June 17, 2013

John Stevenson, Secretary Ontario Securities Commission 20 Queen Street West Suite 1900, Box 55 Toronto, Ontario M5H 3S8 comments@osc.gov.on.ca	Me Anne-Marie Beaudoin, Corporate Secretary Autorité des marchés financiers 800, square Victoria, 22e étage C.P. 246, tour de la Bourse Montréal, Québec H4Z 1G3 consultation-en-cours@lautorite.qc.ca

Re: CSA Consultation Paper 91-407, Derivatives Registration

Dear Mr. Stevenson and Me Beaudoin:

Please accept this letter as the comments offered by Custom House ULC, doing business as Western Union Business Solutions ("WUBS") to CSA Consultation Paper 91-407, Derivatives Registration ("Consultation Paper"), submitted to you for forwarding to the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, the Manitoba Securities Commission, the New Brunswick Securities Commission, the Nova Scotia Securities Commission and the Ontario Securities Commission (collectively, the "Regulators").

WUBS is pleased to provide its comments to the Consultation Paper, and respond to the Regulators' requests for comments on the derivatives dealer registration requirements ("Proposed Registration Requirements") outlined in the Consultation Paper. As noted in the Consultation Paper, the Proposed Registration Requirements are part of a larger effort by the Regulators to adopt uniform, comprehensive regulations of derivatives in Canada (the "Proposed Derivatives Regulations").

By way of background, WUBS is a registered MSB and operates a foreign exchange and cross border payment service in Canada. As part of that business, WUBS currently offers foreign exchange forwards and options, both of which products are or will be classified as derivatives in Canada under the Proposed Derivatives Regulations. The WUBS' customer base is predominantly made up of commercial entities which have foreign exchange hedging needs in relation to foreign exchange payments or for balance sheet hedging purposes. The customer base is largely comprised of smaller to medium enterprise commercial parties which may use WUBS, as opposed to large commercial banks, due to its industry-tailored payment solutions. In addition to its Canadian business, WUBS affiliates in the United States, Europe, Australia, Singapore, New Zealand and Hong Kong also deal in foreign exchange forwards and/or foreign exchange options. Accordingly, WUBS is familiar with the regulatory approaches taken in

those jurisdictions to many of the issues addressed by the Regulators under the Proposed Derivatives Regulations.

WUBS recognizes the global trend toward greater regulatory oversight of derivatives dealing and its affiliates in the United States and Europe have implemented or are currently implementing many of the changes brought about by, respectively, the Dodd-Frank Act and the European Market Infrastructure Regulation (EMIR). As noted by the Consultation Paper, the Proposed Derivatives Regulations will align Canada with other major markets and will promote uniformity in regulatory oversight and market processes. We view the changes coming in Canada as a positive development and appreciate the opportunity to respond to the Regulators' requests for input from industry participants on the Proposed Registration Requirements. For ease of reference, we have included our responses under the re-stated questions as put forth in the Consultation Paper for industry comment.

Q2: What is the appropriate standard for determining whether a person is a qualified party? Should the standard be based on the financial resources or the proficiency of the client or counterparty? If the standard is based on financial resources should it be based on the net assets of the client or counterparty, gross annual revenues of the client or counterparty, or some other factor or factors?

WUBS supports the classification of a customer as a "qualified party" based on objective "bright line," "automatically qualifying" financial criteria. WUBS also proposes that the final regulations include additional means of qualifying customers who do not meet the bright line rule based on the use of a derivative for commercial hedging purposes and based on other specified subjective criteria, together with the mutual agreement between the customer and the derivatives dealer.

With respect to the adoption of a bright line rule, we generally agree that the accredited investor standard provides a reasonable financial benchmark for classification of customers as "qualified parties", with one exception. With respect to entities, under 1.1(m) of NI 45-106 an entity would qualify as an accredited investor only if it holds *net assets* of at least $5,000,000. In our experience this creates artificial barriers to participating in this market that do not serve legitimate policy needs. For example, WUBS has found that many companies - even medium to large-sized businesses - may, for various reasons, fail to meet this net asset test, even though such companies may operate a business with tens or even hundreds of millions of dollars of annual revenue. Companies often have unique features in their financial statements or, in many cases, have intentional policies of withdrawing profits from the business to pay shareholders, or to fund related enterprises, resulting in a lower net asset calculation. In many cases the failure to meet the net asset requirement is not indicative of the lack of sophistication of the company or of its size or ability to absorb losses which may occur from foreign exchange trading.

To the extent that a "financial test" is meant to be a surrogate for "suitability" and sophistication, we believe the final rules should allow for additional financial tests to satisfy the "qualified party" standard such as gross revenue. For example, there is no reason to believe that a corporation with $5,000,000 in gross revenue and $500,000 in net assets has less sophistication or is otherwise less suitable to purchase derivatives than an entity with only $2,000,000 in gross revenue but $1,000,000 in net assets.

In addition to implementing a bright-line financial test to classify an entity as a qualified party, WUBS would propose that the final regulations treat a customer as a "qualified party" if they are purchasing a derivative to hedge a commercial obligation. For example, WUBS markets foreign exchange derivatives exclusively to customers who need to hedge against a risk caused by fluctuations in the value of a foreign currency, such as in connection with foreign currency payment needs or balance sheet related foreign exchange exposures. Commercial hedging alone has long been an independent basis for customers to qualify to enter into a derivative transaction under applicable rules adopted in British Columbia, Alberta, and Quebec. In part, this likely arises from the recognition that many small Canadian businesses have a need to hedge currency risk through foreign exchange derivatives, given the (A) broad participation of small Canadian businesses in cross border trade that creates foreign exchange risk and (B) the pricing of commodities bought and sold within Canada such as oil, minerals and agricultural commodities in U.S. dollars.

Providing these small businesses with ready access to derivative markets to hedge their commercial risks serves the interest of both the customers and of the Canadian economy in general. In addition, in our experience, many small businesses for which the management of foreign exchange risk is critical to the success of their enterprise are generally well-versed in derivatives trading, notwithstanding the size of their business. We believe that that the Proposed Registration Requirements should continue to recognize this concept and treat all commercial hedgers as qualified parties. If this is not the case (and especially if the final rules limit the ability of qualified parties to deal directly with derivatives dealers, without incurring additional third party professional costs, as discussed under our response to Question 16, below), a substantial segment of the market may be dissuaded from hedging currency risks, increasing the scope of risk assumed by such entities.

Finally, if the use of foreign exchange derivatives for hedging purposes is not deemed alone to be a sufficient basis for classifying a party as a qualified party, WUBS would propose that there should be other non-financial means of meeting the qualified party test for parties which are hedging foreign exchange liabilities, such as past trading history (including frequency of trading), the professional designations and qualifications of the person acting for the customer dealing in FX products, the existence of audited financial statements, or the proportion of a party's foreign exchange revenues when compared to gross revenues. While any one of these criteria alone would perhaps be insufficient, a derivatives dealer should be given discretion to consider such relevant subjective criteria in aggregate and make a determination (reasonably documented) that customer may properly be treated as a "qualified party" even if the customer does not meet the "financial test". We believe that the final regulations should allow a customer to agree to be treated as a "qualified party" provided that derivatives dealer can reasonably demonstrate that (A) the customer has the requisite knowledge and experience to evaluate the information provided to the person about derivatives, the appropriateness to the person's needs of proposed derivatives strategies, and the characteristics of the derivatives to be traded on the person's behalf, and (B) the customer has sufficient financial means to fulfill the person's delivery or payment obligations under the terms of derivatives to which the person is party, in light of

the positions held in the person's account and the orders the person is seeking to have executed.[1] The regulations might reasonably require clear record keeping establishing the basis for the dealer's determination of the foregoing as well as a signed acknowledgement from the customer agreeing to be treated as a "qualified party".

Of course, even if a customer meets the qualified party designation through whatever standards are ultimately adopted, we note that the suitability provisions of the Proposed Registration Requirements, as outlined in the Consultation Paper, apply to all client transactions and, accordingly, even for hedging transactions a derivatives dealer will have detailed obligations to assure that a particular derivative is suitable for the customer.

Q3: Should registration as a derivatives dealer be subject to a *de minimis* exemption similar to the exemption adopted by U.S. regulators? Please indicate why such an exemption is appropriate.

WUBS does not support the implementation of a de minimis exemption in ascertaining whether a party otherwise subject to a registration requirement should be required to register as a derivatives dealer. The national and global policy concerns that prompted broad review and regulatory overhaul of derivatives regulation apply irrespective of the size of the dealer with whom a customer contracts. Under the proposed regulations, customers will have confidence that persons registered as a derivatives dealer will be subject to a rigorous compliance regime designed to protect both against systemic risk, as well as specific risk to customers caused by unqualified, undercapitalized, or self-dealing dealers.

Adoption of a de minimis exception would create an uneven playing field where dealers who are not subject to registration might well have unfair commercial advantages, both with respect to ease of trading with customers and substantially lesser costs, resulting from the lack of a requirement to put in place the type of oversight and controls that will be needed to assure compliance with the new regime. In addition, an entity "dealing" derivatives but not subject to dealer registration and its concomitant obligations under the "course of business" rules, could sell and market derivatives to customers free of the requirements of good faith and fair dealing, and free of any obligation to disclose conflicts of interests. While WUBS largely supports the proposed regime and its effort to impose upon industry participants certain responsibilities to carefully consider and take into account the interests of their customers, if it were forced to compete with "dealing" entities that had no such requirements, it would be unfairly disadvantaged in a way which would be detrimental to the public interest.

Q4: Are derivatives dealer, derivatives adviser and LDP the correct registration categories? Should the Committee consider recommending other or additional categories?

We believe the proposed categories appropriately capture the role of key industry participants and support the delineation of these categories as set forth in the Consultation Paper.

[1] This standard is similar but not identical to the standard applicable under the rules defining an "Accredited Counterparty" under Section 3 of the Quebec Derivatives Act (http://www.canlii.org/en/qc/laws/stat/rsq-c-i-14.01/latest/rsq-c-i-14.01.html)

Q5: Are the factors listed the correct factors that should be considered in determining whether a person is in the business of trading derivatives? Please explain your answer.

We believe the proposed business trigger categories for dealer registration are appropriate.

Q10: Is the Committee's proposal to only register derivative dealer representatives where they are dealing with clients or when dealing with counterparties that are non-qualified parties appropriate?

WUBS agrees that all derivative dealer representatives who provide advice to clients relative to derivatives should be registered, whether or not the client is a qualified party. Although "dealers" and other representatives advising customers on the purchase of a derivative should properly be subject to registration, WUBS believes that that the final rules should make clear that customer service representatives or others in an administrative role who may provide information to a customer about their account, including the status of any derivatives in the account, are not subject to registration, provided they are not advising customers on whether to purchase or sell, or make any material change to a derivative. Similarly, we would suggest that representatives of a dealer who provide non-specific opinions or information about derivatives, such as persons writing articles or speaking at conferences where the general public or prospective derivative customers are the targeted audience and the information or opinions given are not directed to a particular client or the sale or purchase of a particular derivative, does not need to be registered.

Q11: Is it appropriate to impose category or class specific proficiency requirements?

WUBS strongly agrees that proficiency requirements ought to be by category and be class specific. Although certain characteristics are common to all derivatives, different classes of derivatives have widely varying risk profiles, and the differences between classes are more significant than the similarities. The complexities of each of the various categories of derivatives are alone substantial and challenging. For example, WUBS focuses solely on the foreign exchange derivative business, and expects its representatives to understand completely the nature of that business and the various derivatives that are sold and bought by industry participants. Spending time learning about agricultural commodity or credit default derivatives would be unnecessary and only take valuable time away from focusing on the information our customers will need to best use our products and services. The customer, the industry, and the financial system will be best served with representatives focused solely on mastering the intricacies of their category and class of derivatives.

In addition, WUBS recommends that the final rule include provisions for making publicly available (i.e., via a website accessible by the public) the list of representatives registered and authorized to give advice in connection with the sale or purchase of a derivate. This both encourages transparency and compliance, while offering customers a method of validating the qualifications of the dealer representatives with whom they transact.

Q12: Is the proposed approach to establishing proficiency requirements appropriate?

WUBS generally supports the proficiency requirements as conceptually laid out in the Consultation Paper and, in particular, endorses the view that objective criteria demonstrating proficiency such as passing industry-specific, third party offered examinations is one appropriate way to demonstrate proficiency.

WUBS notes that such a training and testing regime is not widely available in Canada today and likely will take industry participant collaboration to develop. We believe such a scheme can be developed and supported, however, and note that other jurisdictions in which foreign affiliates of WUBS operate (including Australia and Singapore) have such third party accreditation/certification requirements in place today. WUBS proposes that once employment commences for an individual representative subject to proficiency requirements, the individual should be allowed a limited time period (for example, 6 to 12 months) to successfully complete examinations. Until such examinations are completed, risk can be mitigated by having individuals restricted from dealing with customers unless supervised by another employee who has successfully completed proficiency tests.

For the interim, until such time as a derivatives course/testing regime can be developed and implemented, we would support requiring derivatives dealers to have their own formalized training and qualification regimes in place that address the regulatory objectives of assuring that persons providing advice to customers on derivatives have both product proficiency and an understanding of the derivatives compliance regime. Derivatives dealers during any interim period could properly be charged with keeping records demonstrating that all persons providing advice to clients regarding derivatives meet such requirements. WUBS proposes that any proficiency requirements -whether interim or permanent - be phased in to provide a reasonable time period for existing employees to be trained in accordance with any new requirements.

Q13: Is the Committee's proposal to impose a requirement on registrants to "act honestly and in good faith" appropriate?

WUBS supports the proposal to apply the "act honestly and in good faith" requirement to Derivative Dealers. However, WUBS also supports the introduction of clear and unambiguous language or requirements issued by the Regulators to ensure that registrants understand and can satisfy the purpose of the requirement. For example, an industry code of conduct as is currently in place for other providers, such as broker/dealers in securities, could be introduced which sets out general principles for satisfying such requirements.

Q14: Are the requirements described appropriate registration requirements for derivatives dealers, derivatives advisers and LDPs? Are there any additional regulatory requirements that should apply to all categories of registrants? Please explain your answers.

WUBS supports the Proposed Registration requirements in concept, as outlined in the Consultation Paper.

Q15: Should derivatives dealers dealing with qualified parties be subject to business conduct standards such as the ones described in part 7.2(b) (iii) above? If so, please explain what standards should apply.

WUBS believes that the business conduct standards as outlined in part 7.2(b) (iii) are generally appropriate and should apply to trades with all clients, including both qualified parties and non-qualified parties. However, WUBS would respectfully suggest that business conduct standards should apply only when a client enters into a trade for which it seeks or receives advice from the derivatives dealer. While WUBS understands and supports the need for business conduct standards where a counterparty is looking to a provider for advice on a product, in many cases counterparties are sophisticated in trading and do not seek advice from the derivates dealer but are procuring foreign exchange hedging products for execution purposes only. In such circumstances, the application of business conduct standards are likely unnecessary and may affect the ability of parties to shop around for best price (given the additional time and steps which would be necessitated by the standards).

WUBS would also like to comment on the proposed "Gatekeeper Requirements" pursuant to which the Consultation Paper indicates that a derivatives dealer should be aware of "potential compliance issues that may relate to the client (for example past regulatory issues that they or their staff may have had…)" and "other information necessary to apply anti-money laundering legislation or other comparable regulatory requirements." WUBS respectfully suggests that relevant federal and provincial regulation clearly prescribes the obligations of financial service providers (including money services businesses) regarding customer identification and other AML-related requirements. Any additional obligations included in the proposed derivatives legislation should be drafted carefully or should refer to the requirements in such AML legislation so that there is no inadvertent confusion caused with respect to such obligations. In addition, general "know your customer" requirements involve reasonable due diligence into the business and business practices of a customer. However, there is a limited extent to which a provider has access to prior known compliance issues or problems that a prospective client has had, or the extent to which such issues have been satisfactorily addressed and resolved between that party and its relevant regulator. WUBS respectfully suggests that, beyond the due diligence requirements set out in relevant anti-money laundering regulations, the review of customers' regulatory issues and conduct is better achieved by regulators than by private parties.

Finally, WUBS would ask that the final regulations clarify the responsibilities under the business conduct requirements for situations when two derivatives dealers enter into derivative transactions with each other. For example, WUBS may enter into derivative transactions with a large bank or derivatives dealer to hedge its own liabilities which may arise in connection with customer trades. It would seem incongruous for WUBS to have the obligation to treat our derivatives dealer counterparty as a "customer" and be subject to the suitability and conflict of interest determination requirements set forth in the Consultation Paper with respect to our derivatives dealer counterparty.

Q16: Do you have a preference between the two proposals relating to the regulation of a derivatives dealer trading with counterparties that are non-qualified parties? Is there another option to address the conflict of interest that the Committee should consider? Please explain your answer.

WUBS strongly prefers the Second Alternative, which would permit derivative dealers to trade with non-qualified counterparties provided they advise the counterparty of their right to obtain independent advice prior to entering into the transaction and require written acknowledgment from the customer if the customer elects to proceed without independent advice. This would encourage businesses to continue to hedge their commercial risks, which would serve the interest of both these businesses and Canada's economy in general.

WUBS notes that the First Alternative could greatly increase the transaction cost to a customer as well as potentially lead to delay and inconvenience in completing transactions in a timely manner. In many of the derivative markets, a particular derivative may only be available at a particular price for a short period and delay could result in substantial loss to the client. With respect to customers who use derivatives to hedge risk, which constitutes virtually the entire WUBS' customer base, the small customer may dispense entirely with purchasing a derivative, thereby assuming the full risk of market movements rather than incur the costs of obtaining advice from two separate professionals. WUBS strongly believes that introduction of the First Alternative would not serve the interests of customers and indeed could very well increase the risk of customer losses as a result of the strong potential that many parties which now hedge foreign exchange exposures would cease to do so.

WUBS believes that, subject to modification, the Second Alternative achieves the objectives of the Proposed Derivatives Regulations and does not increase the risk that businesses will cease or decrease their hedging of foreign exchange exposures. As mentioned above in connection with External Business Conduct Rules, WUBS notes that as a practical matter customers frequently deal with more than one derivatives dealer and can often "shop" for the best deal, or confirm for themselves that the terms of the derivative transaction as offered by the derivatives dealer are reasonable. Such customers generally use providers for execution purposes only and are not looking to the dealer to provide advice or assess suitability of a product for its use. This could apply to parties which are or are not Qualified Parties. To this end, a third alternative would be to provide customers who are proficient in derivatives dealing, based on the criteria set out in our response to Question 2, to opt out at the outset of the trading relationship from the requirement to sign such acknowledgements on a transaction by transaction basis. Requiring such acknowledgements on a transaction by transaction basis could negatively affect the ability to trade in a timely fashion and at the most effective price. Any increased risk which may be perceived to occur for the customers who are able to opt out of such obligations, could be addressed by other means such as provision of product specific disclosure documents at the outset of the relationship.

Q17: Are the recommended requirements appropriate for registrants that are derivatives dealers? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives dealers?

WUBS generally supports the proposed requirements, with the exception of a portion of the requirements outlined for pre-trade reports. Under the third bullet setting forth the required disclosure items is "a detailed description of the risks to and the rights and responsibilities of the client or counterparty under the terms of the trade." While WUBS agrees that it is entirely appropriate to require full disclosure of the risks of a derivative and the rights and responsibilities of the client, WUBS respectfully suggests that such a disclosure is more appropriately given in the parties' legal documents or in a separate product disclosure document provided at the initiation of the customer relationship. We note that product disclosure statements are frequently provided in other jurisdictions in which WUBS operates (for example, in Australia). A requirement that each derivatives dealer provide a written disclosure and description of the risks, rights and responsibilities of the client in connection with a derivative contract is appropriate. However we suggest that a one time (or periodic) product disclosure statement should be an accepted method of providing such disclosure.

WUBS thanks you for the opportunity to provide input to the Consultation Paper and looks forward the publication of proposed rules.

Best regards,

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