Pension Investment
Association of Canada
Association canadienne des
gestionnaires de caisses de retraite

February 4, 2013

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

Anne-Marie Beaudoin,
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John Stevenson, Secretary
Ontario Securities Commission
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Dear Sir/Madam:

Re: CSA Consultation Paper 91-301, Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting Facilitating Pooled Asset Management for Ontario's Public-Sector Institutions

This submission is made by the Pension Investment Association of Canada ("PIAC") in reply to the request for comments published on December 6, 2012 by the Canadian Securities Administrators ("CSA") on CSA Consultation Paper 91-301, Model Provincial

Rules – *Derivatives Product Determination* and *Trade Repositories and Derivatives Data Reporting* (referred to here as "the Model Rules").

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over $1 trillion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

Our comments include some general observations on the implications of the Model Rules for pension plans, as well as more specific comments related to the timing of settlements for spot foreign exchange transactions and reporting obligations for "buy-side" derivative market participants.

General Observations

PIAC supports the CSA's efforts to improve the transparency and governance of the derivatives market in Canada and understands that these efforts will necessarily lead to increased regulation. However, PIAC believes that a significant portion of the proposed regulation is being put forward based on concerns related to potential systemic risk created by the activity of large "sell-side" derivatives dealers. As such, PIAC respectfully suggests that when establishing new derivatives rules, Canadian securities regulators should consider the related implications for both buy- and sell-side market participants. Regulation that adequately reflect the concerns of all interested parties will allow buy-side market players like pension plans to continue to gain the full benefit of derivative usage, creating more efficient portfolios and realizing corresponding cost savings and return benefits for millions of Canadian pension plan beneficiaries.

Specific comments

Spot Foreign Exchange Transactions

PIAC understands and agrees with the CSA's decision to exempt spot foreign exchange (FX) trades from the scope of derivatives regulation under the Model Rules. PIAC believes, however, that the definition of spot FX as settling within two business days (T+2) is too restrictive, and should be changed to a T+10 standard for the following reasons.

First, from an asset management perspective, a T+2 standard is very restrictive since it creates a potential mismatch between spot FX trades and many trades in underlying securities denominated in foreign currencies with a T+3 settlement period. Investors will typically match the settlement dates for the FX leg and the underlying security leg in such transactions. Furthermore, in cases where pension plans are making provisions to fund future-dated capital calls (e.g. for private equity or infrastructure fund investments), many PIAC members prudently fix their spot FX trade upon the reception of the capital call. Forcing investors to either: (i) wait to carry out their spot FX trade until less than two days before the date of the capital call, or (ii) enter into a derivative transaction for only a few days, would result in significant increases in transaction costs and / or risk for pension investors and would also significantly reduce their flexibility.

On that basis, PIAC proposes that spot FX trades should be allowed to settle up to at least 10 days after the trade date (T+10).

Reporting Obligations for "Buy-Side" Market Participants

PIAC notes that the Model Rules impose reporting requirements on buy-side counterparties when they enter derivatives transactions with other buy-side counterparties or with non-local counterparties. PIAC understands that CSA has generally put the burden of reporting on dealers because their operations are set up to provide information that regulators need to remain informed concerning systematic risk. By contrast, buy-side participants (and more specifically pension plans) are generally not equipped to provide such reporting. Therefore, in requiring buy side participants to assume reporting obligations for trades with non-local counterparties or potentially even having two buy-side counterparties to report a single transaction (as contemplated for trades between buy-side counterparties where there is no agreement that one party will report), the Model Rules create reporting burdens on market participants that are generally not positioned to absorb such obligations. Further, it is PIAC`s belief that the volume of transactions that the CSA contemplates would require reporting by buy-side participants (i.e. where there is no dealer counterparty) only represents a small percentage of total market activity.

On the basis of these points, PIAC recommends that the CSA proceed with a two-phased implementation. The first phase would cover all transactions with dealers. Once this regime is operational, the CSA will be in a position to assess whether a meaningful amount of market activity is not being reported, and if so, it could expand the reporting requirements if there were material benefits to doing so. A two phase approach would also lessen reporting burdens related to pre-existing trades where required reporting information was not necessarily gathered at the time of the trade.

Data Retention Obligations

As drafted, the Model Rules provide that local counterparties must retain records of derivatives trades for seven years after the transaction expires or terminates. This is generally inconsistent with data retention requirements in other jurisdictions (e.g. five years in the U.S.). As a result, the Model Rules would compel a Canadian buy-side entity entering a trade with a non-local counterparty to either retain the trade data itself or ensure that the trade repository retains the data when the non-local counterparty's obligations in its own country have expired. In addition to the creation data that most buy-side counterparties are already likely collecting, the Model Rules would also require buy-side entities to set-up mechanisms to capture life cycle and valuation data. Given the resource-intensive nature of such an exercise, it would be an onerous burden for many Canadian pension plans.

On this basis, PIAC proposes either: (i) that the retention requirement for derivatives data should be reduced to five years or less, or (ii) that only local counterparties should be required to retain creation data for seven years, or (iii) that as a requirement of being registered in Canada, trade repositories must retain all creation, life cycle and valuation data for seven years.

Data Available to Public

The Model Rules require that trade repositories must make aggregate derivative market data available to the public and that such data must be broken down by (among other things) geographic location and counterparty type. PIAC believes that this is an unreasonable amount of disclosure for the Canadian market because in some instances, it will be relatively easy to determine that a specific counterparty has entered into a particular transaction. PIAC is concerned that such disclosure will discourage some participants from entering into trades that they otherwise would have, resulting in less efficient portfolios for buy-side entities and a less useful market for all participants.

Conclusion

We appreciate this opportunity to comment on the consultation and will help the CSA to ensure that as the ultimate end-users of derivative products, the needs of buy-side market participants are fully considered and incorporated into the Model Rules. Please do not hesitate to contact Kevin Fahey, Chair of the Investment Practices Committee (416-673-9006; kfahey@caatpension.on.ca), if you wish to discuss any aspect of this letter in further detail.

Yours sincerely,

Brenda McInnes
Chair