CSA ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

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Canadian securities regulators seek second round of input on proposed business conduct rules for derivatives dealers and advisers

Toronto – The Canadian Securities Administrators (CSA) today published a notice and second request for comment (the Notice) on Proposed National Instrument 93-101 *Derivatives: Business Conduct and Proposed Companion Policy 93-101 CP Derivatives: Business Conduct* (collectively, the Proposed Instrument). The Proposed Instrument establishes a business conduct regime for regulating dealers and advisers in over-the-counter (OTC) derivatives in Canada.

The Proposed Instrument was originally published for comment on April 4, 2017 (the first consultation). The Proposed Instrument, together with Proposed National Instrument 93-102 *Derivatives: Registration* and a related companion policy (NI 93-102) published by the CSA on April 19, 2018, was developed to help protect derivatives market participants by improving transparency, increasing accountability and promoting responsible business conduct by dealers and advisers in the OTC derivatives market.

"The proposed rules are an important milestone for Canada," said Louis Morisset, CSA Chair and President and CEO of the Autorité des marchés financiers. "They will help protect against market abuse and together, the proposed business conduct instrument along with the proposed registration instrument, will align us with international standards."

The CSA split the proposed derivatives business conduct and derivatives registration regime into two separate rules to ensure that all dealers and advisers remain subject to certain minimum standards in all Canadian jurisdictions.

"Following a careful review of the submissions received with respect to our first consultation, we have revised the Proposed Instrument and introduced changes that enhance investor protection while preserving market liquidity and access," continued Mr. Morisset.

Some of the changes in the revised Proposed Instrument include an amendment to the definition of "eligible derivatives party", which now includes a category for a commercial hedger, a revision to some of the restrictions on derivatives party assets and a change to certain senior manager obligations. A full summary of the comments received, together with the CSA's responses, can be found in Annex I of the Notice.

The Proposed Instrument is intended to create a uniform approach to derivatives business conduct regulation in Canada and promote consistent protections for market participants, regardless of the type of firms they deal with. The Proposed Instrument will also ensure that derivatives dealers and advisers operating in Canada are subject to consistent regulation that does not result in any competitive disadvantage.

The Proposed Instrument accordingly takes a two-tiered approach to the protection of derivatives market participants, with requirements that are tailored depending on the nature of the derivatives dealer's or adviser's counterparty, customer, or other person or company that the firm deals with or advises.

In developing the Proposed Instrument, the CSA considered the existing business conduct regime in the securities markets while tailoring the requirements to the OTC derivatives markets. The Proposed Instrument sets out a comprehensive approach to regulating the conduct of dealers and advisers, including requirements relating to conflicts of interest, know-your-derivatives party obligations, compliance and recordkeeping requirements, and reporting and senior management duties.

The comment period for the Proposed Instrument coincides with the comment period for NI 93-102. This gives stakeholders the opportunity to consider both of the proposed instruments when making their comments. Comments should be submitted in writing on or before September 17, 2018.

CSA members plan to hold roundtables related to the proposed business conduct regime. Further details regarding these events will be published in a separate posting.

The Proposed Instrument can be found on CSA members' websites.

The CSA, the council of the securities regulators of Canada's provinces and territories, co-ordinates and harmonizes regulation for the Canadian capital markets.

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