BLACKROCK®

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Submitted via electronic filing: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

Alberta Securities Commission
Autorité des marches financiers
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 Commission
Ontario Securities Commission
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

Attention:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Re: Canadian Securities Administrators Notice and Second Request for Comment – Proposed National Instrument 93-101 – *Derivatives: Business Conduct* and related Companion Policy 93-101CP (together, "Proposed Business Conduct Rule")

Dear Me Beaudoin and Ms. Knakowski:

A. About BlackRock

BlackRock Asset Management Canada Limited ("**BlackRock Canada**") is an indirect, wholly-owned subsidiary of BlackRock, Inc. (together with BlackRock Canada, "**BlackRock**" or "**we**") and is registered as a portfolio manager, investment fund manager and exempt market dealer in all jurisdictions of Canada, a commodity trading manager in Ontario, and an adviser under *The Commodity Futures Act* (Manitoba).

BlackRock is one of the world's leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. As an investment adviser, we embrace our role as a fiduciary to our clients and recognize its importance in protecting investors.

B. General Observations

BlackRock supports the Canadian Securities Administrators' ("**CSA**") ongoing efforts "to protect investors, reduce risk, improve transparency, increase accountability and promote responsible business conduct in the over-the-counter (OTC) derivatives markets"[1]. However, we respectfully caution that some elements of the Proposed Business Conduct Rule (and particularly when combined with all the requirements contemplated under Proposed National Instrument 93-102 and Proposed Companion Policy 93-102CP – *Derivatives: Registration* (the **"Proposed Registration Rule"**)), will be disproportionately burdensome when weighed against the CSA's stated policy objective. For instance, registered advisers are already subject to significant securities market regulation and oversight and the CSA itself acknowledges that it is introducing the Proposed Business Conduct Rule and Proposed Registration Rule to meet its commitments "to create a *derivatives dealer regime* [emphasis added] that is also consistent with the regulatory approach taken by most IOSCO jurisdictions with active derivatives markets."[2] In our experience, asset managers such as BlackRock have established robust compliance and risk management programs applicable to their entire business and would not generally differentiate between asset classes in implementing and maintaining such programs. In addition, our fiduciary obligation as a registered adviser is paramount in the way we conduct ourselves vis-à-vis our clients. It is our view that any conduct standards to be imposed by the Proposed Business Conduct Rule already substantively exists in other regulations and is also embedded in a portfolio manager's fiduciary duty. Therefore, there would be no incremental, meaningful protection for clients in imposing another layer of business conduct requirements in the context of OTC derivatives.

As a general principle, we support initiatives that encourage long-term savings by improving the quality of advice, better aligning interests of registrants with those of their clients, and broadening the choice of investments and services offered to investors. The potential costs and resources associated with meeting the requirements under the Proposed Business Conduct Rule, which in some case are duplicative of, and lacking harmonization with, other Canadian and global regulations, outweigh the anticipated benefits. The exemptions provided may not be sufficient to incent some derivatives firms to enter or remain in the Canadian market. The real impact of this would be felt by Canadian investors if competition in the market is reduced, leading to an increase in spreads and other costs without a corresponding material benefit such as protecting investors from undue risk. This is especially true when assessing against the conduct of registered advisers.

Beyond these general observations, our specific feedback on the Proposed Business Conduct Rule is set out below. All capitalized terms used in this letter but not defined herein have the same meaning given to them in the Proposed Business Conduct Rule. We have also provided comments on the Proposed Registration Rule, which should be read together with this submission.

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[1] (2018), 41 OSC 4804.

[2] (2018), 41 OSC 4804.

C. BlackRock's Responses

Applicability/scope of the Proposed Business Conduct Rule to registered advisers

Similar to the views expressed in our submission about the Proposed Registration Rule, BlackRock is concerned about the lack of an exemption under the Proposed Business Conduct Rule for firms already registered as an adviser (i.e. portfolio manager) and that as currently contemplated, the scope of the Proposed Business Conduct Rule is too broad. Although certain business conduct obligations do not apply if a derivatives adviser is advising an "eligible derivatives party" (**"EDP"**), other obligations such as the fair dealing, managing conflicts of interest, and know-your-derivatives party requirements[3] would continue to apply--these concepts are already sufficiently covered under other regulation such as National Instrument 31-103 – *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (**"NI 31-103"**). It is unclear what requirements in the Proposed Business Conduct Rule are not substantially being carried out by registered portfolio managers pursuant to existing rules, or what requirements are missing from NI 31-103 or other rules which are of concern to the CSA. We respectfully submit that there should be an explicit provision in the national instrument, or alternatively, explicit guidance in the companion policy that, to the extent portfolio managers are already complying with the applicable requirements under NI 31-103, then they are deemed to have complied with the applicable requirements under the Proposed Business Conduct Rule.

In addition, portfolio managers owe a fiduciary duty to their clients. This fiduciary duty and the robust requirements of NI 31-103 govern the conduct of registered advisers and should be sufficient to meet, and in many cases, exceed the minimum business conduct standards being proposed.

Finally, in reading the Proposed Business Conduct Rule and Proposed Registration Rule together, there is no clear policy rationale for Canadian regulated financial institutions to benefit from exemptions while registered portfolio managers do not.

Senior derivatives managers

The requirement to appoint one or more senior derivatives managers to be responsible for supervising the derivatives-related activities of derivatives business units to ensure compliance with securities laws, as well as to respond to any material non-compliance is unduly onerous and does not align with existing derivatives regulation globally[4]. Registered portfolio managers must operate a compliance program under NI 31-103. The ultimate designed person and chief compliance officer, with the support of other senior personnel, are registered individuals already responsible for ensuring compliance with securities laws. In addition, there is an extensive

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[3] For instance, section 2.1 of OSC Rule 31-505 – *Conditions of Registration* and equivalent rules or regulations in other Canadian jurisdictions (fair dealing), section 13.4 of NI 31-103 (identifying and responding to conflicts of interest), as may be amended by the proposed amendments recently published (the **"Client Focused Reforms"**), and section 13.2 of NI 31-103 (know-your-client), as may be amended by the Client Focused Reforms.

[4] We note, for example, that the senior managers regime in the UK is applicable more broadly to entities registered with the Financial Conduct Authority (**"FCA"**) and does not purport to only apply to derivatives activities of FCA registered investment managers.

framework around the registration of other individuals conducting registrable activities such as portfolio management under NI 31-103, including ongoing obligations in order to maintain one's registration in good standing. We question why, in the narrower context of OTC derivatives, the CSA is imposing similar obligations to unregistered individuals. The proposed responsibilities of the senior derivatives manager should be subsumed under NI 31-103, including any reporting to the derivative adviser's board of directors and, if applicable, to the CSA[5]. Otherwise, one of the unintended consequences may be smaller domestic and foreign firms deciding not to establish or continue supporting Canadian clients and the Canadian OTC markets.

Applicability/scope of the Proposed Business Conduct Rule to foreign registered (or exempt) advisers

The exemptions available under the Proposed Business Conduct Rule to foreign advisers are predicated on a "substituted compliance" requirement in the foreign advisers' home jurisdiction. It is difficult to comment on this requirement when the permitted jurisdictions and regulations have yet to be published. Hopefully, the jurisdictions qualifying for the substituted compliance regime will, at a minimum, be the same under both the Proposed Business Conduct Rule and the Proposed Registration Rule. Moreover, BlackRock questions the usefulness of introducing a different exemption framework for OTC derivatives from what is currently available under NI 31-103 for the securities market. It is not appropriate that foreign advisers who are registered or rely on an exemption in a foreign jurisdiction would need to comply with even some of the requirements of the Proposed Business Conduct Rule. Hence, we urge the CSA, for the reasons outlined in our submission on the Proposed Registration Rule, to adopt the international adviser and international sub-adviser exemptions currently available under NI 31-103.

Content and delivery of transaction information – section 27(1)

Paragraph 27(1)(b) requires a derivatives dealer to provide a written confirmation to the derivatives party, or if the derivatives party consents or has given a direction in writing, to the derivatives adviser acting on behalf of the derivatives party. Advisers typically handle all trading documentation for clients, including reviewing derivative transaction confirmations. Such authority is typically granted in investment management agreements. Market practice today is for a derivatives dealer to provide the confirmation to the derivatives adviser as agent for the derivatives party. In lieu of including 27(1)(b), we would respectfully suggest the language in 27(1)(a) be changed to read "if the derivatives party or its authorized agent(s) consents...". We think this would achieve the policy objective of requiring the derivatives dealer to provide a confirmation for every trade, while being consistent with existing market practice and without creating any ambiguity regarding whether a new, separate written direction from a derivatives party is required.

Derivatives party assets – Division 2

BlackRock has two comments on Part 4, Division 2 of the Proposed Business Conduct Rule. First, the subject matter of this division (i.e. margin and collateral requirements) is misplaced

[5] Please refer to our comments regarding the roles and responsibilities of the derivatives UDP, CCO and CRO in our submission on the Proposed Registration Rule.

within a rule governing business conduct and is more appropriately included in Proposed National Instrument 95-401 - *Margin and Collateral Requirements for Non-Centrally Cleared Derivatives.*

Second, BlackRock believes that these provisions only make sense as applied to a derivatives dealer. To the extent there is a concern that a registered adviser would, for example, commingle the assets of separate clients, such activity would already be contrary to an adviser's fiduciary duty. If the CSA does not move these provisions from the Proposed Business Conduct Rule, we would suggest modifying Division 2 to apply only to derivatives dealers.

Policies, procedures and controls related to integrity

The requirement to have policies, procedures and controls that are sufficient to assure that an individual who advises on derivatives on behalf of a derivatives adviser conducts themselves with integrity specifically, is unnecessary. A registered adviser would already have these documents and controls in place given the requirements in NI 31-103 to establish and maintain policies and procedures to ensure compliance with securities legislation. Moreover, to be registered as an advising representative, an individual typically must have his or her Chartered Financial Analyst designation. As a result, these individuals must already abide by the CFA Institute of Code of Ethics and Standards of Professional Conduct which incorporates integrity as one of its central principles.

Furthermore, as discussed above, registered portfolio managers must already abide by a fiduciary duty to act in the best interests of the client and this is the highest integrity standard applicable. To the extent that there are residual policy concerns in the context of OTC derivatives, amendments to NI 31-103 would be a better approach and that consideration by the CSA should be made as to whether the current client focus reform proposals sufficiently address these residual policy concerns.

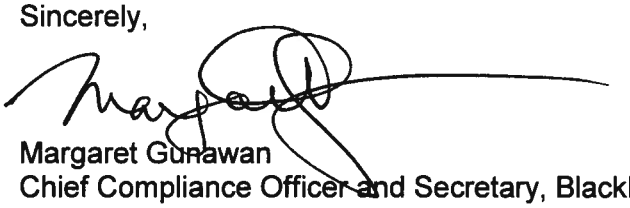
Transition Period

The Proposed Business Conduct Rule and the Proposed Registration Rule should come into force concurrently, given both are intended to be the comprehensive regime for the regulation of OTC derivatives. Further, as noted previously, under both sets of proposals, the relevant appendices for exemptions available to foreign derivatives advisers have not been published for comment. As noted in our submission on the Proposed Registration Rule, a process for maintaining the list of acceptable foreign jurisdictions in Appendix G should also be established and released for public comment. It will be very inefficient and disruptive to implement one set of rules, then the other. The transition period should be a minimum of 3 years from the coming into force of both rules in order to provide sufficient time for the industry to implement the numerous new obligations.

D. Conclusion

BlackRock appreciates the opportunity to provide input on this important regulatory initiative and would be pleased to make appropriate representatives available to discuss any of these comments with you.

Sincerely,



Margaret Gunawan
Chief Compliance Officer and Secretary, BlackRock Asset Management Canada Limited