CANADIAN SECURITIES ADMINISTRATION

AUTORITÉS CANADIENNES EN VALEURS MOBILIÉRES

ROUNDTABLE ON PROPOSED NATIONAL INSTRUMENT 93-101

DERIVATIVES: BUSINESS CONDUCT

AND PROPOSED NATIONAL INSTRUMENT 93-102

DATE: Thursday, September 20, 2018

HELD AT: 351 King Street East, 17th Floor
Toronto, Ontario

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INTRODUCTION:

MR. FINE: So as everyone is taking their seats, I would just like to say hello, good morning, everyone. Hope everyone is well.

For those who don't know me, I'm Kevin Fine, the director of the Derivatives Branch of the OSC. I would like to extend a warm welcome and thank everyone for attending today our Roundtable on the proposed National Instrument 93-101, Derivatives: Business Conduct, and proposed National Instrument 93-102, Derivatives Registration.

In particular, I would like to thank our friends and colleagues from the CSA, who travelled here today, for finding time to be here, and I want to note that staff from the Manitoba Securities Commission, the BCSC, and ASC, the AMF and the FCNB are in attendance. If they could just please stand up in case you want to say hi to them on the break. I'd give them a high five. They're awesome.

Thanks very much. The roundtable is part of our ongoing consultation on the proposed derivatives registration and business conduct regimes.

Before we get started, I would just like to take a moment to take care of some housekeeping items. First, disclaimer time. The views being expressed at today's event are those of various participants and do not necessarily represent the views of the Commission, the CSA, or any of the employers of those speaking, unless they indicate otherwise.

Now the good part. Coffee is available in the foyer outside the main doors and there are some light snacks as well. The restrooms are located on either side of the elevator lobby outside the foyer.

We are transcribing today's Roundtable and we will make the transcript available on the OSC's website shortly. We're also taking photos that may be posted on our website.

I would also like to reiterate that this is a public event and members of the media are in attendance. We have extra copies of the agenda outside, if anyone needs one, and the format of today's event consists of three panel discussions that will explore a variety of topics.

The areas of discussion fall into three categories, including the first panel, Business Conduct for the Institutional and Retail markets; second panel, Registration for Advisors, Dealers in the Retail Markets; and the third panel is Registration of Financial Institutions, both Federally and Provincially Regulated.

The discussion today will assist us in developing a regulatory response that will protect investors, reduce risk, improve transparency and increase accountability, while balancing liquidity and market access concerns.

We have set aside time in each of the three panel discussions for questions. I'm looking forward to learning from all of you and anticipate we will have an engaging conversation with you on these topics.

To make that happen, we will ask at the end of each panel for you to raise your hand if you have comments or questions and a staff member will bring a microphone to you.

There are lot of people in the room today, as you can see, so we want to get the most out of our discussion with our panellists, and we'll try to get to as many questions as we can, but please bear with us if we can't get to all your questions, we apologize. You can certainly contact us afterwards directly at the OSC to provide us with your thoughts on whatever your question is.

Now to start the morning off, it is my pleasure to introduce the OSC Chair and CEO, Maureen Jensen, who will provide opening remarks.

OPENING REMARKS:

MS. JENSEN: Good morning, everyone. Thank you, Kevin. So, first of all, I'd like to thank you all for being here and taking part in today's Roundtable discussion.

As you know, for any new proposal that we put forward or consider, we rely on candid input from our stakeholders to ensure that every perspective is heard and considered and that we ultimately will land on the right approach, so your engagement in these Roundtables is both necessary and very much appreciated.

As I look around this room, this is the second time we have been in this space, we almost always have our roundtables at our office; however, we can only accommodate a hundred if we really squeeze in tight. We had [230] people registered for today, so thank you very much for accommodating us.

So derivatives are now mainstream financial products that play an important role in global and Canadian economies.

In addition to the corporate and institutional markets, we are seeing more derivatives products being promoted to retail market participants in the form of on-line platforms offering foreign currency and other derivatives. There is also an increased interest by retail investors in the trading of derivatives on crypto currencies.

So as a result, in some cases, vulnerable market participants are being exposed to substantial and unnecessary risks. For those situations, it is our role to consider and put in place appropriate investor protections.

The trade reporting rule we implemented in 2014 is the building block of our derivatives rule making, and gives us key insights into the Canadian derivatives market. Since that rule came into effect, about 35,000 counterparties have transacted in our market and about 21,000 currently have active transactions.

There is an increasing appetite for derivatives and our market is growing. Since our last Roundtable in May of 2017, the total notional amount of outstanding transactions in the Canadian market has increased by nine trillion, to approximately 48 trillion.

Recognizing the importance of this market, our goal is to craft a registration regime that allows the markets to flourish, while ensuring the appropriate safeguards for market participants and for investors who use these derivatives.

In order to achieve this goal, the two CSA National Instruments being discussed today adopt a flexible principles-based approach for the institutional market that is in line with regimes currently in place in other jurisdictions around the world.

So the proposed National Instrument 93-102, Derivatives Registration, focuses on the stability and governance of derivative dealers and advisors and the proficiency of individuals who represent these institutions.

The proposal was published for comment the first time in April and today is our first round of public feedback on this initiative.

This is also the second comment period for National Instrument 93-101, Derivatives Business Conduct, and many of you attended our Roundtable on this topic in May of last year.

Together, these instruments will create a robust and flexible oversight regime for derivatives dealers and advisors in the Canadian market.

The proposals recognize the difference between institutional and retail level participants and the importance of foreign liquidity in the Canadian market, and they also promote responsible conduct that can help protect investors and foster confidence in Canada's capital markets.

In developing new regulation, one of our primary goals is uniformity. We have largely been successful in creating uniform derivatives regulations across Canadian jurisdictions, however, there is an important difference that we're going to discuss today, and that is around the registration instrument and how it will be applied in Ontario.

In Ontario, federally regulated financial institutions, or FRFIs, are statutorily exempt from registration; however, FRFIs will be subject to the business conduct rule and other requirements, prohibitions and powers under Ontario securities law.

The OSC is investigating how we might address the gaps that exist as a result of our inability to register FRFIs. The other CSA jurisdictions do not have a statutory exemption for FRFIs and are proposing to register them. This divergence in approach between Ontario and the other participating provinces I think will be a very important topic of conversation for our registration panel, which is [third] this morning.

So I encourage you to speak up, ask questions on this proposal, as well as any of the other issues raised by our panellists today.

We have an excellent and diverse group of speakers, including representatives of the buy side and sell side institutions, such as banks and pension funds, as well as asset managers, dealers, academics and investor advocates. We are very happy to have with us today our CSA colleagues that Kevin just introduced, as well as staff from our federal partners, including OSFI, the Bank of Canada and the Federal Ministry of Finance, as well as our colleagues from the Ontario Ministry of Finance.

So without further ado, let's begin our discussions and start what I hope will be an informative and productive morning for us all. Thank you for being here and let's begin.

MR. FINE: Thanks, Maureen, for those thoughtful comments. Now we will begin our first panel discussion on the topic of Business Conduct, Institutional and Retail Markets.

I would like to introduce Aaron Unterman, senior legal counsel at the OSC, who will moderate the discussion. Aaron.

TOPIC 1: BUSINESS CONDUCT - INSTITUTIONAL AND RETAIL MARKETS:

MR. UNTERMAN: Thank you, Kevin, and thanks to everyone for joining us for our second Roundtable discussion of the Business Conduct National Instrument. We have a terrific panel today. I'm going to ask them to come up now.

To my left is Jennifer Levin, she is a manager at National Futures Association. To her left will be Allan Maclean-Howard, Vice President, asset allocation and risk management, Signature Funds, CI Investments. To his left we have Greg O'Donohue, director and senior legal counsel derivatives, Ontario Teachers Pension Plan; and to his left, Nadeem Siddiq, senior legal counsel at Scotia Bank.

Before we get started with our panel discussion, I'm going to give a brief introduction to some of the key concepts in the rule and also raise some of the major issues that were raised during our last consultation and how we responded to those.

The key objectives of the rule are to protect investors and counterparties, reduce risk, improve transparency and accountability, and promote responsible business conduct in the OTC derivatives market. We're creating a regime that is in line with international standards and we're trying to do so in a way that does not overly burden derivatives advisors or derivatives dealers.

One of the key aspects of the rule is it adopts a two-tiered approach. At the institutional level, the instrument is principles-based, focusing on some key and core business conduct standards.

At the retail level we're instituting a comprehensive investor protection regime that's commensurate with the risks of retail derivatives trading.

The philosophy behind this two-tiered approach is not that institutional investors aren't deserving of these protections, but rather that they're in a position to negotiate, assess and tailor the protections that they themselves need.

Related to this division between the retail and the institutional market is one of the areas we received the most comments on, and that relates to the definition of eligible derivatives party and that threshold, so one of the main comments we received in the first round of comments was that the threshold we had set was too high for small and mid-sized businesses, and this could result in reduced liquidity and access to hedging services for that market.

This is a very serious comment and to address that we have created a new category of commercial hedger, and that category has a lower monetary threshold. One of the main topics of discussion with our panel today will be whether that new threshold goes far enough in addressing these liquidity concerns.

A second area that we received a number of comments on was our treatment of derivatives advisors. Commenters asked that we provide more information and more guidance on what constitutes advising for the purposes of the rule, and they also asked that we relook at our approach to the treatment of managed accounts for eligible derivative parties, and we have done that, we've provided more guidance in the CP and we have adjusted our approach to managed accounts and EDPs. So that's another area of discussion for our panel today.

The final thing I will say before we get this conversation going is to mention an important part of the rule that's not included in this publication, and that's our substitute compliance approach.

Substitute compliance will provide exemptions for entities that are regulated by a foreign or domestic regulator in a way that meets the outcomes and objectives of our rule. This component of the rule will be published before the end of the year and will include our analysis for both foreign regulations and Canadian, so that will be an important component that will be coming out.

Now let's get started with our conversation and discussion. We're very lucky to have Jennifer Levin from the National Futures Association with us. She has experience overseeing business conduct in the American market.

Jennifer, can you get us started by providing a bit of background on the approach to business conduct in the U.S. and also the NFA's role in overseeing business conduct. Thank you.

MS. LEVIN: Sure. The National Futures Association is the self-regulatory organizations of the U.S. derivatives industry, including on exchange traded futures, retail off exchange foreign currency and OTC derivatives.

Our mission includes safeguarding the integrity of the derivatives market, protecting investors and ensuring that our members meet their regulatory obligations.

The Commodity Futures Trading Commission, the CFTC, oversees all NFA activities, and this is really important to the self-regulatory model to have this oversight, and we have a close relationship with them.

Some of our core functions as it pertains to our members is registration and membership, compliance and enforcement and market education and awareness.

The Business Conduct Standards regime in the United States, we have BCS rules for every category of our registrants. I'm going to speak in particular about swap dealers and the CFTC regulations made pursuant to the Dodd Frank Act of 2010, the Business Conduct Standard rules pursuant to that were finalized in February 2012.

Some of those rule areas include the prohibition of fraud, manipulation, other practices, KYC, fair dealing, disclosures, pay to play rules, and verification of counterparty eligibility.

So NFA members are required to comply with both CFTC regulations and NFA rules. For the rules that I am going to be speaking about today, though NFA has a rule that essentially incorporates the CFTC regulations into NFA rules, and that's NFA rule 2-49.

Our approach to business conduct oversight is mainly through examinations, as well as ongoing monitoring. We regulate both U.S. and non-U.S. swap dealers and we examine both. Our examinations mainly consist of interviewing key personnel, reviewing key processes and controls, making document requests, having ongoing communications with the firm during fieldwork is very important, as well as issuing reports and reviewing remediation plans of the firms.

The ongoing monitoring plan, we review swap dealer filings, including the chief compliance officer and rule reports, industry and firm developments, as well as following up on self-reported issues from our members. We very much encourage our members to self-report any issues that they have identified themselves and report it to the CFTC as well immediately.

I can go into our exams if you -- specifically for the Business Conduct Standards.

MR. UNTERMAN: Sure.

MS. LEVIN: So our examination program began in 2014. We have examined various areas of the Business Conduct Standards, regulations. Some of the areas covered are KYC, verification of counterparty eligibility, and in terms of the eligibility, the swap dealers are required to transact with counterparties who are eligible contract participants, ECPs. So there's no retail here.

And there we review the disclosures of information regulations which pertain to disclosures of material risks, characteristics, material consensus and conflicts of interest, as well as providing pre-trade marks and daily marks. We also reviewed regulations pertaining to political contributions, recommendations in institutional suitability, as well as market practice, which is covering fraud, manipulation and other abusive practices.

And just from a cross-border standpoint, we do -- as I said earlier, we do examinations of non-U.S. swap dealers, however, we will only review the rule areas in which substituted compliance does not apply.

Some of the themes that we have identified from our examinations of the Business Conduct Standards really pertain to onboarding processes. So misclassification of counterparties and systems.

So, for example, a firm is not classifying a counterparty as a U.S. counterparty, the firms are running the risk of not providing the required disclosures required by the CFTC regulations.

There is also failures to -- we have seen failures to obtain and retain documentation, required verification. The same -- this can be caused also by misclassification of counterparties, as well as counterparties, existing counterparties who are able to trade in certain products, they begin trading swap products, the systems may not be tracking that and, therefore, they're trading swaps with counterparties without all the required documentation ahead of time.

We've also seen some record keeping issues, but, really, the observation and best practices, I guess, that we can -- that we've identified are having good operational onboarding structures in place is incredibly important, controls are key, having a hard stop that blocks any transaction with a counterparty prior to the counterparty being completely papered ahead of time is really important, as well as having a good pipeline to the front office to see who is papered and who isn't, because if the front office isn't aware as to who it's eligible to transact with, I mean that's -- you run the risk of transacting with ineligible counterparties.

Through all this, the member input at various stages is really important. This helps us identify areas for us to -- identify areas for member education, as well as helping members understand their regulatory obligations and to help us help them meet their regulatory obligations.

MR. UNTERMAN: Okay, well, thanks so much, Jennifer. Very interesting look at what may be the future in Canada, so thank you.

Let's move on, and I think we're going to start with just general impressions of panellists of the revised Business Conduct Rule with a focus on have we achieved the correct level of investor protection and have we done so in a way that is not overly burdensome.

Nadeem, do you want to start things off.

MR. SIDDIQ: Sure. Generally my comments are going to be focused within the confines of the comment letters that have been produced by the industry, in this particular case the Canadian Market Infrastructure Committee and ISDA.

There are some concerns and we might need to be able to look into those comment letters to get more detail. There are some concerns that once we've gotten past what is mandated under the G20 commitments, you need to make sure that, and the caution is to make sure that it's as harmonized as possible with other regimes, the concern being that to the extent that Canada is unique in a fashion that is different from other jurisdictions, it disincentivizes and burdens transacting with Canadians.

So a lot of the comments that are in those are to try to tailor and to try to focus where those concerns are and to try to distinguish somewhat in terms of markets, you know, like the NFA has pointed out, where you're not a retail market, it's not an investor, per se, type of client base, your counterparties are sophisticated, they're fairly robust in their asset management and risk management portfolios, so to keep that in context.

Then with particular respect to your comments on the EDP, we're very supportive of the concept, like under the Commodity Exchange Act, the eligible contract participant concept also being translated here. The only comment is as much as possible to align all of these definitions, not only with Canadian definitions across the country, but as well with the ECP definitions and the thresholds and to leverage as much as possible the representations we've already gotten from clients.

One of the main challenges that the banks have had ever since regulation has come out is with respect to the client outreaches. So with every outreach it's a very burdensome process to actually go out to the entire client base, and then you have to depend on he people actually responding, and that's always been the biggest challenge with the big jurisdictions like U.S. and Europe, it's easier because these are larger jurisdictions.

When we get into smaller jurisdictions like Canada, Australia, other ones, we're a little bit more challenged in actually getting clients captive to respond, so we want to be able to leverage as much as possible and harmonize as much as possible on the definitions.

So those are basically the general comments that the industry has had so far.

MR. UNTERMAN: Excellent, thanks. Greg.

MR. O'DONOHUE: Yes, sure. Greg O'Donohue from Ontario Teachers Pension Plan, so a buy side representative here. Maybe a little bit different view, although we were involved in those papers as well.

OTPP and pension plans generally are supportive of Business Conduct Rules.

With respect to the rules and how they apply specifically to Ontario Teachers Pension Plan, just to walk through just a little bit at the beginning so you know where our perspective comes from, eligible derivatives party definition, it includes pension plans, so that would be all pension plans at that point. So that's extremely helpful when it comes to allowing the light touch, I guess, with respect to pension plans as well, which would include us, but would also include smaller pension plans at the same time.

A lot of our focus on the first round of comments was based on the derivatives dealer definition and the potential for pension plans and other buy side entities who actually fall into that category. I'd like to thank the CSA for their comments in annex one of the proposed rule and the comment summary and the CSA responses in the proposed rule.

After I read that and after I reread through the rules, from my perspective, I believe that OTPP would not fit into that derivative dealer definition. I think there's a holistic look that needs to be taken on all those different categories that are in there and I not believe that pension plans would fit in there. I can speak for myself basically, I don't think I would.

And then if I'm wrong, there is an exemption, section 37(1), that also applies, and I can definitely speak from an Ontario Teachers' perspective, and that deals with more how you trade, I guess, and who you're trading with. So from that perspective, we would definitely fall into that exemption.

I don't know, I can't say pension plans generally, but if they all transact in similar ways that we do, I think they would fall into that exemption as well, so that means they are not competent to deal with that derivatives dealer definition, so then they're not subject to actually complying with these rules, I guess. Their counterparties would be, but they would not be.

From that perspective I'm very supportive of the rules. They don't necessarily apply to me directly, but maybe apply indirectly.

Some of the things that I do really care about, I guess, that are in the rules are things like fair dealing and conflicts of interest. Fair dealing is extremely important to us, having people acting fairly, honestly and in good faith is extremely important. If they do not, it's our members that take the hit ultimately, so we really do care about that.

We are fiduciaries for these members, so we want to make sure that everyone is acting the way they should be acting within the marketplace.

Disclosure of conflict of interest, this was contained in one of the PIAC letters, which is the Pension Investment Association of Canada. There is a -- we see this as two different types of conflict of interest here. There is the general conflict of interest that applies to basically to everything, it will apply to all counterparties or all transaction types, and for that we see omnibus conflict of interest letters coming from like a client would be fantastic. We don't see the need to provide anything further than that.

When it comes to actually counterparty specific conflicts of interest or conflicts of interest related to any particular transaction that someone has entered into, we feel that that should be provided at the time of the transaction or as close thereto to the time of the transaction. It may be needed after the transaction if something subsequent is going to happen that's going to affect your transaction as well and that should be tailored to the specific individual. That should not be an omnibus waiver or letter that comes out that says, by the way, we have a conflict of interest in this case. It should be very specific.

I will -- with respect to the comments from a CMIC perspective, there is, to the extent that these rules do go beyond what other rules and other jurisdictions would have, there could, of course, be a liquidity issue. I don't know if that actually could arise or not, that would be for others to make that determination, but that would be the extent of it. Otherwise, fairly supportive of the rules.

MR. UNTERMAN: Excellent. Thank you very much. Allan.

MR. MACLEAN-HOWARD: I would echo a lot of what Greg has said as a buy side person from the mutual fund industry, and for me personally, I am a portfolio manager, not a lawyer or compliance person, so I tend to look at this more at a general or policy level than at a detail level, and it's very hard to argue against some of the bedrock parts of the policy initiative here. Things like know your client, conflicts of interest, fair dealing, they're unquestionable.

I have been doing this a long time. I started on Bay Street before the crash in '87, almost always in derivatives. My entire career over the counter derivatives has been a wild west, buyer beware, and I think to level the playing field and to make it a more functional marketplace, these sorts of things are sorely needed and it's clear after the credit crisis there has been a global initiative to do this.

In terms of how the rules apply, I notice that it works for dealers and advisors and there's an attempt to differentiate who is a dealer and who is an advisor, and Greg has mentioned how a public pension, that's a tricky thing to make sure you end up as an advisor, and I think it's been done correctly, but I think through history, when you look at any OTC derivative event that has really impacted the markets, I can't think of one where an advisor outsmarted and tricked a bank and dealt with really bad conduct and the bank was doing something that it wasn't smart enough to do and didn't have risk capital to cover it.

When I look at the way regulations work, the dealers all have very, very tight regulations on risk capital and they're forced to live up to that. Typically they've got that side sorted out, and the problems for clients would be doing derivatives that you really shouldn't be doing that you don't understand.

So if there's a way to differentiate, the thrust on conduct is for dealers and the thrust on proficiency definitely should be on advisors.

I think, too, looking at this rule. Coming as it does on top of a lot of things, such as a derivative dealer must be a member of IIROC, the client rules that already exist in 31-103 for an asset manager, the basic reps and warranties that exist is the framework in the way counterparties deal with each other, and on top of that, the requirements for OTC cleared derivatives, these proposed rules do a good job of protecting the end investor.

The one thing I wonder about, having worked at banks for a very long time before I moved to the buy side, and I'll just come out and say it, it's an elephant in the room, GICs and structured notes are not covered, and I understand why they're not covered and that's not an easy thing to change, but when you look at the Canadian environment, there are some very large size transactions done every year within investors through structured GICs and structured notes that have complicated over-the-counter derivatives sold to an end user, they are embedded in something, but they're still complicated OTC derivatives.

I try and think about if there's an experienced portfolio manager doing a call option on the S&P and the OTC market in a mutual fund, versus a farmer in Riviere du loup buying a $50,000 GIC which has a Himalayan equity option on 20 global stocks being sold by a bank teller, how that experience equates to what's being done here for fairly sophisticated investors and that's something that as a market participant that, in general, are people protected, that's something that I look at, but I understand in many ways it's beyond the scope of these rules.

MR. UNTERMAN: Okay. Well, that's very interesting commentary. Unless there's anything else anyone wants to raise, I think we'll move to the next question.

One of the major changes that we made was introducing a new category of EDP, and that was in response to the comments that the threshold was too high and could inhibit certain hedging activities that we want to encourage. So we have created a new category and we lowered the threshold, the monetary threshold from 25 million to ten million.

The question for the panel is does this go far enough to address the liquidity concerns that were raised in previous comment letters. Maybe, Nadeem, can you kick that off.

MR. SIDDIQ: Sure, I mean we contrasted in the comment letters, both the CMIC and other letters comparing with the ECP concept as well. So we would note that under the ECP concept you've got net worth of USD one million, contrasted with net assets of CAD ten million, so from that perspective we would like those concepts aligned and we would want the threshold lowered or perhaps no threshold at all, the concept being that if you're a commercial hedger, satisfy the EDP definition, and then it should be sufficient that you're hedging, or at least have a lower threshold and then focus more on net worth and assets, because sometimes the real economic value is not as reflective. And then to take out the concepts of the knowledge and sophistication as -- you know, take those out of the definitions for this purpose and then we'll address them separately when we do our suitability exercises, which all the banks are quite robust in doing, and don't necessarily look at economic assets when they're doing that, they look at knowledge, experience, history of trading, so not to mix those concepts. So those are the general comments that we have had so far.

MR. UNTERMAN: Okay, the objective of these thresholds is to try to identify market participants that are in more need of protections, of less sophistication.

Lowering these thresholds, do you see any risks that you're going to be exposing those markets participants to transactions they may not be well suited for?

MR. SIDDIQ: Well, I mean, considering the fact that most of the transactions, the substantial majority of transactions in this field are for hedging risk purposes, and so, you know, you're already dealing with counterparties that have fairly robust risk management portfolios and profiles, and then we already have very extensive suitability requirements. I can only speak for my bank and some of the other big banks in Canada as to how rigorous that exercise is.

So those are identified during that suitability process, so we would just think that for purposes of the definitions, we can at least have separate exercises. We can do the financial exercise to fall within definitions, but understand that there's going to be a separate process to capture the knowledge and sophistication aspect of clients.

MR. UNTERMAN: Thanks. Greg, we know you're an EDP, but do you have any comments, general comments on the approach?

MR. O'DONOHUE: I think we're going to fall above the $10-million threshold. I don't think we'll fall below it at any time.

The only concern that I have is that once -- when you have a threshold, it automatically sets up a delineation that if anyone is under that threshold, are people going to deal with them, are they going to take the extra steps to do the extra things that they need to do to comply with the rules in order to deal with those counterparties or do they shut that market off, but that can be said about any threshold, wherever it sits, right.

I don't know where any threshold should naturally be. Maybe ISDA has a better idea of where that should be or maybe you have a better idea of where that should be, actually, if you're seeing the marketplace, right. So I probably am not best suited to say where that number should be. That would be my only concern.

MR. UNTERMAN: Excellent, thanks. Allan.

MR. MACLEAN-HOWARD: I think the new definition makes sense, as does the liquidity concerns. I would echo what Nadeem and Greg have said on this and not really add a lot of detail.

I agree it's a tough thing to equate financial size with derivatives sophistication and it's very difficult for the OSC to draw a line in the sand, and I think you've done a pretty good job in trying to achieve it.

MR. UNTERMAN: Great. Jennifer, any insights from south of the border on this issue?

MS. LEVIN: I don't think it's proper for me to really opine on what you should or should not do in your jurisdiction. I mean we have our definitions. I don't know if your regulations are modelled off of ours, but we do have rules pertaining to special entities. It's a -- special entities are an eligible contract participant, but there is extra regulations pertaining to suitability when advising a special entity.

Special entities are federal agencies, state agency, as well as certain retirement plans, so there are extra scrutiny for those types of counterparties.

MR. UNTERMAN: Okay, terrific. Thanks a lot. I think we're going to shift gears a little bit here and talk about derivatives advisors.

So as mentioned in the opening remarks, we did receive comment that there wasn't quite enough guidance on what activities constitute advising and we also received some comments on our approach to managed accounts for EDPs. Previously they were treated as sort of retail, the same protections.

So starting with Allan. Do the changes we made address advisory issues and any other sort of general comments you have?

MR. MACLEAN-HOWARD: Certainly. In what I say here, I would like to make it clear that I'm speaking on behalf of PMAC and have done some work with PMAC, including the most recent deadline for comments to go through things.

I think it's fair to say that PMAC is supportive of what the OSC has done here and very glad to see this sort of initiative happening and help the marketplace in specific.

I'm going to refer to some notes here to make sure I am correct in what PMAC is thinking and don't speak off the top of my head and make a mistake.

I think PMAC's thoughts are that the bulk of the concerns for advisors under the new rules could be better dealt with in revisions to National Policy Instrument 31-103 and in terms of the duty to a client and conduct and how things are done by an advisor.

There is a risk that the rules can evolve as a one-size-fits-all approach where dealers and advisors are together and ignoring potentially some of the robust regulation that already exists in 31-103 that covers a lot of issues.

I know there's always a tension between, okay, we have regulations that cover peoples' conduct, but that's a different thing from if someone acts very badly, how can we make sure, as a regulator, we have what's necessary to go after them and deal with it and sanction them, and that's perhaps a part of the tension that comes here in looking at all the things that already cover the advisor's conduct, but then to add some teeth so that you can come back and catch a bad actor and do something with them.

I think it's fair to say that PMAC in general sees the IOSCO and CSA proposals as trying to solve dealer issues primarily and then cover advisor issues after that. And there is the risk that dealer, remedies to dealer issues are applied to advisors and perhaps some further thought on how that differentiation exists.

It's pretty clear that advisors owe their investors a fiduciary duty of care and are required to have the very highest levels of efficiency and relevant investment management experience already than any other registrant category, and that's something that needs to be considered in the new rules, that most, if not all, advisors and PMs are already subject to robust regulatory oversight without these rules.

PMAC, in looking at the CSA's cost benefit analysis, sees 93-101 and 102 a little differently as adding material costs, compliance resources, potential renegotiation of existing OTC derivative documentation, which, as everyone in this room knows, just to get it done the first time is a major, major exercise to change derivative documentation, policies and procedures, and then equating that with what the impact is to the end user and avoiding investor market harm.

PMAC sees, perhaps similar to some of Nadeem's original comments, the reach of this and how far it goes versus things happening in the G20, things like the fiduciary rule instructed by the courts in the U.S. Perhaps this goes a little bit further than IOSCO standards and in the way that CFTC rules don't handle this issue.

In the end, PMAC is of the view that advisors should be entirely exempt from derivative conduct registration rules, I'll throw that out there, subject to demonstrated proficiency and risk management practices, and I think that comes back to some of my opening comments that it might be fair to say the major risk on the advisor side is the knowing what you're doing test. That's the key way that an advisor can hurt the end user and hurt the markets.

And I've said all that, I'll leave the others to speak now.

MR. UNTERMAN: Thanks. Nadeem, Greg, any comments on that?

MR. SIDDIQ: This particular rule doesn't apply directly to the banks, the Canadian banks, as all of our advisory subsidiaries don't do OTC. So I rest with those comments.

MR. O'DONOHUE: Similar, yes.

MR. UNTERMAN: Okay, excellent panel. A lot of food for thought there. So why don't we move to questions from the audience, encourage any type of questions. I'm the moderator but I'll be open for any regulatory questions you have.

We have some people with microphones. If you can please raise your hand if you have a question and introduce yourself, that would be excellent. Please don't be shy.

AUDIENCE MEMBER: Thanks very much for the panel discussion, it's wonderful today.

I was just interested in this, and this is just food for thought, Greg, your comment on conflicts of interest. Obviously on both sides of, buy side and sell side, that's something we're acutely aware of, but how would you deal with that on a practical level on a transaction by transaction basis? And maybe, Nadeem, how would you ever envision operationalizing something like that where you could actually deal with that on a transaction by transaction basis?

I think that the risk being you do end up with boilerplate conflict of interest disclosure or you overload those transaction by transaction conflict of interest disclosures to the point where they don't have too much meaning or value.

MR. O'DONOHUE: So my comments around the individual, I think the bulk majority of disclosures that would happen would be the omnibus disclosure that comes once a year, the conflict. I don't think it would arise in every single transaction. Probably, I don't know what the percentage would be, but I think it would be a fairly high percentage that most transactions would be covered just by a general omnibus disclosure.

When it comes to a specific conflict, like a counterparty that is working on both sides of the transaction that may have an impact on pricing, things like that, something that is really going to impact that particular transaction, I think there should be a conflict of interest notice at that point.

I wouldn't envision that happening all that often, I think it would be fairly rare that it would occur, but if it is going to impact your pricing, it's going to impact something on that transaction, I think somebody should be telling you, by the way, we're doing the other side of the transaction as well. A heads up.

I don't know how that is communicated, whether it's over a taped line, whether it's through e-mail, I don't think it has to be overly burdensome, and I really don't think it will arise that often, but it may.

MR. SIDDIQ: I agree with that, and the papering challenge, I agree with your comment on the papering challenge.

When this originally arose in the Dodd Frank context, and I was a part of the commentary that was going on for that, I think initially the focus was -- I think they never really intended at the end of the day it would very boilerplate type, you know, pre-trade, once and for all type disclosure. Unfortunately, as all of that was evolving, it became very clear that there really was no other way to paper it that way, and so that's how in the Dodd Frank context it ended up evolving into a very general generic disclosure that came out up front, because you just wouldn't be able to do it trade by trade. Trading is much too fast and it's far too complicated.

But I do understand, too, that you still are doing processes and you still have to have policies and procedures designed to be able to capture those and communicate them when they're happening, it's just the paper was the challenge and that's why you end up with these generic boilerplates at the beginning.

MR. UNTERMAN: Okay. Any other questions?

AUDIENCE MEMBER: Greg, one of your comments I think early on was referencing sort of an elephant in the room about structured notes, and I was just curious to get maybe some more colour from your perspective on that and whether there are distinctions between principal protected or principal at risk, your perspective in terms of your thoughts.

MR. O'DONOHUE: I think Allan had that comment, so I'll defer to Allan.

MR. MACLEAN-HOWARD: If I could just ask you to repeat the last part of your question. I'm sorry, I missed it. I know you asked about structured notes.

AUDIENCE MEMBER: Just whether you had any further thoughts. Sorry, before that I was suggesting whether there was any distinction in your mind between the principal at risk or principal protected ones; where your comments were kind of coming from.

MR. MACLEAN-HOWARD: Sure. I think the principal at risk and the principal protected distinction is incredibly important and there's room for different interpretation there and that's a key point.

I think from a general perspective when you're thinking about conduct, I don't know that principal at risk or principal protected applies at a general level. I think both the seller and the buyer should understand what they're doing and I think there should be rules of conduct that are applied to those types of transactions, and I think to align with an end goal of trying to harmonize Canada with the rest of the world in making sure that OTC derivatives are not something that can cause a problem in the market and that the standards for dealing there are equivalent to other corners of the marketplace, that's something where those general type of rules apply. But it is very clear the harm to the investor is very different in a principal protected note than one that is not principal protected. Does that answer your question?

MR. UNTERMAN: Thank you. Any more questions?

AUDIENCE MEMBER: Hi, I just had a question. Allan, you made the point about advisors and business conduct, really the different kind of lens of assessment, if you will, in that proficiency for trading swaps as being more important than some of the other conduct requirements that are proposed.

I just was hoping that maybe Jennifer could speak to the U.S. experience. Commodity trading advisors are members of the NFA as well. You spoke about business conduct assessment in the context of swap dealers for advisors in the United States that are involved in managing swaps. What's the experience of the NFA, what's kind of the industry standards that are followed?

MS. LEVIN: So I am a part of our OTC department that deals with swaps, however, I do know that NFA develops its rules -- as NFA is developing its rules, Business Conduct Standards is an important element, and since it does reach every category, it would reach those categories that you had mentioned as well, CTAs, CPOs, introducing brokers, that kind of thing.

So even though the swap dealer regulations are incorporated into NFA rules, NFA has its own business kind of standard requirement for the retail OTC products, some of the products of the entities that you had mentioned, and that includes pretty much similar regulations, KYC, it includes regulations covering promotional material and reporting and, you know, as you move from ECP, which is more swap dealer side to a customer that is dealing more in retail, the Business Conduct Standards become more rigorous and robust.

Unfortunately, I can't really comment on the specifics of the CPO, CTAs, that is not my area of expertise being a manager in our OTC department, but if you ever have any questions, our website has a lot of educational materials, as well as we have an information line which you can seek more information.

MR. UNTERMAN: Great, thanks. I think we have time for one more question. One more quick one, if anyone has.

Okay. Doesn't look like it, so thank you so much to the panellists. That was an excellent panel.

We will be moving on to our next panel, which is Registration - Advisors, Dealers and Retail Markets, and to moderate the panel, I'm going to ask Alison Beer, counsel, and Paul Hayward, senior legal counsel, from the OSC to come up and lead the discussion. Thank you.

TOPIC 2: REGISTRATION - ADVISORS, DEALERS AND RETAIL MARKETS:

MS. BEER: Good morning, everyone. Paul and I are, for those who know Paul, know that we are both very excited to tee up our first public discussion on the proposed registration rule and look forward to hearing from our panellists today their views on how this rule is going to impact the retail market for OTC derivatives.

Joining us for today's discussion is Bob Wong. Bob, will you join us, please? Bob is the CEO and COO of OTT Financial Canada. Bob's firm is currently an IIROC member that trades with retail customers, OTC derivatives like CFDs and similar forex products.

We also have Melissa Ghislanzoni. Melissa, welcome. Melissa is in-house counsel with the Portfolio Management Association of Canada or PMAC.

We also have Richard Corner. Richard is vice-president and chief policy advisor of member regulation at IIROC.

And we also have Larry Bates. Larry is a member of the OSC's investor advisory panel and author of the newly published book, Beat the Bank, the Canadian Guide to Simply Successful Investing.

Before we hear from our panellists, I'm going to briefly address at a high level why this rule is an important milestone for the OSC and the CSA and, as well, talk briefly about what types of firms we expect this to affect.

The proposed registration rule is really intended to modernize the framework for regulating OTC derivatives. As most of you are aware, historically there's not been a harmonized approach across the CSA, and treating derivatives as securities has not always been an ideal fit. That's why our Securities Act was amended to separately account for derivatives.

However, there are still parts of that Act that are still not in force today, and that's because the supporting framework, including this proposed registration rule, are still not settled.

In terms of who this rule is going to affect, we know many registered firms today, like Bob's firm, that already have activities that extend to OTC derivatives. I'm talking about the asset managers that PMAC represents that are registered today as portfolio managers or commodities trading managers, so PMs or CTMs. I'm also talking about investment dealers like Bob's firm, who are members of IIROC and, in some cases, are now trading CFDs, forex products and other similar OTC derivatives with retail customers.

We expect that these types of firms will look at this rule like it's an extension to their existing registration framework because many of the core concepts are very similar, but this is subject to, and I would emphasize this, subject to adaptations that are intended to reflect the differences in OTC derivatives market, and we'll touch on these adaptations in our panel discussion, but some of these features include a new registered category for individuals, the chief risk officer. In lieu of using the permitted client definition, we've introducing a new concept of eligible derivatives party or EDP to determine who is sophisticated and who is not. As well, we have modified some of the proficiency standards, including experience requirements.

We recognize, however, that for other market participants the proposed regimes may represent an entirely new framework. So if you want to get a complete sense of who these firms are, I would encourage you to read the comment letters that have come in, but these entities include certain foreign dealers and some of the energy firms, and my colleague from Alberta is here today and if I don't have the commercial energy working group's letter memorized today, I will certainly in six weeks' time, but it will also include Canadian financial institutions and recognizing that there's an exemption in Ontario for them today. That's the subject of our next panel.

I would also add that we do know and we really appreciate that not all the appendices have been completed. So from our perspective, we want to assure you that the contents of this -- of these appendices will be included in future publications and that you will all have an opportunity to comment on those.

So we will turn to our panel now to get some general impressions on the rule and, Larry, I would like to first start with you. Can you share your impressions about the registration rule from an investor protection perspective?

MR. BATES: Sure. Well, firstly, my experience with derivatives is really from the institutional world, having spent many years working on the RBC trading floor in Toronto and London and also for a while at Scotia, so I come from derivatives from that perspective, but I do have personal experience in the speculative instruments, and that's because every year my two sons and I go to the casino and we have a great time. Our expectations aren't high in terms of walking away with money, and we usually don't, but it's good fun.

That sort of goes to this fundamental question of should -- how much protection do retail investors need, should these products be sold to individual investors, and I think the answer is yes, they should. If we can go to the casino and the government encourages us to buy lottery tickets, then we should be able to buy CFDs and speculate on them, but, you know, what should the rules be, what protection do investors need? And I think transparency is important, transparency means something more than just disclosure.

Individuals should -- it should be made clear that these instruments, if they're not being used for hedging, that they are speculative. They're not investments, they're speculative instruments. Obviously it's important that there be transparency and clarity around leverage.

Also, I think it's important that buyers of these products understand the offer spreads, understand the charges that they're facing in trading these instruments, not just any fees that are involved, but the bid offer, and that that should be made clear. I think it's easy to do that.

Also, I think, importantly, that investors, not speculators, should be made aware of what the pay-off profiles look like and that, again, can be simply illustrated. You purchasing a CFD contract, show a range of market movement in the underlying and demonstrate what the pay-off profile gain or loss will be under those circumstances. So I think transparency is critical.

In terms of suitability, I know that at outset know your client is required. I struggle to see in some circumstances, with the general public entering into these contracts, how a suitability determination can be made by an advisor, by an OEO firm or other firms, so I scratch my head a little bit about that and, you know, I would be interested to hear comments from those in the industry in that regard.

MR. HAYWARD: Thank you, Larry. So the rule is intended to be sort of an evolution from our current approach where we currently have these types of instruments in Ontario as securities when they're offered retail, and the rule contemplates, and I hope I get this right, that if you trade with an individual who is not an eligible derivatives party or EDP, and that's the sophisticated customer type concept in the rule, we say you will need to be IIROC.

And so perhaps I could turn this to Richard. You have had -- you've played, I think, a leading role in IIROC's current approach to regulating the IIROC CFD forex firms like Bob's firm, OTT Financial. What's your, sort of, take on the rule? Have we sort of got that demarcation right and what sort of -- the concerns that Larry's raised, like, what does IIROC see when it looks at these firms?

MR. CORNER: So just by way of background, IIROC is the self-regulatory organization responsible for the oversight of investment dealers in Canada, as well as overseeing trading activity on certain marketplaces. We do not oversee the activity on derivative marketplaces in Canada at this stage.

IIROC, in terms of its existing requirements and how we built up those existing requirements as they apply to

OTC derivatives, IIROC has historically used the CSA registration requirements as the starting point in terms of ensuring that individuals dealing with the investing public have the necessary education, training and experience to deal with that public.

On top of that, the registration requirements, including what would come into effect if the National Instrument came into effect, IIROC also overlays what we refer to as approval requirements.

So these approval requirements in many cases extend further obligations on individuals dealing with the investing public in terms of initial proficiencies and going through a continuing education program.

So on one front, all of those additional requirements currently apply to those involved in transacting in OTC derivatives with the investing public.

We have also put in place margin requirements that, in some respects, are intended to constrain the leverage that individuals can take on by transacting in these products and we have also put in effect things like loss limits and those types of requirements.

Interesting enough, for those of you who are interested, IOSCO Committee 3 yesterday published a report on highly leveraged OTC derivatives; in particular, a toolbox of rule initiatives that are to be considered by regulators. IIROC has pretty much adopted virtually all of the those requirements already.

MR. HAYWARD: So I think you're basically saying this is what you have been asking for for a long time and IOSCO has finally caught up.

MR. CORNER: I'm not saying that at all, but to try to directly answer Larry's point, to the extent these products are being offered on an OEO platform, it's challenging --

MR. HAYWARD: And OEO is order execution --

MR. CORNER: -- order execution only, targeted retail clients. So our focus is making sure that firms that are making these products available on that platform are doing the initial account appropriateness assessments properly with those clients, but it is a challenge, back to the previous panel's discussion, as to how you determine sophistication either through numeric thresholds or through those conversations, it's always going to be a bit of a challenge, but our focus is on that initial screening of clients, as well as all the other measures I've talked about in terms of limiting the risk exposure that clients can take on and limiting the cumulative lifetime losses that a client could incur.

MS. BEER: Thanks, Richard. Bob, we have heard from the regulator. Can you tell us a little bit about your impressions of the rule from your perspective?

MR. WONG: We are very supportive of the registration rule. Actually, you know, one of the main challenges to member firms who offer this type of product legally in Canada has traditionally between the aggressive marketing by unregistered dealers from offshore jurisdictions.

So, in a way, the registration rule that's being proposed is an important milestone in the long road that really began, and, Richard, I think you would agree, with the CFD regulatory analysis paper that was put out by what was the IDA back then, back in 2007, that laid the groundwork for a series of guidance provided by IIROC in terms of how member firms should conduct these business activities when offering these over-the-counter derivatives to retail clients.

So I'm just going to add a little bit more colour to the established procedures of account opening that may address some of these investor protection concerns.

Richard talked about account appropriateness, and that's really based on the type of account that's being offered to the client in which they can trade these products. These are trade suitability exempt accounts, so, in other words, they're non-advisory, there are no recommendations made; however, although these are exempt from trade suitability, which means nobody is going to look at each trade or review each trade before it's entered onto the client's trading platform, there is something called account appropriateness or initial suitability that we have to conduct before we actually open the account, and, on top of that, when the account is approved we also have to create a cumulative loss limit or a risk capital limit, which basically restricts the amount of funding that can go into the account.

Now, this, in a way, is for us to monitor the liquidity of the client versus the financials that he has provided on the account application.

In terms of account appropriateness, we take a very close look and we provide a very detailed questionnaire to the client asking about investment objectives, trading experience. As a matter of fact, I mean the trading experience questions would branch out into five different products, asking whether the client has had any experience in each product. For example, securities, options, futures and options, OTC foreign exchange and CFDs.

So there are some very, very detailed procedures that we go through before we approve an account.

MS. BEER: It sounds like from you, your impressions today are that the world is not going to look very different for you in terms of introducing the registration framework, so thank you.

MR. WONG: I don't think it will be very different. I think the current procedures that we have already meet, if not, in some cases, exceed the requirements of the proposed instrument.

MS. BEER: Interesting. Thank you. Melissa, now turning to the advisors, can you share your perspective in terms of your initial impressions of the proposed registration rule?

MS. GHISLANZONI: Sure, so thank you very much. I would like to say that PMAC supports the work that the CSA has been doing to implement a robust investor protection regime through these rules. We were very glad to see a nationally harmonized proposal come out and we thought that some of the comments from the 2017 Business Conduct Rule proposals specifically with respect to the treatment of managed accounts of EDPs were very welcome and we thought they were very responsive to the consultation process.

So Allan spoke very well, I think, to the main points of our letter, but I'd just like to explain to you why we have concerns about the application of the registration rule as a separate regime on portfolio managers.

So the first thing, I think it's crucial to highlight that portfolio managers have a fiduciary duty to their client, and that already applies, regardless of the asset class that you're considering for that investor.

I think it's also important to note that, as registrants, they're already subject to robust regulation under 31-103 and that they do have the highest proficiency and relevant investment management experience in the industry and so it's for that reason that we think that the policy goals that we see you trying to achieve, we think that they can be more efficiently accomplished from the advisor perspective by leveraging 31-103 with the ability to evidence general proficiency with respect to derivatives, as well as by incorporating certain of those risk management policies for derivatives.

I think we're worried that 93-102 differs just enough from 31-103 that it's going to create an overlay and it's going to require re-papering of client representations and documentation, additional staff and salaries to meet some of these new roles, such as the derivatives chief risk officer, and so for that reason and because we haven't seen throughout any of the publications, whether they be from the CSA or from IOSCO, including yesterday's paper, of specific harm or concerns in the advisory space, we think that either that harm should be more clearly articulated and we can find a tailored solution for it or that 31-103 can be leveraged very well.

I think one last point that I would like to raise that I don't think has been touched on yet is that we're concerned that the absence in the proposed registration rule of exemptions for foreign advisors and sub-advisors, you know, akin to 8.26 and 8.261 in 31-103, could have a really disruptive effect and ultimately a negative impact on investors.

MR. HAYWARD: So I'll just quickly respond to a couple of points. On your last point about a number of more technical exemptions that are in the National Registration rule for securities firms, I think the sub-advisor exemption, 8.2, 6.1 and the dealer with advisory non-discretionary authority, 8.24, we're definitely looking into that.

MS. GHISLANZONI: That's wonderful, thank you.

MR. HAYWARD: On the broader question, we recognize that in the U.S. they have introduced a swap dealer category that's analogous to what we're proposing for derivatives dealer. They didn't introduce a swap advisor category.

It's my understanding that in the U.S. the approach is if you're registered as a CTM with the CFTC, that's sort of sufficient. That's a question we definitely considered and will still consider and we are reviewing the various comment letters, but I think one of the concerns why we thought maybe the existing PM category might not be sufficient is we thought maybe it wasn't sort of sufficiently tailored to the OTC derivatives markets today.

So perhaps I could get your experience from PMAC, is that -- how well suited is the current category, and if there are gaps, are there ways we could fill those gaps?

MS. GHISLANZONI: Certainly, and thanks for the opportunity to chat about this. You know, speaking with our members, and we represent over 270 member firms, less than ten percent of them are currently registered as CTMs, but certainly there are firms that deal in foreign exchange and none of them came to me, and they're very candid, none of them came to me and said, oh, you know, I see that there's a big gap that we need to fill that hasn't already been addressed in our proposal, which would be, yes, we think that having the appropriate proficiency is part of fulfilling your fiduciary duty, so certainly we see that that could be a gap that could be filled, I think, easily through 31-103.

And then, you know, subject to certain of our more technical comments in the submission, we understand the risk management aspects may, and this probably isn't applicable to all firms, but for certain firms they could be beefed up, or you may need, as the CSA, some audit and regulatory tools.

So we think that those are the potential gaps that we saw and we see them as being able to be filled fairly seamlessly through the existing instrument.

MS. BEER: Thanks, Melissa. Turning to the definition of eligible derivatives party; Larry, do you have any comments or thoughts on how we've classified a retail investor for the purposes of this rule, which is that if you're not an EDP, then you're retail.

MR. BATES: I think that the 25 million threshold seems very high for hedgers. If small business is looking to hedge, that threshold seems way too high, but I guess then the question is are -- is that definition of hedger or that use of that exemption, if that's what it might be, is that going to be applied properly, that's more the question.

MS. BEER: I think, and we had many comment letters that came in, so the commercial hedger category was a new addition to the definition that was designed to reflect differences in this market.

MR. HAYWARD: In response to many comments on the April 2017 proposal.

MS. BEER: We're aware that the threshold is lower in the U.S. and that's something that we will be considering as we go through the comment letters in this round of thinking about the rules.

From your perspective, Richard, do you have any thoughts about how we classified --

MR. CORNER: Well, from IIROC's perspective, and I guess taking a step back in kind of tying some of the previous -- one of the comments on the previous panel, IIROC tries to look at all business lines at an investment dealer and categorize clients consistently across those business lines, and I'm referring to transacting in securities, transacting in exchange traded derivatives and transacting in OTC derivatives.

IIROC has an existing definition for a retail customer which effectively includes all individuals, and to the -- we are looking at potentially carving out some legitimate hedgers in that activity, but to the extent we do that, it would apply to all business lines, not only to the

OTC derivative business line.

Our preference in doing this is to establish one standard that could be used when looking at a particular client account which may have securities, OTC derivatives and exchange traded derivatives in the same account and we believe, looking at an investor differently depending on the nature of the product they transact is very problematic and overly complex.

So from our standpoint, we would like to continue on with our existing delineation between retail customers and institutional customers and have that delineation apply for all business lines where the firm interacts with clients.

MS. BEER: Thanks, Richard. Melissa, can you share your thoughts on the definition of EDP; in particular, if you have any thoughts about the operational or implementation perspective.

MS. GHISLANZONI: Sure. So, you know, we understand that you had to tailor the sophisticated client definition for the OTC derivatives market. That having been said, we still held out hope for a permitted client definition.

I think one thing that could work and that could serve to streamline and reduce a lot of burden is to take the permitted clients who are not individuals and put them in under the definition of EDP. I think that that would eliminate the need for a lot of repapering.

I do think that there are operational challenges. I think that some firms will now be grappling with potentially four sophisticated client definitions and I think that for these sophisticated clients, you query whether they need that paperwork to be redone, whether they need to make a written representation as to their knowledge and experience to evaluate derivatives information or whether that could be waived. I'm thinking about large pension plans and, you know, do you want to have to fill out all of that resultant paperwork just to say, yes, I am an EDP and a permitted client.

MR. HAYWARD: So I have a question on that. I did see that proposal in the PMAC letter and I think it's in some of the other letters, can we not just add permitted client as another category. But we have proposed in the two proposed rules a transition period that will sort of grandfather people that you've onboarded, either as a permitted client if you're a registered firm today or if you're a qualified party under the various jurisdictions that have blanket orders or an accredited counterparty in Québec. I think we proposed sort of a one-year grandfather period.

As an alternative, we recognize there is a concern about do we have to go back to all of our clients and reestablish, because of a new definition, but if we just extended that grandfathering provision to a longer period, is that going to address the concerns or no?

MS. GHISLANZONI: Yes, I think that the initial one-year transition period, and I'll say thank you, I'm going to shoot for the moon and say I think that those should be grandfathered. I don't know that that's your investor risk key priority of getting those repapered, but I think the middle ground, speaking to firms, and I think that maybe a period of around four years would allow those relationships to be renewed in the normal course of business, and so that makes a little bit more sense as a touch point when you're going out.

And so, you know, certainly one year is better than none, four years is better than one, but if we're looking to reduce regulatory burden in a way that impacts the investor protection concern that you've set out, perhaps grandfathering would be appropriate.

MR. HAYWARD: Okay. Bob, any comments to add on that?

MR. WONG: On the retail definition? Yes, I just want to add a little bit to the comment from Richard a minute ago about the IIROC universe defining retail customers versus institutional customers.

Within our conditions of approval for our client-facing representatives, the conditions of approval are based on the product and the type of client.

So currently our business model is such that our investment representatives are approved to offer -- now, think about this, right, we're actually selling OTC derivatives, but the condition of approval right now is actually for futures and futures options, and the client category is actually retail.

So I'm just wondering if we are allowed to onboard an EDP client, how would that look, right? I mean, an EDP client would be, under the proposed rule, not a retail client, an individual I'm referring to, but, you know, our conditions of approval over on the IIROC side would be, you know, this is what it is, right, I mean we're approved to deal with retail clients.

MR. HAYWARD: Okay, so I think the rule -- the two rules are intended to operate in a similar manner to our kind of existing regime, which is, the basic rule is 93-101, 102, however, there's a sort of an overlay with sort of more specific IIROC requirements and, to the extent IIROC firms comply with the more specific IIROC requirements, I think they would, generally speaking, be exempt from the more principles-based requirements that we have.

So, I mean, we can continue this question offline, but I think it's sort of how the regime operates today I think is the intention of how it would operate in the new world.

We have about four minutes before we go to questions, I'm getting the look. I want to ask just one more quick question.

So, as I mentioned earlier, we're suggesting a line where if a firm trades with an individual who is not an EDP, we're saying you need to at IIROC, that if you trade only with EDPs, I mean you can be IIROC, obviously investment dealers do trade derivatives today with company clients, but we're saying if you only trade with EDPs you don't need to be IIROC.

And one area that this is going to impact is some of the forex and multisurfaces firms today. Based on what I've seen, some of these firms, what they do, a lot of it actually seems to be quite similar to what some of the IIROC firms do. So I think if they are trading individual, I think that makes sense.

On the other hand, some of the firms, most of their activity isn't really similar to what the IIROC firms do, so, Richard, I'm going to direct this to you. Is IIROC sort of going to be able and willing to take on these many service firms that trade with individuals who are not EDPs?

MR. CORNER: So IIROC's perspective is that to the extent it involves retail clients under the existing IIROC definition, we're prepared to take on that regulatory activity. That being said, as I alluded to earlier, we're looking for consistency of regulatory treatment, no matter what the product is, and I mean consistency in terms of assessing the sophistication of the client, consistency in the margin requirements.

IIROC currently does not differentiate or come up with different margin requirements, depending on whether it's a security or a derivative, we look at the risk profile and try to come up with equivalent requirements, and so that's our perspective.

To the extent that there are other businesses out there that come under IIROC's purview that have similar products with similar risk profiles that deal with similar clients, we would try to extend our existing philosophy to those clientele and to those firms.

MR. HAYWARD: And, Bob, some of these firms are kind of competitors to you. Any thoughts?

MR. WONG: Not really, because the products that we trade in are non-deliverable contracts, whereas the MSPs are mostly focused on either forward contracts and many of them, I believe they do want to take delivery of the currencies, and, you know -- so generally I really don't see them being a competitor in our space. I mean, most of our clients are really doing this for, you know, short term trading, speculation, whereas the MSPs are mostly servicing clients who actually have a need to hedge their exposure. So we don't see us crossing paths.

MR. HAYWARD: Okay. So perhaps we could turn to questions. If anybody has any questions, please put your hand up.

AUDIENCE MEMBER: Thank you for this. I would just like to echo Bob's question about the MSP and the very limited usage of certain industries fairly to, shall we say, claim simple derivative instruments. In light of the proposed registration requirements under the new set of rules, what is the OSC's position, I guess, with respect to -- I guess how receptive is the OSC towards, say, a more restrictive or limited registration requirement for certain industries or professionals who are using derivatives in a very limited, limited fashion? Is that something that is being considered at this point or is the broader scope of coverage being the main objective, the driver at this point? I would just like your thoughts on that.

MR. HAYWARD: We're certainly open to considering these types of comments and we have had these types of comments.

In a way, this question is tied into the definition of EDP and the commercial hedger category and the financial threshold category, because the lower the financial threshold, the broader the scope of entities that we would still say we think need to be registered, because we think integrity, proficiency, solvency concerns should apply, but if it's an EDP with a lower commercial threshold, that would broaden the entities that maybe the CSA would kind of take primary oversight over, rather than saying you need to be IIROC.

Did you want to direct your question to the panel as well?

AUDIENCE MEMBER: I would be happy -- I guess Bob spoke somewhat to that point. I'm happy to hear additional comments on that that hasn't already been said.

MS. BEER: Any other questions?

AUDIENCE MEMBER: Hello, I'm Danny Wortzman (ph.) Some of you know me. A couple of questions regarding -- I need a little bit of clarity on just a couple of things.

If our firm, which is a futures margin, trades and clears through a U.S. FCM, will that firm now be required to register either with IIROC or the OSC and will they have to have an agent here for notice?

Similarly, if a firm trades -- covers its FX positions with a non-Canadian firm, will they also be required to have some type of registration?

MR. HAYWARD: So I'm going to start with the disclaimers that we can't give legal advice. To the extent we're talking futures, exchange traded derivatives, we already have a regime there, and I'd be happy to speak to you after the panel on your questions in relation to futures activities.

On the OTC side, we're reviewing comments, there have been proposals, you know, should there be sort of a dealer to dealer exemption. So we would have to -- we'll consider the comments on that, but I'm happy to take that question after.

MS. BEER: Any other questions?

AUDIENCE MEMBER: Just for Bob, there's rules now in the registration room about portfolio reconciliation, portfolio compression. Do you think they will apply to a retail firm? Is there anything that you would have to be doing on that front? I think it sort of applies more to very -- you know, larger banks and dealers like that, as opposed to...

MR. WONG: They don't apply to us.

AUDIENCE MEMBER: So I think there needs to be some consideration of portfolio reconciliation and compression as to whom they really should apply. I'm not sure that a retail dealer who is dealing in CFDs or other forex products is really going to be engaged in a function of portfolio compression or portfolio reconciliation.

MR. HAYWARD: So, again, I think the general approach of the rule will be if you are an IIROC firm certain of the requirements and the rules may not apply to you if there are, kind of, comparable IIROC requirements, and that's something we could consider as part of that analysis. Julie.

AUDIENCE MEMBER: With regard to -- I know there was some contemplation on an incidental threshold. Being a securities regulatory lawyer and having to give opinions on what constitutes incidental and doesn't is a very, very difficult task, and so I think I would be concerned about providing an incidental threshold without there being very clear factors, like incidental for portfolio, incidental for mandate, incidental across global operations, and wondering whether or not the Commissions have considered the issues that will arise if you wanted to settle on an incidental as opposed to an outright exemption for advisors.

MR. HAYWARD: So we definitely struggle with that issue today on the commodity futures side. I'm going to toss that one over to Melissa for her experience.

MS. GHISLANZONI: Sure. So, you know, we think that it's important to have clarity and, to Julie's point, I think -- I think it's very difficult under the current Ontario Act for firms to know whether they've tripped the business trigger there.

So in our submission, I won't read it, it's very detailed, but we have listed out three indicia that we think may work in different scenarios for incidental and then we've also asked for and provided a starting point for some examples, but we do think it's really important that firms have clarity.

I think the unintended consequence of not having some clarity on this issue is that some firms will be afraid and so they won't engage in derivatives for their investors and some will feel that they need to register, and, as mentioned, we think -- I don't like making arguments about costs, but in this particular situation I do think that the cost issue and the investor issue are very connected, and so I think it's important that firms know.

MR. HAYWARD: Thank you. Any more questions?

AUDIENCE MEMBER: Hi. Paul, just a question for you. I think, as proposed for retail dealing in derivatives, it's contemplated that a dealer needs to be a member of IIROC, is that...

MR. HAYWARD: Yes, with retail being set at EDP, non-EDP.

AUDIENCE MEMBER: All right. So for a Canadian bank, which will be exempt from registration in Ontario, that wants to offer a simple currency forward to one of its banking clients to purchase a property in another country, the client's not an EDP. Is the expectation of the OSC that those Canadian banks would need to become members of IIROC in order to trade currency forwards with their Ontario retail client and does IIROC contemplate granting membership to banks that are not registered as investment dealers?

MR. HAYWARD: So that's a good question, as I stall. I mean, first of all, again, that question is tied into where we end up setting the EDP financial threshold, because the lower the threshold is, the broader the sort of universe of customers that you could deal with and they would be EDPs, so we wouldn't be saying you need IIROC membership.

In terms of whether we would say the bank needs to be an IIROC member, I mean, I suspect that won't be the case, but I mean it might be that to the extent the banks want to offer certain types of products to people who are not EDPs, it might be that you should conduct that activity through the banker dealer, as opposed to through the bank directly.

That might be the proposal, but that's obviously something, I think, in part, the next panel may discuss.

MS. BEER: All right. Well, thank you very much. First I want to thank all our panellists for joining us today and sharing your feedback. It's very important and we'll take all of your comments into account as we reflect on the rule.

We're going to take a ten minute break right now for refreshments. The door will be open, but we'll let you know in a few minutes when it's time to come back and join us for the third panel. Thank you.

--- Recess taken at 10:44 a.m.

--- On resuming at 10:53 a.m.

TOPIC 3: REGISTRATION - FINANCIAL INSTITUTIONS (FEDERALLY AND PROVINCIALLY REGULATED):

MR. FINE: Okay. It looks like folks are making their way back to their seats, so I think we're going to jump in and start right now. We're going to have our final panel on the topic of the registration of the financial institutions, and that's both federally and provincially regulated.

It's going to be an interesting discussion and we have a great, very prestigious panel. This is an area that's particularly relevant for a variety of reasons, including the nature of who is actually selling derivatives in Canada and also this is one area that we are not fully harmonized across the country, so looking forward to the discussion.

Our panelists for the discussions are, to my immediate left, Srijan Agrawal; he is the director of regulatory strategy and engagement at RBC Capital Markets. Then Lise-Estelle Brault, she is the senior director of derivatives oversight at the AMF and also in charge of fintech at the moment, I believe.

MS. BRAULT: On an interim basis.

MR. FINE: Interim basis. And Mary Condon, the interim dean at Osgoode Hall Law School. And Waqaas Fahmawi, who is the director and assistant general counsel at Bank of America.

So before we get into the panel discussion, we're going to begin with an introduction by Lise-Estelle, but I first wanted to mention, this issue is particularly relevant in the way that it's a little bit different than the previous panels.

Just from a factual perspective, the vast majority of derivatives that are transacted in Canada are done with a Canadian bank on one side of the transaction and currently they're -- of course the banks are subject to OSFI oversight, prudential oversight, but they are not subject to any securities oversight as derivatives dealers under the Acts across the country. This is a new proposal that's being done with regards to that and how that market will be overseen. So that's the context to think about our discussions today and why it's relevant.

With that, Lise-Estelle, would you like to give an intro to the topic.

MS. BRAULT: Yes, sure. Before I jump into my remarks, I want to say that I talk to you today in the name of the AMF, but also in the name of staff from the other provincial regulators that are members of the CSA, except for the OSC, with respect to registration of financial institutions in Ontario.

Business conduct and registration constitutes, together, a comprehensive regime that will protect Canadian investors in Canadian financial markets.

Business conduct protects the interest of clients by telling us how dealers and advisors should interact with their clients. Registration, on the other hand, helps us ensure that these firms and their representatives meet minimum standards of integrity, solvency and proficiency before they engage in their activities. And when there is misconduct, registration gives us a broader range of powers which can be used to take the most efficient and appropriate action, including enforcement actions, when necessary.

I would like to take a few minutes to illustrate these statements, because it may not always be clear who are the investors and the clients that we are trying protect in the OTC derivatives market. There are many, but I would like to talk about the small, medium and large corporations that fuel the Canadian economy.

These businesses find the financing they need in the capital markets, but it is in the derivatives market that they find the product to hedge their financial risk, whether an FX risk from imports and exports, or an interest rate risk from their financing.

Hedging is essential to the stability of our Canadian businesses. They must be able to access the derivatives market with confidence, especially when they do not have the internal expertise and the internal resources to evaluate for themselves the terms, most importantly the risks of these products.

The registration in business conduct regime helps us achieve this by filling three regulatory gaps. First, we introduce business conduct requirements such as fair dealing, conflicts of interest and suitability. These requirements have been in force for many years in the securities market, which includes the dealing of exchange traded derivatives. If these minimum standards of conduct have brought value to the dealing of exchange traded derivatives, they will certainly add value to the dealing of OTC derivatives, a market that lacks the transparency of trading on an exchange.

Second, we formalize our gatekeeping responsibility by requiring firms and their representatives to register. Firms must demonstrate that they have the resources and the policies in place to mitigate the risk of mis-selling and misconduct before they can enter the market.

Individuals that do not have sufficient knowledge in derivatives, that have a history of misconduct, a history of financial insolvency or records of conviction for financial crimes cannot be authorized to conduct business with clients that do not have the resources or the skills to evaluate, to do their own evaluation of the derivatives products that they enter into.

Finally, registration acts as a deterrent to misconduct, because it allows us to use a broader range of powers to take the most efficient and appropriate action if there is a breach of the business conduct requirements.

The commercial paper crisis, as demonstrated ten years ago, that the losses from mis-selling by individuals working for financial institutions can be substantial, both for institutional and less sophisticated clients. The OTC derivatives market is not shielded from similar events. That's why registration and the implication of the CSA can clearly add value for investor protection.

Again, registration has long been in force for firms and individuals that trade exchange traded derivatives. Nothing justifies going for a lesser regulatory regime in the OTC derivatives market as the OTC market is much less transparent.

We have drafted the registration business conduct regime with a fundamental principle in mind, equal treatment.

Let me say a few words about it. Equal treatment means that all market participants engaged in the same regulated activity should be subject to a consistent regulatory framework and face the same enforcement action if there is a breach of compliance. Similarly, equal treatment means that participants in the derivatives market that use the services of derivatives firms should benefit from the same protection, regardless of whether their dealer is a financial institution or not or whether their dealer is in Canada or abroad. This is a key concept in rule making and, again, I will take a few minutes to illustrate it.

Company A is a small shop transforming Canadian wood into hockey sticks. These sticks are then sold to U.S. teams. Clearly there's an exchange rate risk here and company A uses FX forward sold by a money service business to hedge it. Under the registration and business conduct regime, company A would be advised by a registered rep, that is, an individual that has demonstrated integrity, solvency and proficiency to the CSA. Company A would know that the money service business is subject to business conduct requirements and that we inspect it regularly to ensure compliance. That's reassuring.

Finally, company A could turn to us for help in case of misconduct, knowing that we are mandated to protect investors and that we have the tools to take the most efficient and most appropriate enforcement action, if justified.

Next door, company B turns Canadian wood into baseball bats. Company B is similar in all aspects to company A. Equal treatment means that company B will benefit from the same protections as those offered to company A, even if it chooses to hedge its risk with its bank.

Now, the bank would already be subject to prudential oversight, that's true, but the purpose of prudential oversight is not to protect company B. The purpose of prudential oversight is to protect the financial institution itself for the benefit of its depositors and creditors. Prudential supervision and market regulation are not substitutes. They have different mandates. They are complements.

The protection of the bank's client when the bank acts as a dealer is the responsibility of market regulators. In Canada, it is the responsibility of the CSA, it is our responsibility, and we intend to achieve it with the proposed registration and business conduct regime.

We are aware, however, that there is sometimes overlap between market regulation and prudential oversight. We have, therefore, included in the proposed regime exemption from those requirements that are equivalent to existing prudential requirements. As a result, we can have both prudential oversight and market regulation without duplicating the regulatory burden of financial institutions.

We have also included similar exemptions for foreign derivatives dealers and advisors, including an exemption from the requirement to register when the whole regime is equivalent. We have drafted the registration and business conduct regime with a clear investor protection objective in mind, but we have done so in a manner that avoids, wherever possible, the duplication of regulatory burden for dealers and advisors that are already subject to equivalent requirements and oversight of another authority.

We also intend to develop mechanisms of cooperation between provincial regulators, similar to the passport regime in the securities market, to reduce as much as possible the administrative burden of registrants.

To conclude, I would like to reiterate that we strongly believe in the value that the proposed registration on business conduct regime can add to the Canadian OTC market. This regime fills important regulatory gaps by introducing conduct requirements for derivatives dealers and advisors, formalizing our gatekeeper responsibility through the registration of firms and their representatives, and by giving us the powers to oversee compliance with these conduct requirements and take the most efficient and appropriate action when there is misconduct.

We are eager to receive the feedback of market participants, and while we work diligently to adjust the proposed rule where appropriate, we remain determined to fulfill our responsibility to protect the OTC derivatives market, its participants.

I would like to thank the OSC for organizing this roundtable. We appreciate the opportunity hear the feedback from market participants directly, whether from dealers, advisors, and also end users. We also appreciate the opportunity to share with you the important principles upon which we have built the proposed regime.

So, again, thank you, Kevin, for the opportunity to speak and thank you all for your attention.

MR. FINE: Thank you, Lise, and thank you very much for, what I think, is a very clear and concise expression of the CSA proposal, which is a very helpful way to frame the discussion.

With that, I think we'll jump right in. What are your views on whether financial institutions should be required to register under securities laws in all the provinces and territories? I think I'd like to start with Mary and Srijan discussing that, and, Mary, can we start with you.

MS. CONDON: Sure. Thank you very much and, again, thank you to Lise-Estelle for setting out some of the issues.

You know, obviously part of the context here is, as was said earlier, that there is a provision in the Securities Act that prevents federally regulated financial institutions from being registered by securities regulators.

The one point that I wanted to add to the discussion of Lise-Estelle earlier is that that provision was put into place in 2009. In 2011, of course, we had the Securities Act reference, which obviously stands for various propositions around who's got the jurisdictional authority to regulate securities markets, but to the extent that it references derivatives as one of the areas that securities regulators could be interested in, you know, I think it's an interesting benchmark that perhaps suggests that maybe this 2009 provision could be revisited in light of that.

Certainly, the reality is that, as we have seen through other initiatives of the CSA, derivatives regulation has come to ripen in terms of the kinds of things that securities regulators are interested in with respect to the way derivatives markets operate.

Obviously, again, you know, the big policy problem here is fragmentation, and fragmentation on a number of different axes. On the one hand, I don't think we really want to end up with a situation in which regulation of, at the core, participants in the derivatives market are regulated differently by some jurisdictions in Canada than others, and the other axis of fragmentation, as Lise-Estelle did mention, is the one about the distinction between market regulation and market conduct regulation, which is of interest to securities regulators and prudential regulation, which is of interest to OSFI on the other.

Certainly here we know that other jurisdictions have addressed this problem as well and we know that they've addressed it by way of this twin peaks model, which clearly articulates a distinct role for securities regulators on the one hand, and prudential regulators on the other.

One of the things that's interesting about the UK situation, for example, is that there is a kind of a working protocol that governs the way in which some of the concerns that financial institutions like banks would have about the inconsistency of trying to meet securities regulatory requirements on the one hand and prudential regulation requirements on the other are solved by way of not just a very robust form of information sharing between the FCA and the PRA in the UK, but also, an opportunity for the PRA to exercise a veto power around certain actions that the securities regulators might take.

I guess what I'm suggesting is that there are a number of different ways that we could address this potential problem of regulatory overlap, but I do think that we need to address ourselves very seriously to the concern around fragmentation.

If you were taking this issue, looking at it from an investor perspective, I think you would have to say that from an investor perspective it doesn't help to have a series of different requirements implemented and enforced differently by different provinces with which financial institutions would have to interact.

MR. FINE: Thank you, Mary. Srijan.

MR. AGRAWAL: Yes, so I think I would echo some of the comments that Mary made. You know, on an outcomes basis, we feel strongly that the OSFI prudential approach gets us to where the policy goals are of the CSA, so we're there already and we endorse an approach that Ontario's laid claim to from the Canadian banks for registration requirement, in Canada, in all of the provinces in which we do business.

We have seen similar comments being made in the U.S. where Chairman Giancarlo said that regulators must pursue multilateral coordination to achieve high levels of comparability on the basis of economy, but not on basis of what is identical. So the goal here is to avoid duplicative overlapping rules because duplication stifles innovations, causes market uncertainty.

At the Royal Bank of Canada we spend hundreds of millions of dollars on large projects. 40 percent of all that's spent is regulatory compliance and that wallet share of the spend that we do on regulatory compliance has been increasing over the period of time and every dollar that is spent on regulatory compliance is a dollar that goes away from innovation, from new business practices, and so our goal here really is to avoid duplicative practices.

MR. FINE: Lise, did you want to add anything to that?

MS. BRAULT: I've already expressed the reason why, in our opinion, prudential oversight and market regulation are different mandates, so I will not go back into this.

What I may add when we're talking about fragmentation in registration, registration is nothing new for the five large Canadian banks. They are already registered swap dealers with the CFTC, so CFTC is the market regulator in the United States, has the mandate to protect U.S. clients.

We end up in a situation here where U.S. clients of the Canadian banks, the five large banks, are protected by the conduct regulator in the United States, but not the Canadian clients. That's another fragmentation that we need to keep in mind and it's something that, from a policy perspective, is not acceptable, from my personal opinion.

MR. FINE: Thank you. Let’s move briefly on to the situation in Ontario. The Ontario Securities Act exempts certain specified financial institutions, including banks, from registration as a derivatives dealer, as we have been discussing, therefore, the OSC will not mandate that those firms register when they act as dealers or advisors in the Ontario market.

Do you think that by employing all available tools in the Securities Act and otherwise, including the proposed business conduct rule, that the OSC can achieve outcomes that are as closely aligned to 93-102 as possible?

I would like to go back to Mary and Srijan.

MS. CONDON: I'll just address that very quickly. I'm very interested in what Srijan has to say as a market participant, but on that question, obviously the outcome that I think there's some consensus about is that we do want to achieve a robust level of business and market conduct, which we've obviously well developed in the securities space already and we see the need for doing that now in the derivatives area.

I think obviously to the question that was raised earlier, I think the big issue is going to be if there is a compliance or an enforcement related concern with respect to a bank following the business conduct and market conduct requirements, what is going to be the jurisdictional hook for the securities regulators to deal with that.

I mean, in the securities space, as is well-known, the hook is registration and so registration is not an end in itself necessarily, it's a tool to be able to deploy some of the more substantive requirements around proficiency and suitability and addressing conflict of interest issues, which we have heard already today is certainly something that's on the minds of participants in this market.

While I think we certainly have other examples in the Canadian market of firms adhering to the jurisdiction of securities regulators in terms of substantive rules around market and business conduct, one concern would be if there actually turns out to be an adversarial situation, will there be an argument about the absence of jurisdiction to do this.

MR. FINE: Thank you. Srijan.

MR. AGRAWAL: Yes, I mean, Kevin, I think on an outcomes basis, the OSC, with the business conduct rules and the existing OSFI guidelines, get you to the spot where you need to get from a policy perspective.

The registration rule imposes a number of obligations that we think are fully covered by existing OSFI guidelines. I'll just take one example.

The registration rule has a number of prescriptive rules and responsibilities for senior management. These include various ultimate designated persons. There's chief risk officer, there's chief compliance officer. OSFI already occupies that space, right, so they had to develop a corporate governance framework to their OSFI supervisory framework. The CSA approach here doesn't really gibe with the OSFI approach.

We had a speech from OSFI superintendent Jeremy Rudin, who said there should be a one-stop shop for corporate governance matters and Superintendent Rudin said that this one-stop shop approach is meant to minimize confusion and maximize consistency in messaging, making it easier for boards and senior management to better understand requirements and reasons behind them.

When you are conflating corporate governance matters not only in the registration rules, but in the business conduct rules, and then we have OSFI supervisory guidance that covers the same area, you know, that creates, again going back to my initial comments about market confusion, uncertainty, how do we comply with two sets of rules that occupy the same space.

MR. FINE: Okay, thanks. I'll give Lise an opportunity to respond, but first I should mention, and this is in the notice for the rules, the OSC did do an analysis and we did speak to this language about using other tools, et cetera, but we did point out that there is a material gap if you don't have registration, that relates to the registration of individuals, and the OSC is committed to research and examine that and see if that can be dealt with in another way outside of registration, so I just wanted to clarify that. Lise.

MS. BRAULT: Yes, and the point that I will add to that is from an equivalency perspective, when we do an equivalency assessment for an exemption, substituted compliance exemption, we, of course, look at equivalency on an outcomes basis of the requirements, but there are other conditions that need to be met and sometimes these are forgotten in the conversation.

Even if we defer to the rules of another authority, we remain responsible for what happens in our market. We remain responsible for the protection of Canadian investors in the financial markets here, so we need to make sure, first, that the other authority has equivalent power for oversight and for enforcement of these equivalent requirements.

Having rules is not sufficient, you need to be able to enforce them, and we need to make sure that this is the case. When we talk about the registration of individuals, there is this gatekeeper responsibility, and when an individual is registered, the individual is liable and accountable for the responsibility in the securities and what we propose in terms of the registration regime.

So, yes, first, equivalent oversight and enforcement process and powers and, second, because we remain responsible, we need to access the information if there is an issue. So we need to have information sharing agreements in place.

These are two other conditions that need to be considered and that we consider when we include in the rules those exemptions from substitute compliance, and if there isn't equivalence, and it seems that the requirements are equivalent, then it is in those two other conditions that we weren't comfortable including these particular exemptions.

MR. FINE: I'm just going to ask a question that builds on that. Since OSFI does not have registration requirements for individuals that trade in derivatives, do you think that the registration -- a new registration requirement for representatives of specified financial institutions which have to register would be a positive step forward? And I think I know Lise's answer, so maybe we'll start with Srijan.

MR. AGRAWAL: No, I don't think that's a positive step forward. Starting again with the premise that banks should not be registered, then it follows that individuals that work at the banks should also not be registered.

As far as I know, there's no other marketplace that requires individuals to register. We know that CFTC and PMFA did some analysis on whether individuals should be registered and they have not gone down that path.

If you were to require registration requirements for individuals in Canada, you're going to be running against privacy issues, so individuals that work for banks would be concerned about giving their private information to securities regulators. We think this may dissuade individuals from working for banks and they may choose to go work at a competitor where they're not required to register, so we don't think it's a good idea.

MR. FINE: What would the competitor be that's not required to register?

MR. AGRAWAL: Well, they don't have to work in Canada, right.

MR. FINE: Oh, outside of Canada.

MR. AGRAWAL: Yes, it's a global market. They can choose to work in the U.S. or elsewhere.

MR. FINE: Mary.

MS. CONDON: Just to put the other side of the argument, I guess, I don't think that there's any disagreement that we need individuals dealing in derivatives who have the appropriate level of proficiency and the appropriate level of integrity, and so registration has, as I mentioned earlier, historically been the way that securities regulators bring people into the tent.

I think there's sort of an acknowledgment that some level -- some appropriate level of proficiency would be required for acting in this space.

I think, as a kind of transition issue, we had a reference to the concept of grandparenting or -- in a different context earlier today. If this is a transition problem for people who are currently acting as derivatives dealers at banks, I'm sure there could be at least some consideration of the issue of grandparenting, the requirement to demonstrate adequate proficiency and adequate appreciation of conflict of interest issues, but I imagine there's not a lot of disagreement that this is a market which requires a certain level of expertise to operate in, so it would seem unfortunate that we wouldn't have some regulatory mechanism for dealing with that.

MR. FINE: Lise?

MS. BRAULT: Yes, I would first like to clarify that the proficiency requirements, actually the registration of representative is only for those representatives that deal with non-sophisticated clients, so the non-eligible derivatives participant.

Our objective here is really to make sure that the representative that deals with the non-EDPs have the necessary knowledge and the skills to correctly advise the clients that may not necessarily have the resources or the skills internally to really understand and evaluate for themselves the risk in the terms of the derivatives.

I would also like to quote a report published in March 2018, so not too long ago, published by the Financial Consumer Agency of Canada that states that, the retail banking culture encourages employees to sell products and services and reward them for sales success. The sharp focus on sales can increase the risk of selling and breaching market conduct obligations. The controls banks have put in place to monitor, identify and mitigate these risks are insufficient. So it's reasonable to expect that similar practices exist in the dealing of OTC derivatives with non-sophisticated clients.

So then it's obvious that the registration of individuals, which will ensure that these individuals meet the individual minimum standard of integrity and have the required knowledge, it's obvious that it will add value. And it's also obvious that the enforcement powers that come with registration will be a deterrent for these individuals for misconduct.

MR. FINE: Thank you. Let's just move on and give the dealers on the dais a chance to discuss their general impression of the rules.

I would like to start with Waqaas in terms of your experiences. Bank of America is a dealer, a bank dealer that's subject to securities oversight by the CFTC in the U.S., so I'm curious about your general impressions of the rule, and as part of that, how does our rule compare to your current business practices and the rules that you're under and how do the requirements compare to the registration requirements of foreign jurisdictions. I'll start with you and then we'll ask Srijan the same question.

MR. FAHMAWI: Sure, thank you. At Bank of America we are supportive of the CFTC registration regime, so much that at one point we had eight entities registered as swap dealers with the CFTC, currently down to six, which is still a very large number.

We have had six years of experience as registered swap dealers since Dodd Frank was implemented, Dodd Frank registration requirements have been implemented, and while there have been some growing pains, particularly in onboarding clients with the necessary documentation, the necessary representations relating to their status under the legal registration requirements and the related business conduct requirements, those have certainly been the largest challenge, and continue to be, but overall it's been positive for us and for the marketplace.

With respect to the proposed instrument, there are obviously a number of material differences which I won't go through in detail, but just highlight a couple of key differences that we're greatly interested in.

One is the requirement that individuals be registered, which is a departure from other IOSCO members and apart from the United States, a swaps regime where individuals are not required to register. There is a concept in the U.S. of an associated person in a swap dealer and there are attendant complication requirements of associated persons, that they can't be statutorily disqualified from being associated persons of a swap dealer, but they are not, as individuals, required to register with the CFTC.

To Lise-Estelle's point, certainly I think proficiency is a valuable goal for individuals that are soliciting swaps and entering into swaps with counterparties, but I think there are a number of different ways to achieve that goal of which individual registration and examination by regulatory authority is just one of several ways to get to the same end point.

In the United States, the CFTC has taken the approach in a number of rule areas where it has required swap dealers to put in place, to maintain and to adhere to policies and procedures to achieve certain outcomes, such as the swaps trading relationship documentation requirement, the portfolio reconciliation requirement, those requirements require that the swap dealer have in place policies and procedures to achieve those goals, and I think something similar can be achieved with respect to proficiency where put the onus on the swap dealer or on the derivatives dealers to ensure that it has policies and procedures in place to ensure that its personnel that are dealing in these products have the necessary skills, have the necessary integrity and are not otherwise disqualified.

I would add respectfully that the dealers may be in the best position to make that determination, knowing -- the dealers being the subject matter experts, seeing these products day to day, and the dealers being the ones doing the hiring and firing, would be in a very good position to evaluate the qualification of individuals.

So I'll just pause there on that one point. The other difference I wanted to highlight is the scope of the registration requirement under the proposal. The threshold is significantly lower than the threshold in the United States for registration. In the United States it's 8 billion dollars over twelve months U.S., as opposed to 250 million dollars in Canadian over 24 months, and that is a -- it's obviously a policy decision as to what proportion of market activity should be captured under the registration requirement.

The CFTC and for the -- the legislators of Dodd Frank made that policy decision to set that threshold at a higher level and to permit non-registrants to conduct the activity at a smaller scale. As well as in the U.S., there are several exemptions for -- exemptions from the de minimis threshold calculation, such as the exemption for ensured depository institutions on the swaps that are entered into in connection with loans, there is a hedging exemption as well or a hedging, a safe harbour for swaps that are entered into for hedging purposes. And there is an exemption which may be codified for the swaps entered into in connection with portfolio compressions. So just a few key differences to highlight.

Then, finally, the scope of the registration requirement, in addition to the scope in terms of capturing market activity, we can think about the scope in terms of the extra territorial scope. The U.S. requirements to register, to count swaps towards registration requirements and effectively to register, only count swaps entered into with U.S. entities or non-U.S. entities that are guaranteed, the swap obligations are guaranteed by U.S. entities, so that really limits the territorial scope to swaps, swaps activity with very clear U.S. nexus.

MR. FINE: And could you briefly speak to your experiences with other foreign jurisdictions in terms of their registration regimes that are already in place and comparing it to what we proposed, where do you feel it sits?

MR. FAHMAWI: I'm not familiar with any other jurisdictions that have a similar derivatives registration requirements.

MR. FINE: We did a survey in IOSCO, and most -- I think there is one jurisdiction that doesn't -- they do all have – a lot of them it’s part of the securities regime and a separate derivatives regime – they all report that they do. Anyway, we'll move on from there, thanks very much.

It's interesting, this discussion. Srijan has an opportunity to respond, we'll give you the opportunity to do that, but could you also speak to, it's very interesting to hear the Bank of America's overall experience has been positive with registration with the securities authorities.

So given your previous comments, if you could maybe speak to that after you reiterate some of your views. Srijan.

MR. AGRAWAL: I think that the context here is Canada's experience or where Canada fits in the global market, so we really don't think that the CFTC model is the right model for Canada.

Canada is a very small marketplace as it relates to derivatives. To give you some data points for FX on a net gross basis, Canada is sandwiched between Denmark and the Netherlands. We are about one percent of daily FX turnover for derivatives. U.S. is 20 percent and the UK is 35 percent.

On the rates side, for interest rate derivatives, Canada is only one percent and the U.S. is about 40 percent, so it's a very different marketplace.

So employing CFTC style registration rules in Canada, I just don't think makes sense from a public policy standpoint. And then going beyond and just talking about our experience or what we think of the registration rule, we have very, very strong concerns about the liquidity impact it would have, not only for banks to register, Canadian banks to register with the dealers, but any foreign bank that trades with us will be required to register.

Waqaas spoke about the notionals being very low, so we -- about 90 percent of our trades are with foreign banks. We have about 400 or 500 bank counterparties located in 50 different jurisdictions. All these foreign banks will be brought into the registration regime as a result of trading with us, and so we're very concerned that these foreign banks are not going to take the exercise. They're already reluctant to learn about the Canadian marketplace. We are dependent on foreign banks for liquidity, not the other way around.

And so we think the registration rule could have a very, very detrimental impact on liquidity, that we really need for our hedging, for our treasury functions, for money markets and for all the other reasons, for core banking functions, frankly.

MR. FAHMAWI: If I could just add to Srijan's comments, our experiences as well overall have been positive, but our experience has also been that non-U.S. counterparties that do not have to face a U.S. counterparty prefer not to deal with the requirements appended to the U.S. swap dealers.

So even though many of the requirements are intended to protect the counterparty, in many instances they don't want those protections, they don't want to enter into the documentation, they don't want to be subject to Dodd Frank, even though we are the primary -- we have the primary obligation as the dealer registered, but they don't want to be indirectly subject to those requirements, even those requirements that are intended for their protection. They don't want pre-trade and market quotes in many cases, even though that's intended to protect them.

We have seen many non-U.S. counterparties, particularly in the EU, prefer to face non-U.S. dealers that are not subject to Dodd Frank requirements.

Fortunately, in our case we have a number of non-U.S. booking entities, we have a principal booking entity in the UK, but we have seen that divergence or that fragmentation in liquidity. What is a global market and what has evolved to be the global derivatives market, which is a positive feature of the market and something that should be preserved to the extent possible, but we have seen definitely an impact on fragmentation.

MR. FINE: I think that's an important point. Continuing, one more question of you, Waqaas, on foreign dealers. 93-102 takes an equivalence-based approach. There are two exemptions, from the requirement to register and from specific requirements, that exist for foreign dealers that are regulated under the laws of a foreign jurisdiction. Do you agree with that approach and do you have any comments on that?

MR. FAHMAWI: We're extremely supportive of an outcomes-based equivalence or substituted compliance approach. We have some concerns about the -- you know, the devil is in the details. We have some concerns about some of the conditions that have been required in order for foreign dealers to avail themselves to compliance, including effectively submitting to the jurisdictions of the CSA. Many of the conditions cut away at substituted compliance, in my view.

The foreign dealer would have to be -- have its head office or principal place of business in the jurisdiction, not just be subject to the requirements, but it also has to have some physical location there. It must be registered, actually registered, not just subject to registration.

For example, a dealer that is subject to CFTC registration requirements, but otherwise exempt, would not qualify. And there are also some compliance reporting rules or reporting requirements for non-compliance for the CSAs.

So many of the conditions, we view those as severely limiting the actual scope and the benefit of what would otherwise be equivalence and effectively clawing back many of the entities that are subject to foreign regimes, but would not meet all of these conditions.

MR. FINE: Thank you. Just a quick follow-up back on our discussion on individuals and the requirement for proficiency, some of the things that Mary and Lise-Estelle mentioned.

For Waqaas, I think there's sometimes some confusion when you're talking about proficiency as to why is that an issue. Are you concerned that your employees aren't proficient enough to sell these products? Could you speak to that confusion?

MR. FAHMAWI: The confusion --

MR. FINE: That why would there be an objection to proficiency requirement, since I assume you're quite comfortable that your staff are all appropriately proficient to sell derivatives.

MR. FAHMAWI: I think there are benefits to ensure that -- to ensure that staff that are interacting and entering into the contracts meet certain minimum requirements.

I think my point was how do you get there, and individual registration with the privacy concerns, with the administrative concerns, is burdensome. There may be easier ways to get to the same place.

MR. FINE: Srijan?

MR. AGRAWAL: Yes, it's our practice to have proficient staff that have knowledge and experience and that are appropriate for the responsibilities. We don't think restrictive proficiency requirements are helpful; so specific courses that you should take, minimum number of experience you should have prescribed under the rules. We don't think that's helpful, we think that's off-market in our jurisdiction that require such minimum standards, and, frankly, we won't be in the business of banking for long if we hire incompetent staff, but that's to be business discretion.

OSFI guidelines already covers that. They say that our derivatives staff should have appropriate education, skills, experience and training to carry on our responsibilities. I mean, that itself is sufficient guidance that we need, not only from a business perspective, but from a regulatory perspective. And the registration rule, section T1 of the registration rule has a similar principles-based approach towards proficiency.

No one here is saying that our staff shouldn't be proficient, we're not resisting it. What we're saying is don't prescribe to us what you think proficiency is; we know what proficiency is for our staff.

MR. FINE: Mary.

MS. CONDON: Well, I wasn't going to make this point because I thought it would be too provocative, but in light of the last comment I did take a look at the website that indicates the time commitment required to pass the Canadian fundamental derivatives course, it's 60 to 90 hours, and so to the point about prescribing specific courses, I find it a bit hard to believe that investing two weeks of your time in passing that course, and presumably you want people to be at the lower end, the 60 hours, is not an especially onerous obligation, but that's a little bit of a drive-by comment.

The more important one I did want to make is -- and I may be jumping ahead here, but obviously one of the things the rule does is indicate specific roles and responsibilities for specific people and roles within a derivatives dealer, and the one that I did pause on was the chief risk officer because, to me, that's where you might get into a real concern about slightly different, but overlapping obligations with respect to whatever OSFI requires of Canadian banks around this.

So all to say that I can appreciate an argument that risk issues with respect to trading markets are different from risk issues with respect to particular institutions, but I'd recommend a hard look at what it is that is being required of a chief risk officer with respect to the securities jurisdiction and the question of how you either sync that up with what OSFI already requires or consider whether the person performing equivalent OSFI related roles could accomplish the same goal.

MR. FINE: And we think - obviously we acknowledge there is that push-pull with regards to principle-based regulation, which is more in the world prescriptive in our world. Although I do note that the International Market Rules, which are banking rules, are quite prescriptive, so perhaps there is a change going on in that area as well.

I have time for one very quick question before we move to the audience questions, and that relates to the IOSCO risk mitigation standards, which have been adapted and put in as part of the registration proposal.

I just wanted to get your thoughts as to whether that makes sense or whether there were any particular issues that are going to be identified as part of that. Waqaas, do you want to...

MR. FAHMAWI: The risk mitigation standards are consistent with what our firm and I think other large dealers have adopted across the street and, in fact, the U.S. swap dealer requirements that address these risk mitigation standards are considered to be higher, more rigorous than what IOSCO requires.

I think the key for our firm, and I think for many firms on the buy side as well, if I can say that, is there is fatigue, there is regulatory fatigue in the marketplace after many rules, client outreaches and re-paperings for successive regimes that have come down and been implemented, and I think that is a real concern.

We have seen market participants trade away purely on the basis of not wanting to repaper. Not for any substantive reason, just not wanting to dedicate the resources to enter into the protocol.

So I think what I would emphasize is the need for robust equivalence, robust outcome-based equivalence that would permit substituted compliance and minimize the requirement for repapering and client outreach, because that is damaging to the marketplace at this point.

MR. FINE: Srijan.

MR. AGRAWAL: Yes, on an outcomes basis we are already doing all the risk mitigation techniques that are set out in the registration rule.

The opening remarks talk about a level playing field. I think those risk mitigation processes are appropriate for non-bank dealers. They may not have them, I don't know what their business is, but we certainly do, and perhaps imposing those requirements on non-bank dealers will actually level the playing field. But imposing registration requirements on the bank will again not level the playing field because now banks are subjected to two duplicated regimes, one OSFI, one CSA.

MR. FINE: Thank you. We are going to go to questions now. This is your opportunity to let your questions be known to the CSA and to the government officials and OSFI in the room as well.

AUDIENCE MEMBER: This is a question for Lise-Estelle. I just wanted to comment on the consumer report that you mentioned. I haven't read the report and I'm not familiar with the sales tactics of banks that you refer to, so-called questionable sales tactics, but to draw the analogy from that report and then to say that there might be a concern in the OTC derivatives markets and that you can see how perhaps one of those tactics will then apply to that, I'm just kind of missing the whole difference in markets.

You know, consumers, retail, buying banking products is not the same as the clients of banks, which are largely institutional, entering into OTC derivatives for hedging purposes. They have the need to satisfy risk management techniques and they go to banks to satisfy that need, so I'm just not sure that that's a great conclusion from that report. But that follows on with the whole retail versus non-retail, and I have heard today that non-EDP equals retail, which then brings around the whole commercial hedger point.

I guess one thing that I just wanted to raise is commercial hedgers right now as defined wouldn't capture entities such as structured special purpose vehicles who are structured as trusts, intentionally designed to have zero net assets or close to zero net assets in very sophisticated financial transactions. So now, you know, they will be brought into the whole retail market, and I just wondered if you had any comment about that.

MS. BRAULT: Sure. Thank you for your comment. You addressed many points.

I would say that the important point in the quote that I read is about the culture, and I think culture in an institution is not product specific, it's the culture of the institution.

So while it is possible, and I have no grounds to say that it is exactly the same sales practice, you are right on this. The point of culture makes me think that there is perhaps something to be done here.

Next, your point on the EDP definition. It is probably the most important definition in both rules. It's that definition that allows us to have the two tier model. Getting it right is quite a challenge. We welcome comments like the one you've just voiced on the special purpose vehicle that will allow us to get better, if it's not right yet, and it's probably not, so many -- I haven't read all the comment letters yet, but I've scanned through and I have seen that there are many comments on that particular definition and it will certainly be the topic of many discussions within the committee. Thank you.

AUDIENCE MEMBER: I have three statements to make and I just look for comments from the panel.

The first, and I say this respectfully and somewhat playfully, I think there is some irony and it's unconvincing when a collection of 13 regulators objects to the addition of OSFI as one additional person of overlap on the point of fraction, regulatory fraction.

The second thing I would say is I think the nature of OTC derivatives anecdotally lends itself more to prudential regulatory requirement and I would actually say that's why you find a great number of OTC derivatives booked in the banks in the first place, particularly in a global space where now people are consolidating those books, not just in a region, but in a global entity.

My third point would be on the proposal to regulate the individual registrants of banks, but not the banks themselves. How would that actually be operationalized without having some touch points to the bank, some vision into its policies, procedures and activities, and is that really required where you have business conduct rules that are in effect and is there really value to requiring people to be that small, I mean, 60 hours, what's the value in that? So it's the other side of that coin.

MR. FINE: Lise-Estelle, do you want to respond?

MS. BRAULT: Sure, if this is anything like the Roundtable in Montreal, you guys can relax for all the questions.

I'm trying to remember the three comments. So I'm going to start with the last one, which is the one I remember. The registration of individuals, again, only for non-EDP. And you really have to think, you know, when everything goes well then it might look like it's not necessary. It's when there is an issue that we're happy to be able to protect our investors, that we have tools to be able to do something about it. And when we talk about rule, rule making, what we have in our rules, the different requirements, we often forget that the core piece of all of this is to be able to do something when it goes wrong and that the enforcement of these rules is also important. And we believe that registration has always been the means in securities laws and practice under our Acts by which we enforce business activity, and this is why we believe that it gives us a broader range of powers and the possibility of really taking the most efficient and most appropriate action in the circumstances.

MR. FINE: Thanks. Questions?

AUDIENCE MEMBER: I think I'm going to support Lise-Estelle a little bit more on this. If the mandate, harking back two years ago, was how to address systemic risk, and we're now considering an exemption for financial institutions, so that now leaves other market participants in the room, like portfolio managers, money services businesses that are entering into deliverable forwards, is there a concern that you're going after the low hanging fruit in having them have mass regulatory burden over what many of them would say this isn't even our problem.

MS. BRAULT: Well, the G20 requirements were about systemic risks certainly. I would say that registration in business conduct has a link to systemic risk, misconduct of one individual or a few individuals could lead to systemic implication, not in all cases of course, but it could.

This is really about investor protection, this is really about protecting our financial markets, and it makes sense that all players be treated equally in that respect.

When we ask our market participant is it okay if you're protected here and you're not protected there, it doesn't make sense. We have to have equal treatment, equal benefit and equal protection for everyone.

AUDIENCE MEMBER: So a little very quick history, but in 1987 obviously when the banks all started buying the independent Canadian dealers, there was this issue came up again of how to resolve the federal conflict between banking and securities regulation, property and civil rights in '92 and banking in '91.

So Ontario resolved it by signing an intergovernmental accord between then the conservative government of Brian Mulroney, and the provincial liberal government of David Peterson, the Hockin-Kwinter Accord, as it was known. And Kwinter only just recently lost an election, the guy was around a good 35, 40 years.

But the intergovernmental accord didn't make this distinction between prudential and market regulation. It actually said securities -- I just read it, I can read it again, but it says OSFI shall regulate the securities-related activities entirely of the banks, while the OSC shall regulate the -- or the province is how they define it, but shall regulate the securities-regulated activities of their subsidiaries, and then it, in accordance with that, we put into the regulations, into the Bank Act, that prohibited the banks from taking on certain activities; for instance, primary issuance of equity and things of this sort.

So the Bank Act was changed because Ontario signed on to a federalist principle, but then no other province signed on, even though federal legislation was changed on the banks. And the banks have had to suffer for 31 years with restrictions in the Bank Act because the other provinces didn't sign the intergovernmental accord.

So I think what we have here is a failure of federalism as opposed to a distinction between prudential and market regulation. I think this is the perfect opportunity for Ontario to update Hockin-Kwinter to specifically define where it is equities fall, because the accord deals mostly with securities, but it has some minor mention of risk, but for every other province, and I would start with Québec as the second largest capital market in Canada, to enter into a similar intergovernmental accord with the Crown in Right of Canada.

If you could do that, then we would have this distinction made and we wouldn't go back to court. We have been to the Supreme Court twice on the issues of where the line in banking is drawn in the last fifteen years, right, Canadian Western Bank against Alberta, and Marcotte, which was a class action lawsuit, but it involved federalism for banking because specifically that activity was something that was covered by both the Bank Act and by Quebec's insular protection regulation, credit cards mainly.

So I think to avoid this problem, I can guarantee you will see this in court again if we don't have intergovernmental accord. I think there is an opportunity here for federalism to be successful, as opposed to regulating and seeing, you know, how far we can push into section 91 using section 92 powers. Thank you.

MR. FINE: Thanks. I'll take my moderator hat off and jump in here.

So I'm going to say some very obvious things. The world has changed extremely since 1987. The world has moved on from these types of arguments.

I'm very happy to report actually that we have existing securities rules that are in effect that oversee the banks and their activities in the derivatives market, trade reporting rules is an example.

We worked closely with OSFI and the banks in terms of doing conduct reviews and compliance reviews of those, and I was actually very pleased, unless I read it too fast, but I did not see the traditional 20 year old constitutional argument in the letters from CMIC.

My view is I think we have moved past some of those issues. I don't know if Mary or anyone else wants to comment.

MS. CONDON: You know, to me the issue now is the question of regulatory expertise and where does it lie, and that's why I'm focusing on this twin peaks model.

There are a set of regulatory obligations and interests that apply on the prudential side and then there's a different set that apply on the markets and the trading side. To me, that's what is the approach that's been taken in other jurisdictions, Australia, the UK and the like, because it allows the regulator to build the expertise that you want to oversee a world in which products and those who trade them are converging very fast.

We had the discussion at the beginning of the day about the principal protected notes, and I know no one wants to go back to that debate, but the reason we have it is because there are lines that you can draw between different types of products and who should regulate them just are really very different and arguably incoherent in terms of where they were a few decades ago.

MR. FINE: Any other questions? Someone must have another question.

AUDIENCE MEMBER: Three for three here now. Actually, two questions, and the first, I think, is picking up on comments from Lise-Estelle and Waqaas.

You started off by comparing regulation of securities and futures markets, which have long been the domain of securities regulators to OTC derivatives and why you saw no difference or reason why OTC derivatives should be treated differently, and I think my two questions both pick up on that theme.

The first, and as Waqaas aptly noted, the exemptions that have been proposed for foreign derivatives dealers, which include far more robust reporting of potential non-compliance, as well as this articulated schedule of jurisdictions that are considered appropriate for substituting clients, is an approach that doesn't have a parallel on the securities side.

I believe that since 2009 that the international dealer regime does not require an articulated list of foreign jurisdictions and rules that are considered substituted. Before 2009 every jurisdiction, except Ontario, didn't require registration of foreign dealers at all, as long as they were participating in the exempt markets.

So I guess the first question is, is there a rationale that has been clearly identified by the CSA for imposing significantly higher standards on foreign dealer participants than currently exist in securities in the futures capital markets.

The second question goes back to the registration of individuals, unlike sales of retail banking products, derivatives are complex commercial agreements which involve a whole host of people with a variety of expertise, legal, financial, risk-based.

Where do you draw the circle of who actually needs to be registered and is it the people who are on that sales role, is it the people who are negotiating complex credit clauses? Is it the people who are designing an OTC derivatives instrument that may be then used in multiple occasions for different products? Are all of them needing to be registered? And do the proficiency requirements, or should they be the same for everyone or do you say, actually, the sales practices and proficiency of a person selling the derivative is far different than what we care about when it comes to a person assessing a credit risk or a legal risk.

So I just want to again question whether there really is that same connection or equivalence between securities product sales, for example, by an investment advisor selling a mutual fund, compared to institutional trading entering into what are effectively very complex commercial agreements. So those are my two questions.

MR. FINE: I guess that's you, Lise.

MS. BRAULT: Yes, sure. I wrote them down this time, so...

MR. FINE: Yes, I don't remember the first question.

MS. BRAULT: The first question was about the exemptions, foreign dealers versus a much broader exemption that exists under the Securities Act, is that right? I got that.

Exemptions for foreign dealers, we are certainly very concerned about the liquidity in our markets, so it's the very difficult act of balancing liquidity with investor protection, level playing field. We drafted these exemptions, again, with an investor protection principle in mind and also to make sure that we had everything, the tools we needed, to intervene if there is a problem.

On this particular topic, the Australian market regulator, ASIC, has published a consultation in June which is very interesting in that respect.

As maybe some of you know, Australia had temporary but broad exemption in registration for foreign dealers. In June they published a consultation paper consulting the industry on their intention to remove these exemptions and replace them with specific licence requirements for foreign dealers, and in that paper they explained why.

They gave two reasons that I think are very relevant for this conversation. The first one is they had enforcement issues, so there has been Australian clients, I don't exactly know what case it is, but it was with the foreign dealers and they had issues with the enforcement process. Because their exemption was so broad, they didn't have the powers to be able to intervene and defend their market participants. That's one of the points they made.

The second point is we're talking about substituted compliance, we're talking about having or establishing that the other regimes are equivalent so that they can come in and we still have that liquidity. But the other side of that coin is do we want Canada to be considered equivalent elsewhere, our market participants, do they want to go elsewhere and be able to rely on their home rules.

That's the point that I guess staff from ASIC made in their paper, saying Australia didn't get equivalency, nowhere, because of their broad exemption, so they were not considered to be equivalent. So those are two considerations that are important when we think about these exemptions and, of course, we're going to go back to the drawing board and reflect on all these considerations and the liquidity consideration that's very important for market participation. We heard it loud and clear.

MR. FINE: I think we have to skip the second question, it was touched on in some of the others.

I have one last question which I want to throw out. In participating in the discussions over this issue of whether or not banks in Canada should have to register over a number of years now, it seems to have developed into a two option scenario, they register with some deference, or no registration, which is Ontario's position now.

Isn't there another option, being registration with more or less full deference to OSFI vis-a-vis all the aspects of the rule that are things that OSFI has the expertise in and in their governance role, and is there any potential for the two positions to move a little bit closer together? Srijan or Lise or Mary want to respond?

MR. AGRAWAL: Well, Kevin, I invite you to bring that conversation to the Canadian Market Infrastructure Committee. I think that there may be possibilities. I think our position continues to be banks should be exempted from registration.

MR. FINE: Fair enough.

MS. CONDON: Well, since we're talking history, the other historical moment, I guess, was that rule that was introduced back in the early 2000s around the regulation of derivatives that was then -- that "got disappeared" before it came into effect, but that rule was essentially a kind of a catch and release rule, I think, which was the idea that there be the ability to register and regulate, but that there were many exemptions underlying that -- those requirements that would have really left with the residue of trading of derivatives in the retail space.

So to your point, you know, I think there may be some opportunities to work off that model that might be productive.

MR. FINE: Thank you. The only other point I wanted to mention was we have heard periodically over the years that we don't need these rules because there has been no problems in Canada and there would never be any conduct problems in Canada.

I'm going to state the obvious, but unfortunately greed and the desire to act on that greed does not have a nationality. When you look at the consequences, both from a systemic point of view and also from a more individual point of view, that is why we feel these rules are still appropriate.

I'd first like to very much thank the panel for a very lively and interesting discussion. I want to thank everyone here for making the time to attend today's Roundtable. I would like to also thank all our panellists and moderators.

I want to touch on what will happen in the future on proposed registration of business conduct regimes. We have received [48] comment letters. The comment period is closed now on the proposed National Instruments. We're going to start analyzing them to make sure that we understand all the perspectives and the nuances that are represented in the very thoughtful comments that we've received.

We'll take that analysis, also consider all conversations that we have had here today at this roundtable and at others, and move forward to develop our policy and response.

I want to assure you that we are working closely with our CSA colleagues on the proposed derivatives registration of business conduct rules with a view to implementing a harmonized Canadian regime.

I would like to remind you that we will make a transcript available on our website. And thank you very much and have a great day.

--- Whereupon the proceedings adjourned at 12:08 p.m.

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