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September 6, 2013

Ontario Securities Commission

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
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Email: comments@osc.gov.on.ca

Dear Mr. Stevenson:

Re: AIMA Canada's Comments on the Proposed Ontario Securities Commission ("OSC") Rule 91-507 Trade Repositories and Derivatives Data Reporting (the "Proposed Rule") and Companion Policy 91-507CP (the "Proposed CP")[1]

This letter is being written on behalf of the Canadian National Group (**"AIMA Canada"**) of the Alternative Investment Management Association (**"AIMA"**) and its members in relation to the OSC's Proposed Rule and the Proposed CP.

AIMA was established in 1990 as a direct result of the growing importance of alternative investments in global investment management. AIMA is a not-for-profit international educational and research body that represents practitioners in hedge fund, futures fund and currency fund management – whether managing money or providing a service such as prime brokerage, administration, legal or accounting. AIMA's global membership comprises over 1,350 corporate member firms (with over 5,500 individual contacts) in more than 45 countries, including many leading investment managers, professional advisers and institutional investors. AIMA's Canadian national group, established in 2003, now has over 100 corporate members.

The principal aims of AIMA are to provide an interactive and professional forum for our membership and act as a catalyst for the industry's future development; to be the pre-eminent voice of the industry to the wider financial community, institutional investors, the media, regulators, governments and other policy makers; and to offer a centralized source of information on the industry's activities and influence, and to secure its place in the investment management community.

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1 OSC Request for Comments, 36 OSCB 5737 (2013).

For more information about AIMA Canada and AIMA globally, please visit our web sites at www.aima-canada.org and www.aima.org.

This comment letter has been prepared by a working group of the members of AIMA Canada, comprised of managers of hedge funds and fund of funds, and accountancy and law firms with practices focused on the alternative investments sector.

Comments

AIMA Canada supports the purposes of the Proposed Rule, which are to improve transparency in the derivatives market and to ensure that trade repositories operate in a manner promoting the public interest.[2] However, we have significant concerns with the Proposed Rule as currently drafted.

Redundancy in Data Reported for Cross-Jurisdictional Transactions

Under subsection 25(1), a local counterparty must, subject to certain exceptions, "report, or cause to be reported, to a designated trade repository, derivatives data for each transaction to which it is a counterparty."[3]

While we appreciate that the OSC has reduced the scope of the definition of "local counterparty" in the Proposed Rule, many scenarios still exist which would require a report to be filed in multiple jurisdictions. This leads to the anomalous and likely unintended result of some transactions being reported in one jurisdiction while others are reported in multiple jurisdictions. Simply, multiple reporting of the same transaction presents an inaccurate portrayal of market activity, which in turn hinders proper regulatory monitoring.

We propose that this unwieldy reporting patchwork is best avoided by having one centralized trade repository both as a designated trade repository and to collect data on behalf of all of the provinces and territories. Centralized trade repositories would have the additional benefit of standardizing the input and output of the trade repository's reported data.

Alternatively, the OSC and other provincial and territorial regulators could adopt a principal regulator model, similar to the existing principal regulator model for registrants and reporting issuers. Having a principal regulator model would increase market efficiency as well as provide for a more accurate picture of the Canadian derivatives market by reducing redundant reporting.

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2 *Ibid* at 5738.

3 *Supra* note 1 at 5768.

While the OSC's response to these comments on the Canadian Securities Administrator's (the "**CSA**") consultation paper 91-301 (the "**Consultation Paper**") is that such a passport system is outside the scope of the Proposed Rule[4], it is within the OSC's jurisdiction to abandon the Proposed Rule to attempt to work with the CSA and all Canadian securities regulators to develop and implement a Canada wide solution to Canada's derivatives trade reporting obligations.

Reporting Counterparty

Section 27 of the Proposed Rule establishes who is responsible for reporting a derivatives transaction to a trade repository or local regulator. We appreciate that as between two end-users, at least one of them will be required to report a transaction. However, we are very concerned that local counterparty end-users, and not foreign dealers and clearing agencies, will be required to comply with the transaction reporting requirements under subsection 27(2) of the Proposed Rule.

Foreign dealers, clearing agencies and other regulated entities, are routinely required to comply with local securities regulation and other Canadian laws when conducting business with Canadians. The risk of non-compliance and the inability to enforce against such entities has not generally been cited as reasons for not imposing rules on foreign entities conducting business with Canadians. As in the case of virtually every other securities law, rule or instrument, foreign dealers, clearing agencies and other regulated entities carrying on business with end-users in Ontario should be required to comply with the transaction reporting provisions of the Proposed Rule.

Differential treatment of local end-users, depending on whether their counterparties are local or not, can also have inadvertent detrimental market consequences. In an effort to avoid reporting requirements, local end-users may disproportionately favour local derivatives dealer counterparties over non-local derivatives dealer counterparties. Consequently, the diversification of derivatives dealer counterparties may be diminished by the decreased participation of non-local derivatives dealer counterparties. In fact, contrary to the OSC's intent, systemic risk may actually be increased as a result of a reduction of the number of active derivatives dealer counterparties.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act and other international derivative regulation initiatives, end-users are not currently required to report transactions when transacting with foreign dealers. The Commodity Futures Trading Commission (the "**CFTC**") has specifically taken this approach because such foreign dealers are "more likely to have automated systems suitable for reporting."[5] Taking the contrary approach in Ontario is inconsistent with the

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4 CSA Staff Consultation Paper 91-301, 35 OSCB 10967 (2012).

5 CFTC Final Rule, Swap Data Recordkeeping and Reporting Requirements, 77 F.R. No. 9 (January 13, 2012) at 2167.

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goal of international harmonization. As a result of attempted harmonization, all Canadian, United States and non-North American derivatives dealers, clearing agencies and other regulated market participants have made significant investments to develop compliant reporting systems. In our view, requiring Ontario end-users to implement reporting systems to facilitate trade reporting is inefficient, impractical and unfair. The time and resources necessary to develop such a system or alternatively, manual compliance, place an undue burden on Ontario end-users. The obligation to report derivatives trade data under the Proposed Rule should be imposed on dealers and clearing agencies party to such transactions, whether foreign or not. Such parties have the technological capability to generate required derivatives data and are in a far better position to efficiently provide reports mandated under the Proposed Rule.

Further, we do not believe the power to delegate the reporting function to third party service providers addresses the concerns stated above and may exacerbate such concerns. While the end-user has acquired and paid for reporting services, it remains ultimately responsible for such reporting and must maintain the relevant data in an accessible format in case the third party service provider fails to comply with its obligations. As such, the ability to delegate under the Proposed Rule, without relief from liability for such reporting, may be more of a burden than a benefit to the end-user.

Finally, we believe that an additional step in the hierarchy of reporting in section 27 should be included in the Proposed Rule that will be of benefit to end-users. Where there is no clearing agency or dealer party to a derivatives transaction, if one of the counterparties is a large derivatives participant, then it, rather than the end-user, should be the reporting counterparty. Presumably large derivatives participants will have the resources and trade frequency necessary to support the development and implementation of a derivatives trade reporting system.

Reporting Valuation Data

We note that the OSC has changed subsection 35(1) to require the local counterparty to report valuation data daily. This is an unexplained change from the Consultation Paper. We believe this should revert to "reporting counterparty", particularly in light of the inconsistency it creates with clause 35(2)(b) which only requires quarterly reporting of valuation data for non-dealers. This approach is also inconsistent with the reporting regime in the United States, where only the reporting counterparty is required to provide valuation data.

Mandatory Disclosure Delay

Subsection 39(3) of the Proposed CP has the stated objective of ensuring "that counterparties have adequate time to enter into any offsetting transaction that may

be necessary to hedge their positions."[6] The objective is to allow counterparties to hedge risk before it becomes unduly difficult or expensive. The potential for market manipulation based on prematurely released data is particularly acute given the relatively limited number of Ontario market participants and corresponding liquidity level.

While we strongly support this objective, we respectfully submit that this objective is not achieved by the current drafting of subsection 39(3). The issue raised by the current drafting is that the delays of one or two days (depending on counterparty identity) are optional, rather than mandatory. The designated trade repository must disclose transaction level reports *not later* than one or two days after receipt from the reporting counterparty. As drafted, there is no requirement that trade repositories wait one or two days.

The stated objective of subsection 39(3) is better achieved by making the delays mandatory. It is our suggestion that subsection 39(3) should be revised to prevent transaction level reports from being publicly disclosed until one day after reporting. This would allow counterparties to protect their risks prior to their trading strategy being prematurely disclosed. We firmly believe that any harm the market would suffer as a result of the one day delay would be minuscule, and in any event would be far outweighed by the benefit of preventing market manipulation.

Dealer or Derivatives Dealer

We believe the addition of a definition of dealer is useful but believe the Proposed Rule should cross reference the definition and guidance provided in respect of the registration rule or instrument. In addition, to distinguish from dealers that are securities dealers, the defined term should be "derivatives dealer".

Conclusion

We appreciate the opportunity to provide the OSC with our views on the Proposed Rule. While supportive of its stated purpose, we have serious concerns above specific aspects of it. Please do not hesitate to contact the members of AIMA set out below with any comments or questions you might have. We would be happy to meet with you in order to discuss our comments further.

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6 *Supra* note 1 at 5786.

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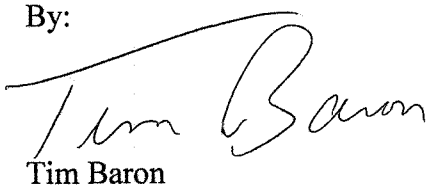
Yours truly,

ALTERNATIVE INVESTMENT MANAGEMENT ASSOCIATION

By:



Tim Baron
On behalf of AIMA Canada and the Legal & Finance Committee