



May 13, 2015

Alberta Securities Commission
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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

Josée Turcotte
Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Dear Sirs / Mesdames:

Re: CSA Notice and Request for Comment (“CSA Notice”) on Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (“94-101”) and Proposed Companion Policy 94-101CP *Mandatory Central Counterparty Clearing of Derivatives* (“94-101 CP”)

Custom House ULC operating as Western Union Business Solutions (“Western Union”) appreciates the opportunity to comment on 94-101 and 94-101 CP. Capitalized terms used in this letter and not defined herein will have the same meaning as in the CSA Notice.

In respect of the Intragroup Exemption, Western Union would like to repeat the comments made by commenters on the Draft Model Rule that the current drafting of paragraph 10(1)(b) limits the applicability of the Intragroup Exemption even from

affiliated entities that do manage risk on a centralized basis. Although, the CSA's response to the Draft Model Rule commenters says that paragraph 10(1)(b) is drafted broadly enough to include affiliated entities that do not prepare consolidated financial statements, the wording of the paragraph is unclear and redrafting the language would make it more apparent that affiliated entities with centralized risk management could use the Intragroup Exemption whether or not they prepared consolidated financial statements. In particular, the current drafting of section 10(1)(b) would restrict the exemption to companies who prepared IFRS consolidated financial statements, and would appear to preclude corporations with ultimate parent companies located in the United States which prepare consolidated US GAAP financial statements. We therefore propose that section 10(1)(b) be replaced to adopt the securities laws definition of "affiliates", or, that section 10(1)(b) be amended to also refer to consolidated financial statements prepared in accordance with US GAAP.

In respect of the derivatives or classes of derivatives to be subject to mandatory central clearing, while Western Union recognizes that 94-101CP states that "existence of a clearing obligation in other jurisdictions" is one of the criteria used to determine if a class of derivatives will be subject to mandatory clearing in Canada, it should be made explicit that the default position for Canadian derivatives regulators will be not to require clearing for classes of derivatives that are not subject to clearing in other jurisdictions.

There should also be a presumption that there will not be mandatory clearing for a derivative or class of derivatives which is not required to be cleared in that foreign counterparty's home jurisdiction. For instance, if a European counterparty enters into a non-deliverable foreign exchange forward with a Canadian counterparty in respect of Euros or another European currency such a transaction would not be subject to mandatory clearing under the European requirements, Canadian derivatives regulators should be forced to overcome a strong presumption against mandating clearing under the rules of a Canadian jurisdiction for that transaction. This type of requirement would encourage consistency on a global basis while recognizing that there may be rare circumstances where Canada-specific situations require Canada-specific responses.

Further we would note that "jurisdiction" is a defined term under National Instrument 14-101 *National Definitions* and refers specifically to a province or territory of Canada. Since 94-101CP is proposed to be identical in all jurisdictions and mandatory clearing determinations are to be made on a national basis, it is difficult to see how there would be a clearing obligation in one province or territory of Canada, but not in another. If this criterion is meant to prompt Canadian derivatives regulators to review the clearing determinations made by non-Canadian jurisdictions, it may be clearer to state "the existence of a clearing obligation in foreign jurisdictions".

In respect to record-keeping, a number of commenters stated that parties should be able to rely on representations made by their counterparties. The Committee responded by including additional language in 94-101CP stating that local counterparties could rely on



factual representations made by their counterparties so long as they had no reasonable grounds to believe those representations were false. While this language is very much welcome, Western Union believes that it could be made more explicit to state that a local counterparty can rely on its counterparty's representation as to clearing status specifically. For instance, a local counterparty should be able to rely on its counterparty stating that it is an end user because it is (a) not a financial institution; and (b) entering into the transaction for the purpose of hedging or mitigating commercial risk, rather than have to obtain a set of factual representations about the counterparty's existing positions with respect to the underlying risk and how the proposed transaction is correlated to those risks. This would be in keeping with the recordkeeping requirements in place in foreign jurisdictions.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at shannon.seitz@westernunion.com, on this or any other issue in future.

A handwritten signature in blue ink that reads 'Shannon Seitz'. The signature is fluid and cursive, with the first and last names being clearly legible.

Shannon Seitz
Associate Counsel, Western Union Business Solutions