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DELIVERED VIA EMAIL

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Re: Exemption from the provisions of Rules 91-507 Trade Repositories and Derivatives Data Reporting for IIROC registered dealers

Dear Sirs,

The Investment Industry Association of Canada (IIAC) has argued in past submissions to Canadian Securities Administrators (the CSA) that retail OTC derivatives offered by dealers regulated by the Investment Industry Regulatory Organisation of Canada (IIROC Regulated OTC Derivatives) should be excluded from the scope of the CSA's OTC derivatives reform initiative and, in particular, the provisions of Rule 91-507 Trade Repositories and Derivatives Data Reporting (the TR Rule).

As our members are preparing for the effective date of reporting obligations under the TR Rule, it has become apparent that implementation of the Rule will force them to stop dealing in large segments of the IIROC Regulated OTC Derivatives market with the result that their clients will turn to unregulated entities. **For the reasons outlined below, we therefore reiterate our recommendation that IIROC Regulated OTC Derivatives be excluded from the provisions of the TR Rule.** We would like to have an opportunity to meet with CSA members to discuss the conditions under which such an exemption could be granted.

Equivalent regulatory regime

IIROC Regulated OTC Derivatives are offered under a regulatory regime that is at least equivalent to the TR Rule and other proposed OTC rules. In particular, IIROC Rule 200 lays out member's obligations to maintain minimum records, including detailed trade blotters and securities records. These records are available to IIROC and can be made available to CSA jurisdictions in accordance with the provisions of IIROC Rule 19.

As we submitted in our March 18, 2014 response to the CSA request for comments on 91-303 - Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives (the CCP Submission), IIROC rules and CIPF coverage also effectively deal with counterparty risk and investor protection issues. Furthermore, IIROC Regulated OTC Derivatives are traded on platforms that provide full transparency and liquidity.

The European model is not appropriate for IIROC Regulated OTC Derivatives

We understand that the CSA looks at developments in other markets, especially in Europe, where CFDs and retail FX are also offered, in determining the scope of OTC derivatives rules. While other markets will sometimes offer useful lessons for Canada, in this particular case, fundamental differences in regulatory regimes point to different approaches to CFDs and retail FX. European markets generally operate a "government regulatory model"¹ without SROs. Government regulation must therefore shoulder the entire burden of ensuring market efficiency and fairness and investor protection. Canada operates an "independent SRO model" where, in the case of IIROC Regulated OTC Derivatives, the SRO effectively deals with these issues. Subjecting these products to a second layer of regulation would bring no benefits, and in fact, would probably lead to perverse, unintended consequences, as we argue later in this letter.

No systemic risk

OTC reforms were initiated in the wake of the 2008 financial crisis, to deal with "Large volumes of outstanding bilateral transactions (that) had created a complex and deeply interdependent network of exposures that ultimately contributed to a build-up of systemic risk."²

As we submitted in our CCP Submission, IIROC Regulated OTC Derivatives do not raise any systemic risk issues. The IIROC Regulated OTC Derivatives market is small, both in absolute terms and as a percentage of the underlying asset markets and is not characterized by a "deeply interdependent network of exposures". Furthermore, IIROC rules already impose capital and margin requirements.

Proposed TR fees incompatible with the economics of Canadian retail FX and CFDs

¹ Self-Regulation in Securities Markets, John Carson, The World Bank, January 2011

² Report from the Financial Stability Board Chairman for the G20 Leaders' Summit, September 2013

A working group of IIAC members has held discussions with 2 TRs that have filed or are in the process of filing for recognition in CSA jurisdictions. Their proposed fee per transaction is a multiple of the total revenue generated by a large segment of the CFD and retail FX market – where the typical nominal value of a transaction is a small fraction of the average swap and the duration is much shorter. The proposed fees are also 15 times (or more) higher than European TR fees, where the economics of CFDs and retail FX are otherwise the same as in Canada.

Obviously, the market cannot bear such fees, which would force our members to stop dealing with a significant segment of the IIROC Regulated OTC Derivatives market. Some members may exit the market entirely. As a result, the only alternative left to investors would be unregulated entities. In previous correspondence and meetings with the OSC and the AMF, IIAC has raised the issue of unregulated entities dealing with Canadian investors and the obvious investor protection issues they raise³.

Recommendations

Trade reporting as mandated by the TR Rule would bring no benefit in terms of systemic risk reduction, market efficiency and fairness or investor protection and would likely have the perverse unintended consequences outlined above. **We therefore reiterate our recommendation that IIROC Regulated OTC Derivatives be excluded from the provisions of the TR Rule.** We would like to have an opportunity to meet with CSA members to discuss the conditions under which such an exemption could be granted.

Best regards,



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cc: Mr. Paul R. Riccardi, Senior Vice President, Member Regulation, IIROC
Mr. Paul Hayward, Senior Legal Counsel, OSC

³ For example, www.forexportal.ca, an unregistered portal, solicits Canadian investors on behalf of a wide range of unregulated entities