

Canadian Securities Administrators

CSA Consultation Paper 91-407

Derivatives: Registration

Q1: Should investment funds be subject to the same registration triggers as other derivatives market participants? If not, what registration triggers should be applied to investment funds?

No input.

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 the 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?

Qualified party determination should be based on a holistic review of the party's financial resources and proficiency of the client or counterparty. Financial resources alone do not impart reasonable assurance of knowledge or proficiency; nor does proficiency alone impart a reasonable assurance of financial resource sufficiency for classification as a qualified party.

Some additional factors that should be considered when determining a relationship definition of derivative dealers and qualified party would include the derivatives dealers ability to mitigate risk, such as the dealers ability to demand up front cash deposits for all positions the client enters, automatic liquidation of under-margined position, and automatic measures which preclude clients from losing more than their stated risk capital.

Additional types of accounts that should be considered as an alternative to a qualified party definition are those which have a preset caps on the client cumulative risk capital limit, which limit client loss to their stated cumulative risk capital limit while ensuring a reduced risk assumption by the derivatives dealer.

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

We agree with the Committee that participants in the derivatives market should be subject to the same registration requirements regardless of the size or the total derivatives exposure of the dealer with no de minimus exemption.

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

An additional category for consideration – IIROC currently accepts the registration of derivative dealers who provide self-directed online trading to retail and institutional clients on a suitability exempt basis for OTC contracts including foreign exchange, CFD's and spot contracts. We recommend the committee consider including a comparable category.

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

These seem sufficient

Q6: The Committee is not proposing to include frequent derivatives trading activity as a factor that we will consider when determining whether a person triggers as a derivatives dealer. Should frequent derivatives trading activity trigger an obligation to register where an entity is not otherwise subject to a requirement to register as a derivatives dealer or a LDP? Should entities that are carrying on frequent derivatives trading activity for speculative purposes be subject to different registration trigger than entities trading primarily for the purpose of managing their business risks?

Frequency of derivatives trading activity should have no bearing on the definition of a derivatives dealer. Entities that carry on derivatives trading activity for speculative purposes should be subject to the same registration triggers that entities trading primarily for the purposes of managing risk to ensure market integrity.

Q7: Is the proposal to impose derivative dealer registration requirements on parties providing clearing services appropriate? Should an entity providing these clearing services only to qualified parties be exempt from regulation as a derivatives dealer?

No input.

Q8: Are the factors listed above the appropriate factors to consider in determining whether a person is in the business of advising on derivatives?

No input.

Q9: Are the factors listed for determining whether an entity is a LDP appropriate? If not what factors should be considered? What factors should the Committee consider in determining whether an entity, as a result of its derivatives market exposure, could represent a serious adverse risk to the financial stability of Canada or a province or territory of Canada?

No input

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

We agree that derivative dealer representatives should be registered, but we also agree that there should be a suitability exempt category similar to what IIROC currently grants.

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

We believe a base knowledge of derivatives is appropriate and should be a minimum proficiency requirement. Thereafter, we agree that class-specific proficiency requirements

could be beneficial for derivative dealer representative, such as an OTC contract (FX, CFD's, and Spot contracts) specific proficiency.

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

Please see response 11.

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

It is always reasonable that a dealer member should 'act honestly and in good faith'. We support the notion that derivatives dealers should avoid making incomplete, inaccurate or unwarranted claims, opinions or forecasts in their communications with clients and counterparties, or potential clients or counterparties.

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

There is no current centralized facility or clearing agent to clear OTC trades in Forex, CFD's and spot contracts, and there is no central repositories to hold these types of contracts. Since dealers who trade in such OTC products are direct counterparties to their client's trades there would be no advantage to requiring IIROC dealers to hold customer assets at a central repository.

As an IIROC dealer we are already subject to IIROC oversight regarding segregation and holding of client assets (cash).

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.

We agree that standards such as 7.2(b)(iii) are reasonable standards with regards to Know Your Customer requirements and Conflicts of Interest requirements.

As a suitability exempt dealer, we would recommend a comparable suitability exemption as currently provided by IIROC.

Q16: Do you have a preference between the two proposals relating to the regulation of 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.

We prefer alternative two which pertains to enhanced notifications to clients and do not support alternative one. We believe the burden of seeking outside advisors would preclude market participation.

There are numerous measures that can be implemented to properly communicate risk, conflict of interest, and product suitability such as enhanced or clarification of current conflicts of interest policies on account opening and the establishment of auto-liquidation procedures that take effect at preset margin requirements.

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

With regards to additional regulatory requirements per section 7.3 of the consultation paper, we agree to the appropriateness of the recommendations.

We would recommend that recognition of suitability exempt dealers remain in effect similar to IIROC's current suitability exempt status.

Q18: Are the recommended requirements appropriate for registrants that are derivatives advisors? If not please explain. Are there any additional regulatory requirements that should apply to registered derivatives advisers?

No input.

Q19: The Committee is recommending that foreign resident derivative dealers dealing with Canadian entities that are qualified parties be required to register but be exempt from a number of registration requirements. Is this recommendation appropriate? Please explain.

No input.

Q20: Is the Committee's recommendation to exempt foreign resident derivatives dealers from Canadian registration requirements where equivalent requirements apply in their home jurisdictions appropriate? Please explain.

We agree with the Committee that participants in the derivatives market should be subject to the same registration requirements as Canadian registrants.

Q21: Should foreign derivatives dealers or advisors not registered in Canada be exempt from registration requirements where such requirements solely result from such entities trading with the Canadian government, provincial governments or with the Bank of Canada?

No input.

Q22: Is the proposal to exempt crown corporations whose obligations are fully guaranteed by the applicable government from registration as a LDP and, in the circumstances described, as a derivatives dealer appropriate? Should entities such as crown corporations whose obligations are not fully guaranteed or corporations owned or controlled by foreign governments benefit from comparable exemptions? Please provide an explanation for your answer.

No input.

Q23: Are the proposed registration exemptions appropriate? Are there additional exemptions from the obligation to register or from registration requirements that should be considered but that have not been listed?

We agree as appropriate the proposed registration exemptions for affiliate entities when both are controlled, either directly or indirectly, by a common entity where they are facilitating the trades of a Canadian registered affiliate.