

Mr. Rajeeve Thakur
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Alberta Securities Commission
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August 21, 2014

Dear Mr. Thakur:

Re: Alberta Securities Commission (ASC) Notice and Request for Comment – *Proposed Consequential Rule Amendments relating to Derivatives Regulation and the Securities Amendment Act, 2014*

The Investment Industry Association of Canada (IIAC), representing 160 dealers regulated by the Investment Industry Regulatory Organization of Canada (IIROC), would like to provide comments of its Derivatives Committee in response to ASC *Notice and Request for Comment – Proposed Consequential Rule Amendments relating to Derivatives Regulation and the Securities Amendment Act, 2014* (the “Notice”).

We understand that the proposed consequential amendments are intended to make conforming changes to the rules to reflect the statutory change in terminology from “exchange contracts” to “derivatives” and we agree with this objective. However, we disagree with some of the proposed amendments to section 8.20 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (“NI 31-103”). For the reasons listed below, we recommend that the ASC:

1. Does not adopt proposed section 8.20 (1.1);
2. No longer provide for a non-solicitation exemption for unregistered firms seeking to trade with Alberta residents in futures contracts and adopt provisions that provide for equivalent relief to section 8.18 of NI 31-103 that would apply to derivatives trading

Background

Our attached [letter](#), dated March 8, 2013, to the Alberta Securities Commission and other members of the Canadian Securities Administrators (the “March 2013 Submission”), sets out our concerns with respect to registration exemptions available to unregistered foreign firms under the current regulatory regime for trading in exchange-traded derivatives. These include:

- i. Parties using the non-solicitation exemption to market to Canadian clients through advertising on internet websites and attending industry group events (ie. Commodities conferences etc.) held in Canada where the primary purpose is to solicit clients
- ii. Unregistered dealers targeting retail clients with no or limited futures trading experience or the financial wherewithal to absorb losses, while providing little client disclosure or notification to local regulators of reliance on such exemptions
- iii. Lack of financial thresholds associated with the qualification of a client as a “hedger”
- iv. Practice of unregistered dealers of “layering” exemptions
- v. Lack of access of Canadian clients of these parties to protections offered by IIROC, the Ombudsman for Banking Services and Investments (OBSI) and Canadian Investor Protection Fund (CIPF) – evidence of the impact of this are the losses incurred by Canadian investors in the bankruptcy of Peregrine Financial Group whereas clients of the Canadian IIROC-registered affiliate of Peregrine were made whole by the CIPF
- vi. Significantly different regulatory regimes for Canadian futures commission merchants and their foreign counterparts (ie. Suitability reviews, cumulative loss reporting etc.)
- vii. Absence of financial contribution to the protections of the Canadian marketplace
- viii. Unfair competition for Canadian dealers who must comply with and support the cost of IIROC’s extensive regulatory framework, OBSI and the CIPF
- ix. Lack of exemptive reciprocity for Canadian IIROC-registered dealers to these parties’ jurisdictions

We also submit that market structure has evolved considerably since registration exemptions for derivatives were adopted by CSA jurisdictions. These exemptions are no longer justified in terms of market access for end users, since a number of registered dealers have the ability, directly or through their network of correspondents, to effect a transaction for a Canadian resident on any derivatives exchange, anywhere in the world.

Following our March 2013 Submission, we have had and continue to have constructive discussions with the OSC and the AMF and we understand that they are actively evaluating the possibility of a regulatory initiative to deal with this issue. We encourage the ASC to consult with your colleagues from these jurisdictions in an attempt to harmonize initiatives in this area. In particular, use of section 8.18, which would lead to application of the international dealer exemption across asset classes, is a framework that is familiar to and accepted by market participants; provides safeguards for investors; imposes reporting

obligations on foreign dealers; and quite appropriately limits their activity to dealing with permitted clients in foreign products.

Recommendation

We recommend that the ASC:

1. Does not adopt proposed section 8.20 (1.1);
2. No longer provide for a non-solicitation exemption for unregistered firms seeking to trade with Alberta residents in futures contracts and adopt provisions that provide for equivalent relief to section 8.18 of NI 31-103 that would apply to derivatives trading

We would welcome an opportunity to discuss this matter further with you in the near future, at your convenience. Please let us know if we can answer any questions in the meantime.

Yours truly,



Richard Morin
Managing Director

Cc: Derek West, Senior Director, Derivatives Oversight, AMF
Kevin Fine, Director, Derivatives Branch, OSC
Chris Besko, Acting Director, MSC
Debra MacIntyre, Senior Legal Counsel, Market Regulation, ASC
Paul Hayward, Senior Legal Counsel, OSC
Michael Brady, Senior Legal Counsel, BCSC
Susan Powell, Senior Legal Counsel, NBSC
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