and conduct due diligence on, their counterparties, we consider that this role should not apply from a derivatives policy standpoint to dealers that only transact at arm's-length with their counterparties.

We recognize that diligence is required from a commercial standpoint to address credit exposures, but we do not consider that it is necessary to layer onto this an undefined obligation to consider "the reputation of the derivatives party" (s. 11(2)). – We do not have a view as to whether this is an appropriate obligation to impose on dealers that are transacting on behalf of third parties, but where a dealer transacts opposite a third-party this is not an appropriate obligation to impose.

Furthermore, like numerous money services businesses and securities dealers, Western Union is subject to and complies with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and we do not consider that it is appropriate for derivatives legislation to alter those requirements or attempt to layer on similar requirements. For that reason we consider that Section 10(3) which is directed to identifying ultimate beneficial ownership of counterparties should not apply to dealers that are already subject to the PCMLTFA.

7. Disclosure Obligations in respect of Referral Arrangements

We do not consider that referral arrangements should be required to be disclosed if the referring party has no ongoing role in the derivatives relationship (Conduct Rule ss. 13(1)(c), 15 and 18(1)(e)). For example, if a dealer acquires a list of business leads in accordance with existing contractual obligations and applicable laws, then the pricing agreed for these referrals should not be subject to disclosure. The CSA may have concluded that this disclosure is necessary in some advisory context where the referring firm continues to have some derivatives-related involvement with the client, but generally this type of disclosure is not and should not be required for derivatives dealers. To the extent any disclosure is required, we would request that the final rule not require a disclosure of the exact quantum of fees, but rather, simply the disclosure of the fact that a fee is paid.

8. Pre-transaction Pricing Disclosure Obligations in respect of Arrangements

The disclosure obligations under Conduct Rule section 19(2) to disclose "if applicable, the price of the derivative to be transacted and the most recent valuation" before transacting in a derivative are unclear to us, perhaps because we do not understand when the price and value of a derivative would be "applicable" (e.g., does this only refer to transactions that are already outstanding and therefore have a "most recent valuation"?).

It is not clear what disclosure would be required if a dealer is proposing to enter into a new transaction. If the dealer offers to enter into the transaction on particular terms at a particular rate, is the offered rate the "price" of the derivative and is there a "most recent valuation"?

To the extent disclosure of market prices or mid-market rates is required, we strongly request that such market information should only be provided upon client request, or that clients may waive the right to receive such disclosure. It is generally possible to provide an end-of-day fair value valuation of outstanding transactions which is useful for certain limited purposes and is determined based on relatively well-understood principles and a pool of market data, but this daily valuation data may not reflect pricing available in the market, is often not

available intra-day, and it would be difficult in the context of pricing a particular derivative to explain the assumptions that have been made in reaching the valuation, what the time cut-off or pool of data used is for this purpose or how such valuation may not provide all of the relevant information for determining the terms on which the client should be able to enter into a transaction in the broad market or with specific dealers. For these and other reasons, it is difficult and time-consuming to provide such specific valuation information in the context of a particular transaction, and any obligation to provide such information may frustrate the ability to offer stream-lined FX hedging services by voice or electronic means.

To the extent available inter-day benchmark pricing is relevant as the principal factor in determining mid-market pricing, such information usually reflects rounded standard periods (e.g., 1 month forwards, 3 month forwards) which will often not align with the customized negotiated transaction, and we and other dealers would be contractually restricted in sharing this information under a live feed which would be necessary to operationalize this type of valuation disclosure information for various stream-lined transaction models.

We note that no-action relief has been granted under CFTC Letter No. 13-12 which exempts CFTC rules swap dealers from the requirement to provide pre-trade market pricing information for most ordinary FX forwards and swaps. In particular, the exemption applies if the transaction is "(1) a foreign exchange swap or forward that, by its terms, is physically settled, where each currency is one of the BIS 31 Currencies [i.e., the top 31 currencies (by volume) described in a particular BIS report] and where the transaction has a stated maturity of one year or less, or (2) a vanilla foreign exchange option that, by its terms, is physically settled, where each currency is one included among the BIS 31 Currencies, and where the option has a stated maturity of six months or less; (b) real-time tradeable bid and offer prices for the transaction are available electronically, in the marketplace, to the counterparty; and (c) the counterparty to the transaction agrees in advance, in writing, that the [Swap Dealer or Major Swap Participant] need not disclose a [pre-trade mid-market mark]".

Given the operational difficulties, costs and disruptive timing implications associated with making this disclosure available, it is important that the Canadian disclosure obligation does not exceed what is provided under CFTC rules for swap dealers and so we would request that this carve-out from pricing disclosure be provided in respect of at least the enumerated types of FX transactions. Furthermore, given that the overwhelming majority of all FX transactions only involve the BIS 31 currencies referred to in the CFTC letter and real-time tradeable bid and offer prices are generally available in the market, we would suggest that the CFTC exemption could be simplified for use in Canada by not including the limitations set out in clauses (b) and (c) above.

9. The General Segregation Obligation and the Identification Derivatives Party Assets

For dealers transacting with counterparties on an arm's-length basis, it is not appropriate to require segregation of collateral. For that reason, we consider that the body of the Business Conduct Rule s. 24 (and not just the Companion Policy) should describe "accounting segregation" as sufficient, and a statement should be included in the Companion Policy that accounting segregation is consistent with re-use or rehypothecation of collateral.

We also consider that the definition of "derivatives party assets" should be more precisely defined. The term is currently defined in the Business Conduct Rule as follows:

> "derivatives party assets" means any asset, including collateral, received or held by a derivatives firm from, for or on behalf of a derivatives party;

This definition could be interpreted (or misinterpreted) as including assets that are transferred outright to a dealer by a customer (and not merely pledged) as well as assets delivered to a dealer that are not directly related to derivatives transactions.

Where a dealer is transacting on an arm's-length basis with a counterparty, assets which are transferred outright to the dealer should not be subject to any ongoing obligation. Such assets are equivalent to payments and of course there should be no obligations owing in respect of money or securities which are transferred outright in satisfaction of derivatives obligations.

Furthermore, we consider that only assets that are held primarily as security for derivatives should be characterized as derivatives party assets. A dealer may have a number of relationships with a counterparty which could involve various custody and pledging relationships. Only those assets which are pledged to or required to be maintained with a derivatives dealer as a condition or term of the derivatives relationship should be considered to be derivatives party assets for which particular business conduct obligations apply.

10. Material Non-Compliance Reporting Obligation

Business Conduct Rule section 32 imposes an obligation on derivatives firms to report to the relevant regulator material non-compliance with the Business Conduct Rule or derivatives laws. This obligation goes significantly beyond the requirements imposed on securities dealers and we do not see any justification for this type of requirement. Derivatives firms' primary obligations will be to comply with derivatives laws, and sufficient internal controls have already been proposed in the Business Conduct Rule which should be satisfactory to achieve the regulatory objective in respect of firms that are conducting operations in good faith with the intention of complying with laws.

This same comment applies in respect of Registration Rule section 27(3)(d) which essentially reproduces the Business Conduct Rule section 32 reporting requirement.

Registration Rule Comments

11. Requirement for IIROC Membership if Dealing with Individuals that are Non-EDPs

We see no justification for requiring a dealer to become an IIROC member in order to transact with an individual that is not an EDP (Registration Rule section 9). This is an extremely anti-competitive step that would likely have a severe impact on hedging options available to individual entrepreneurs.

The Proposed Rule does not set out any justification for this requirement in the Proposed Rule, nor have the market impact, costs and operational burdens that this will introduce been evaluated and described in the Proposed Rule. The IIROC qualification regime and rules are patently not appropriate for regulatory oversight of derivatives firms which in the past has been recognized by CSA members which as a result have not required derivatives firms to register with IIROC. Very significant revisions to IIROC's rule book and the elimination, for example, of the IIROC requirement for members to be Canadian corporations would be required in order to make IIROC an appropriate regulatory body. Even if IIROC were to undertake this project, there are significant risks that the interests of current IIROC members could bias IIROC towards over-regulation and unnecessarily burdensome membership and capital requirements. We do not consider that it is appropriate for the CSA to pass off the responsibility to determine the membership requirements and scope and terms of regulation of OTC derivatives markets to a securities self-regulatory organization, and we are strongly opposed to the additional financial burdens and fees that would inevitably result with no demonstrated regulatory benefit and an undeniably negative impact on market competition and liquidity.

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12. Registration Requirements and Exemptions for Dealing Representatives
We share the view expressed by other comment letters that registration of individual dealing representatives and advising representatives is not appropriate for the derivatives markets. We do not object to identifying a UDP, CCO and CRO, but the specific registrations obligations are not necessary so long as a registered firm confirms proficiency of its representatives under Registration Rule section 18.

To the extent the registration obligation for individuals is retained, we ask that the CSA clarify Registration Rule section 58 to make clear that in order to rely upon the exemption from advisor registration obligations the individual representative only needs the proficiency required under section 18(1). As currently drafted, section 58 could be read as implying that a registered dealing representative would not be able to provide incidental advice in connection with a transaction if the individual does not have a CFA Charter or otherwise satisfy the requirements in section 18(6). We do not consider that such a requirement is reasonable and would in effect largely eliminate the benefit of providing the section 58 exemption. We note that if section 18(6) is intended to apply then we request that section 18(7) (which provides an exemption to representatives of registered advisers from the section 18(6) CFA requirement if the representative only advises EDPs) should be stated to apply for representatives of derivatives dealers to eliminate the section 18(6) CFA (or similar) requirement if the individual is only advising EDPs.

However, we consider that the section 18(6) CFA (or similar) requirement is not necessary or consistent with the international regulatory approach. Individuals working as dealing representatives will very often be fully capable of providing investment advice in respect of derivatives without having completed the CFA Charter (which of course covers a very broad span of securities matters with relatively minimal focus on derivatives) or two courses and 2 years of investment management experience (which experience dealer representatives generally will not have as they are not employed to manage funds or accounts).

As a related point, a *non-registered* dealing representative should also have the benefit of the section 58 exemption from adviser registration obligations if the non-registered dealing representatives is only advising EDPs. This change is required in order to parallel the exemption in section 16(4) which permits individual representatives of registered advisers to deal with EDPs without registration.

13. Portfolio Reconciliation Obligations
We consider that the Registration Rule section 44 portfolio reconciliation requirements for derivatives dealers facing non-EDPs are redundant and unnecessary given that they overlap fully with daily valuation reporting obligations and the obligation to deliver quarterly statements that apply under Business Conduct Rule ss. 20(1) and 28. The quarterly statement delivery

requirement adequately spells out all of the details that would typically be included in a portfolio reconciliation report. It is unnecessary to require dealers to include in their client relationship agreements a new provision requiring counterparties to review and confirm the quarterly statements as part of portfolio reconciliation. As non-EDP counterparties will already be receiving the relevant reports, it is unnecessary to impose a new obligation requiring the counterparty to review such reports and confirm agreement.

Portfolio reconciliation obligations have been imposed on large financial institutions in cases where there is no obligation for dealers to provide quarterly reports. Furthermore, the OSFI requirement under OSFI Guideline B-7 only applies where there are a material number of derivatives outstanding with a counterparty.

14. Portfolio Compression Obligations

We consider that the Registration Rule section 45 portfolio compression obligations are an unnecessary burden which will provide little if any practical benefit.

In respect of section 45(1)(a), this obligation to terminate fully offsetting derivatives could be problematic because many dealers (e.g., FRFIs) will be exempt from the obligation and so there is no mutual obligation to terminate. Of course, in practice both parties will frequently agree to terminate fully offsetting derivatives but if there is some dispute between the parties as to whether transactions are truly fully offsetting then the inclusion of the obligation would be problematic.

In respect of section 45(1)(c), if the provision is retained we would appreciate if it was limited to only apply "for portfolios with large numbers of uncleared derivatives contracts containing substantially similar economic terms" where the compression could reasonably be expected to materially "reduce the risk, cost, and inefficiency of maintaining redundant transactions on the counterparties' books". These limitations on the compression obligation are set out in the parallel requirement under OSFI Guideline B-7, are an appropriate description of the circumstances when compression is appropriate, and will align non-bank dealers' obligations with those of chartered banks that are their counterparties.

15. Reporting of Disputes to Regulators

We considered that disputes which are unresolved after 30 days of internal escalation (i.e., reporting to the board) should only be reportable to regulators under Registration Rule section 42(4) if the disputes would reasonably be expected in aggregate to have a material adverse impact on the registered firm.

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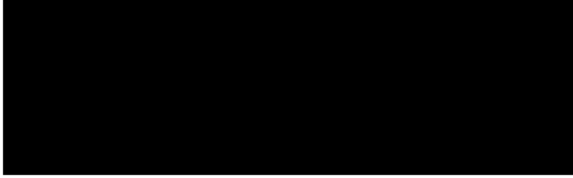
We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at shannon.seitz@westernunion.com, on this or any other issue in future.



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