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CANADIAN SECURITIES ADMINISTRATORS  
AUTORITÉS CANADIENNES EN VALEURS MOBILIÈRES

ROUNDTABLE DISCUSSION RE  
PROPOSED NATIONAL INSTRUMENT 93-101 - DERIVATIVES  
BUSINESS CONDUCT RULES ROUNDTABLE

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DATE: Monday, May 29th, 2017

HELD AT: Ontario Securities Commission  
22nd floor, 20 Queen Street West  
Toronto, Ontario

BEFORE: MONICA KOWAL Vice-Chair  
AARON UNTERMAN Senior Legal Counsel  
KEVIN FINE Moderator, Director  
Derivatives, OSC

1 PANELLISTS:

2

3 RON HOOVER CIBC Capital Markets

4 MIKE FISHER BMO Capital Markets

5 JIM BYRD RBC Capital Markets

6 MARY CONDON Osgoode Hall Law School

7 BRAD TATE OMERS Capital Markets

8 GREG O'DONAHUE Ontario Teachers' Pension

9 Plan Board

10 BREANN KIRINCICH BlackRock

11 ALLISTER FIELD Manager, Enforcement, OSC

12 NEIL GROSS Component Strategies

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15 CRR, OSC

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1 --- Upon commencing at 9:03 a.m.

2 INTRODUCTION AND OPENING REMARKS:

3 MS. KOWAL: Hello and welcome  
4 to the OSC's roundtable on our new proposed  
5 regulation of business conduct in OTC derivatives  
6 markets. I'm Monica Kowal, vice chair with the  
7 Ontario Securities Commission and I'm absolutely  
8 delighted that you are all joining us here today  
9 for this very important discussion.

10 Business conduct regulation is  
11 one of the pillars of Canadian financial sector  
12 regulation. It promotes responsible behaviour and  
13 fosters confidence in Canada's capital markets.

14 The publication of Proposed  
15 National Instrument 93-101 -- we do know how to  
16 name our instruments -- marks an important step in  
17 the road to a comprehensive regulatory framework  
18 for OTC derivatives trading in Canada which  
19 already includes final rules on derivatives trade  
20 reporting, mandatory clearing and segregation and  
21 portability of customer clearing.

22 To begin, I would like to say  
23 a few words about the evolution of the OTC markets  
24 in Canada and globally.

25 As we all know, derivatives  
26 play an important role in the Canadian economy  
27 allowing companies of all sizes and across diverse  
28 industries to manage risk. Let me give you a few

1 statistics.

2                   In Ontario we have over 29,000  
3 active counterparties engaged in derivatives  
4 trading, and the notional amount of derivatives  
5 outstanding in Canada is in the order of  
6 \$39 trillion. In addition to the institutional  
7 and corporate markets that are the focus of our  
8 first panel this morning, in recent years we've  
9 also been observing a continuing trend to offer  
10 derivatives products to retail investors on  
11 on-line platforms frequently involving foreign  
12 exchange plays.

13                   The retail derivatives markets  
14 is going to be the focus of our second panel this  
15 morning.

16                   I should also underscore that  
17 the OTC derivatives markets are global and we have  
18 a high level of foreign dealer participation in  
19 the Canadian markets.

20                   Traditionally, OTC derivatives  
21 markets were focused on a few very sophisticated  
22 institutions whose only interest was to act in  
23 their own interest.

24                   However, as we saw in the global  
25 financial crisis, we saw the selling or, rather  
26 the mis-selling, of financial instruments that led  
27 to major losses for retail investors, for  
28 institutional investors and negatively impacted

1 economies around the world.

2                   The U.S. senate subcommittee  
3 report on the causes of the 2008 financial  
4 crisis identified a variety of troubling and  
5 sometimes abusive practices by investment dealers,  
6 and these practices included trading in OTC  
7 derivatives to exploit conflicts of interest with  
8 their clients.

9                   IOSCO has also explained the  
10 need for enhancing regulation of OTC derivatives  
11 markets, noting in 2012 that until recently OTC  
12 derivatives markets have been subject -- or have  
13 not been subject rather -- to the same level of  
14 regulation as securities markets. Insufficient  
15 regulation allowed certain participants to operate  
16 in a manner that created risks to the global  
17 economy that manifested itself during the  
18 financial crisis of 2008.

19                   Market misconduct in the  
20 global OTC derivatives markets has continued since  
21 the financial crisis and has had a harmful effect  
22 on investor confidence in markets.

23                   Since the financial crisis  
24 there have been several examples of financial  
25 institutions manipulating commodity, FX, credit  
26 and interest rate derivatives and benchmarks  
27 resulting in unfair advantages that these banks  
28 have exploited for profit.

1                   Recent reporting suggests that  
2 institutions have been fined over \$320 billion  
3 globally since the financial crisis for market  
4 misconduct. The proposed national instrument  
5 targets abusive behaviour by creating duties and  
6 accountabilities both on firms and the individuals  
7 that directly oversee a firm's derivatives  
8 trading.

9                   Most foreign regulatory  
10 regimes with active derivatives markets have  
11 implemented or modified business conduct standards  
12 for derivatives dealers in response to the  
13 failings that we witnessed in derivatives markets.

14                   The adversarial caveat emptor  
15 paradigm for OTC derivatives counterparties is no  
16 longer acceptable.

17                   With the introduction of this  
18 proposed national instrument, Canada joins  
19 international regulators in creating an  
20 internationally consistent regime for promoting  
21 responsible business conduct.

22                   The OSC's mandate is to ensure  
23 that the derivatives market operate in a fair and  
24 efficient manner that protects investors and  
25 derivatives counterparties from unfair, improper  
26 or fraudulent practices. It is with these  
27 objectives in mind that the CSA has published  
28 Proposed National Instrument 93-101 *Derivatives:*

1     *Business Conduct.*

2                     The fundamental objective of  
3     the Proposed National Instrument is to reduce  
4     risk, increase transparency and promote  
5     responsible conduct in markets by ensuring that  
6     derivatives advisers and derivatives dealers meet  
7     certain minimum standards of integrity and  
8     proficiency.

9                     Importantly, the Proposed  
10    National Instrument will also harmonize these  
11    rules for all participants in the Canadian  
12    derivatives market including federally regulated  
13    financial institutions, foreign dealers and other  
14    companies trading in derivatives.

15                    We're very excited to have you  
16    all here today. I look forward to hearing from  
17    our panel and from all of you in the audience.  
18    Please participate. We encourage participation  
19    throughout the discussion.

20                    We have an excellent group of  
21    panelists that Kevin will be introducing shortly  
22    with diverse perspectives representing academics,  
23    investor advocates, buy side, sell side, I think  
24    we have pension funds, banks, dealers, dealers  
25    servicing the retail market, different voices  
26    around the table.

27                    We're also very happy to have  
28    colleagues from the CSA here today as well as

1 federal partners, OSFI, the Bank of Canada, and  
2 the Federal Department of Finance, who have all  
3 been essential and valuable partners throughout  
4 the entire derivatives reform process in Canada.

5 So we're very excited about  
6 this important advance in OTC derivatives  
7 regulation in Canada, and we're delighted to have  
8 everyone here today, and I would like to invite  
9 Aaron Unterman from our derivatives branch here at  
10 the OSC to come take my seat and explain what the  
11 rule's all about.

12 MR. UNTERMAN: Thank you,  
13 Monica, and thanks to everyone for joining us for  
14 this important event, a roundtable on the  
15 derivatives business conduct national instrument.  
16 I think this will be a great opportunity to open  
17 the discourse on this important rule making area.

18 So before we begin the  
19 roundtable, I'm just going to walk through some of  
20 the key concepts that will be discussed by the  
21 panelists.

22 The intended policy  
23 objectives of this rule are to protect investors  
24 and counterparties, reduce risk, improve  
25 transparency and accountability and promote  
26 responsible business conduct in the OTC  
27 derivatives market.

28 The national instrument

1 accomplishes this by imposing duties and  
2 obligations on derivatives dealers and derivatives  
3 advisers.

4           It's an important step forward  
5 because it brings a uniform approach to a somewhat  
6 fragmented market for business conduct regulation  
7 in Canada. The uniformity will be both across the  
8 country and also across different dealer firm  
9 types and dealers regardless of whether they are  
10 in Canada or the U.S. or elsewhere in the world.

11           Importantly, the rule operates  
12 independently of registration and, therefore,  
13 entities like financial institutions that are  
14 exempted from registration under the Ontario  
15 Securities Act will be covered by this rule.

16           The first key question is,  
17 who is a dealer or adviser? And the national  
18 instrument adopts a business trigger. It asks,  
19 are you in the business of trading or advising  
20 derivative?

21           The companion policy includes  
22 key guidance on what that means, and includes  
23 indicia such as quoting prices, acting as a market  
24 maker, facilitating our intermediating trades.

25           So how do the requirements  
26 Apply? The national instrument is set up to adopt  
27 a two-tier approach. There's a set of core  
28 standards that apply to all participants, whether

1 sophisticated or retail. These include standards  
2 like conflicts of interest and fair dealing.

3           There's a higher level,  
4 elevated standards that apply to the  
5 retail market, and is a comprehensive customer  
6 protection regime for that market. The elevated  
7 standards include client-specific KYC and  
8 suitability obligations, as well as comprehensive  
9 risk disclosure and reporting.

10           This higher standard is  
11 commensurate with the risk profile and complexity  
12 of retail OTC derivatives.

13           The philosophy behind this  
14 approach is not that institutional market  
15 participants cannot benefit from these elevated  
16 standards but, rather, they are in a position to  
17 assess, negotiate and tailor the requirements that  
18 they need from their dealer or adviser.

19           We are very much looking forward  
20 to hearing the audience and panel's thoughts on  
21 this approach, particularly how the universal  
22 standards could apply differently depending on the  
23 sophistication of the counterparty.

24           We're also very excited to  
25 incorporate an innovative approach to increasing  
26 accountability at derivatives firms. We call this  
27 the senior manager regime.

28           The regime, which is based on

1 a broad UK initiative, addresses gaps in corporate  
2 responsibility between the trading floor and mind and  
3 management of a firm. The way it accomplishes  
4 this is it creates duties and responsibilities for  
5 a senior manager who is directly responsible for a  
6 derivatives line of business at a firm.

7 The key responsibilities and  
8 obligations that apply to the senior manager are a  
9 duty to supervise and promote compliance, a duty  
10 to take steps to prevent and respond to breaches  
11 of the act or rules, including regulatory  
12 reporting for serious misconduct.

13 This is not a strict liability  
14 regime, but it does create obligations on the  
15 senior manager to take reasonable steps to address  
16 and prevent misconduct.

17 And finally, members of the  
18 audience will be interested to know that there  
19 are exemptions in this rule. There's important  
20 exemptions for end-users, and that is persons or  
21 companies who trade with regularity but do not do  
22 other dealer-like activity, like making a market,  
23 soliciting or intermediating transactions.

24 We also include a substitute  
25 compliance exemption, and that's an exemption for  
26 institutions that are regulated equivalently. So  
27 an example of that would be a foreign dealer that  
28 is subject to a market conduct regime in their

1 home jurisdiction.

2 In conclusion, we've tried  
3 to create a regime that offers a high level of  
4 protection, one that is similar to the protection  
5 available in other international derivatives  
6 markets. We've also tried to balance interest.  
7 We've tried to provide a very high level of  
8 protection but also create a flexible and  
9 competitive market for derivative firms to operate  
10 in.

11 So with that, I'm very excited  
12 to hear the discussion both from the panel and  
13 audience today, and I'll hand it over to Kevin to  
14 introduce the panel.

15 TOPIC 1: INSTITUTIONAL DERIVATIVES

16 MR. FINE: Thank you, Aaron,  
17 and thank you, Monica, as well. That's a great  
18 way to set the table for the discussion.

19 I also want to welcome  
20 everyone, particularly on a Monday morning and  
21 given the subject and the weather.

22 My name is Kevin Fine. I'm  
23 the director of the derivatives branch at the OSC  
24 and I'll just do a quick explanation of the

1 format.

2 It's relatively simple. Two  
3 panels. First panel is a panel with institutional  
4 dealers and investors. Second panel is a retail  
5 panel.

6 We'll go some way to between  
7 10:30 and 10:45, we'll have a break. There will  
8 be opportunity for questions and comments. You've  
9 all got comment cards. If you like, you can write  
10 down questions or comments and we'll take those up  
11 during the course of the panels, or alternatively,  
12 there are two mics. If Asad and Hilary can put  
13 up their hands back there, they will come to you  
14 with a mic if you would like to ask your question  
15 or comment.

16 Just to clarify what we won't  
17 be doing. We won't be answering specific drafting  
18 questions. That's not the nature of this  
19 roundtable. Definitely we're -- glad to hear  
20 those and we'll take those in, but really we're  
21 mostly here to listen to everyone's views with  
22 regards to it. If you do have specific drafting  
23 comments,  
24 those would be great to receive in writing as  
25 part of the comment period for the rule itself.

26 There is a transcript

1 being taken of today's event which will be posted  
2 on the OSC's website shortly after.

3 So with that, I wanted to  
4 introduce the panel, and the first thing I want to  
5 say before that is on behalf of all the panelists,  
6 the views they express today may not necessarily  
7 be the views of their institutions, and it could  
8 be their own personal views, and they can add  
9 anything to that as well.

10 So starting on my left, and  
11 perhaps just put up your hand when I mention your  
12 name so the people in the cheap seats can see who  
13 you are.

14 We have Jim Byrd from RBC  
15 Capital Markets, managing director and head of  
16 fixed income and currencies. Beside Jim we have  
17 Breann Kirincich from BlackRock, and she's the  
18 vice president of legal and compliance. Then next  
19 to her we have Brad Tate from OMERS Capital  
20 Markets, he's the director legal. Then beside  
21 Brad we have Greg O'Donahue from Ontario Teachers  
22 Pension Plan, director and senior legal counsel.

23 Then starting around this side  
24 we have Mike Fisher from BMO Capital Markets, he's  
25 the managing director and head of global rates for  
26 BMO. Then Ron Hoover from CIBC Capital Markets,  
27 managing director of regulatory change management.  
28 And then Mary Condon who is professor and

1 associate dean at Osgoode Hall Law School.

2 With that, we're going to jump  
3 into the questions.

4 We're going to start with a  
5 general question, and what I would like to do is  
6 -- everyone is going to have a general question to  
7 comment on the rule itself. Once we're through  
8 that initial stage, then I'll ask if anyone has  
9 some particular questions and I'll try to stop the  
10 questions if someone has a comment to make.

11 As opposed to some of these  
12 roundtables, a comment is actually welcome as  
13 opposed to a question. So if you just have  
14 something you would like to get off your chest,  
15 please do so because we're here to -- we want to  
16 start this process of hearing what people think of  
17 the rule.

18 So just a general question is  
19 what are your general impressions of 93-101. And  
20 for the dealers, how do the business conduct  
21 requirements compare to your existing business  
22 practices in your institutions.

23 Jim, if you don't mind  
24 starting us out?

25 GENERAL DISCUSSION OF DISCUSSION 1:

26 MR. BYRD: Thanks, Kevin.

27 When Monica gave the  
28 introduction I was getting a little nervous

1 initially, but thanks for resetting the tone a  
2 little bit.

3 To date, to the best of my  
4 knowledge, no Canadian dealers have been in  
5 trouble over interest rate swaps or derivatives in  
6 Canada. So thanks for having us.

7 General impressions. I guess  
8 I would say initially my first comment would be  
9 I'll leave it to the lawyers in the room to  
10 discuss the implications of having the Canadian  
11 Securities Administration regulating banking into  
12 these -- in non-securities related transactions  
13 would be my very first point.

14 Generally, the Canadian  
15 derivatives markets are well-behaved,  
16 well-functioning, and these rules in many  
17 instances are quite similar to the rules that many  
18 of us are already dealing with under Dodd-Frank.  
19 So a lot of our swap salespeople, traders are  
20 already used to these rules when they face U.S.  
21 persons. So from an implementation and awareness  
22 standpoint, I think we're already off on a pretty  
23 good foot.

24 The rules strike me as being  
25 drafted with a bit of an equity bent and a bit of  
26 a retail bent. I think -- you know, outside of  
27 the FX markets when you're talking about FX  
28 forwards there is not a lot of retail

1 participation in the interest rate derivative  
2 market in Canada.

3           The average trade size on an  
4 interest rate swap on trade web on a theft is  
5 about 110 million in size. So quite large. And  
6 for the most part, clients dealing on that  
7 platform are very aware of the market, the  
8 transparency, duty owed to the dealers, what their  
9 perception of fair dealing is and I guess market  
10 corrections that are in place for correcting them.

11           However, when you talk about  
12 FX there are many implications. I think when you  
13 talk about retail FX, middle market FX. Give you  
14 an idea. RBC has 250,000 small business accounts  
15 that -- 100,000 which trade FX.

16           So in terms of FX forwards, FX  
17 options, FX rules, it could be quite impactful to  
18 the bank and onerous in terms of the application  
19 of the rules.

20           In certain places I would say  
21 the rules can be a bit vague, particularly around  
22 the definition of derivatives dealer, what's an  
23 end user, who do these rules actually apply to.

24           If we're only talking about  
25 Canadian dealers, are we talking about all  
26 Canadian banking entities regardless of what  
27 region you are in or operating in, what currencies  
28 you are trading in.

1                   So I think those are some of  
2 the things that we would look for further  
3 clarification on in terms of applicability.

4                   I guess that would be my  
5 opening salvo. I have lots more.

6                   MR. FINE: Thanks very much,  
7 Jim. Breann?

8                   MS. KIRINCICH: I'll start by  
9 giving you a little bit of a background about  
10 BlackRock. BlackRock is the world's largest asset  
11 manager with over 5 trillion in assets under  
12 management globally, and the third largest asset  
13 manager in Canada.

14                   We service both retail and  
15 institutional clients and use derivatives on both  
16 sides of our business.

17                   For hedging purposes for many  
18 of our i-Shares funds and on behalf of a wide  
19 variety of clients on the institutional side, many  
20 of whom are some of Canadian's largest pension  
21 plans and asset managers. So we utilize FX for  
22 hedging purposes, futures for equitizing cash and  
23 swaps and repos through strategies that seek to  
24 generate additional returns, are just some  
25 examples.

26                   In terms of our overall  
27 impressions of 93-101. We support the CSA's  
28 overall policy goals that Aaron articulated of

1 protecting investors, reducing risk, improving  
2 transparency, and as the voice of and a fiduciary  
3 to our clients, we have a vested interest in the  
4 development of sustainable and fair business  
5 conduct standards that protect investors and  
6 promote the CSA's objective.

7 We appreciate the time the CSA  
8 is taking to do this panel today and are grateful  
9 for the opportunity to speak.

10 That being said, we do have  
11 some questions and concerns surrounding certain  
12 areas of the proposed reforms.

13 As a general note, we would  
14 encourage the CSA to consider the underlying  
15 policy goals of the reforms and whether these can  
16 be achieved for existing registrants through the  
17 existing regime in National Instrument 31-103,  
18 supplemented as necessary, rather than  
19 implementing an entirely new regime, particularly  
20 in light of the other initiatives that the OSC has  
21 undertaken aimed at reducing regulatory burden and  
22 duplicative regulation.

23 We also have some questions  
24 surrounding some of the reforms as they relate to  
25 institutional clients. The proposed introduction  
26 of the new requirement for a senior derivatives  
27 manager, as well as the lack of exemptions in the  
28 rule for advising managed accounts.

1                   And we also have questions on  
2 how the new fair dealing standard will apply and  
3 be interpreted in the face of other regulatory  
4 changes surrounding the introduction of a best  
5 interest standard, particularly if, as expected,  
6 this won't be a harmonized standard across the  
7 country, whereas these rules will be.

8                   So as Jim said, that's it  
9 for now, but I will have more to say.

10                  MR. FINE: Thanks very much.  
11 Brad?

12                  MR. TATE: From a buy side  
13 perspective, we welcome the changes -- the  
14 proposed changes. We're focused more on two  
15 issues, the fair dealing issue and the conflicts  
16 of interest provisions. And I think that the  
17 principles-based approach is something that we  
18 welcome.

19                  It will be interesting to see  
20 whether or not this is only getting at deceptive  
21 and manipulative trading practices and fraud type  
22 situations like we have seen with FX and LIBOR  
23 rigging, or if it gets at something which is a  
24 little bit more of a gray zone before you actually  
25 get to something that's actually fraudulent or  
26 where a party is looking to manipulate the market.

27                  But I do think that the  
28 proposed language within the legislation does

1 allow for flexibility in that regard, and it is  
2 something that we are very focused on ensuring  
3 that we get best execution as well as we deliver  
4 on our pension promise.

5 So it's something that we're  
6 very focused on in terms of fair dealing and  
7 avoidance of conflicts of interest and -- yeah.  
8 I think that it's -- the interesting thing will be  
9 there's sort of a continuum in terms of honesty  
10 and integrity and fair dealing, and I think it's  
11 going to be on the enforcement side in terms of  
12 how that is actually interpreted.

13 That's it for my preliminary  
14 comments.

15 MR. FINE: Thank you. Greg?

16 MR. O'DONAHUE: Also buy side  
17 perspective. So I agree with Brad that I would  
18 support the initiatives brought up in this  
19 national instrument. I also applaud the CSA and  
20 the OSC and all those involved by making it a  
21 national instrument and not having 13 different  
22 rules in this jurisdiction. I think that was  
23 extremely important.

24 We voiced that opinion before  
25 and we're happy to see the last few set of rules  
26 is now coming out as national instruments being  
27 harmonized across Canada.

28 Being harmonized

1 internationally is very important as well, but  
2 it's also very important to be harmonized within  
3 Canada as well. It makes it much easier for  
4 people to implement. And I'm saying that only  
5 being here in Ontario. But I was just seeing  
6 other people being very frustrated with that  
7 process of how that went.

8                                 With respect to the rules  
9 itself, supportive of the rules. Generally  
10 supportive of business conduct rules. A couple  
11 areas where we see maybe some discussion is to  
12 happen is in the definition of derivatives dealer.  
13 It seems to capture everyone, and technically from  
14 that standpoint it seems to capture all of the buy  
15 side, anyone who transacts in it.

16                                 I know there is a companion  
17 policy and the companion policy does make it very  
18 clear that I think that pulls the buy side back  
19 out. I always like to see that in a rule as  
20 opposed to companion policy and how that works.

21                                 I understand that that  
22 probably would not happen in this case and I know  
23 where this rule came from. So I'm pretty sure  
24 that would not happen, but it's a preference more  
25 than anything.

26                                 The other thing with the split  
27 between the different types of buy side entities,  
28 I guess I was appreciative of that split. I think

1 it's an appropriate split but I think we're going  
2 to get into that afterwards.

3 The one thing that sort of  
4 caused a bit of -- not concern, and this may be a  
5 surprise coming from a buy side entity, but there  
6 is a requirement of segregation of assets, and  
7 it's not so much a concern at this point. It's  
8 just I really need to give it further thought.  
9 Segregation of assets in a clear space makes a lot  
10 of sense because if a counterparty goes down, you  
11 can move your assets very freely.

12 Does that make sense when  
13 we're talking about all transactions? Does it  
14 move into the unclear space? Does that change  
15 things? Does it increase pricing in a world where  
16 increased pricing is already going to happen  
17 because of the uncleared margin rules? There's a  
18 bit of thought that I need to do myself on that  
19 before I have a full picture on it, but it's just  
20 something I was thinking of as I was going through  
21 the rules at this early stage.

22 MR. FINE: Thank you. Mike?

23 MR. FISHER: I guess back to  
24 dealer side. I'm perhaps a little less excited  
25 about the regulation and buy side.

26 Let me also state that by  
27 trade I'm an interest rate swap dealer. I did  
28 that for about 10 years, starting before the

1 financial crisis and now continuing on until  
2 afterwards.

3                   Executing an interest rate  
4 swap with anybody we deal with is a substantially  
5 different process than it was 10 years ago. So  
6 regulation -- the market has changed the size of  
7 the market, the depth. Certainly the regulation  
8 around doing a swap has changed and has, in my  
9 view, kept up with the growth of the market here  
10 in Canada and abroad.

11                   It's been mentioned by a  
12 couple of my colleagues harmonization, equivalence  
13 and comparability. We, the Canadian banks, have  
14 been pretty good actors on the world stage so far.  
15 We are regulated by many different entities, many  
16 different jurisdictions already, and at the end of  
17 the day I would just like to see the playing field  
18 remain as level as possible such that we're not  
19 re-regulating something that has already been  
20 done.

21                   The Canadian experience is  
22 always different than the U.S. or the UK or  
23 Europe, and there will be modifications required,  
24 I think, to suit Canadian experience. But in  
25 general, our own internal code of conduct is very  
26 much like the rule as it's drafted right now, so  
27 we are already reacting that way. In practice,  
28 we're already acting that way.

1                   Also, the foreign dealer  
2 exemption. We, as Canadian banks, are certainly  
3 not exempt from complying with Dodd-Frank or  
4 MiFID. We have to make changes and allocate  
5 resources to transact in those markets. And I  
6 question the logic behind giving foreign dealers a  
7 complete exemption from doing the same thing in  
8 our market.

9                   At the risk of it sounding  
10 like a joke, if a Canadian client sees a swap move  
11 from a European bank, a U.S. bank or a Canadian  
12 bank, are they subject to the same suitability of  
13 know-your-client rules, or how do we make sure  
14 they are actually well and truly comparable?  
15 That's it for me. Thank you.

16                   MR. FINE: Thank you. Ron?

17                   MR. HOOVER: Kevin, thanks for  
18 the opportunity to participate in this.

19                   The comment I would make is  
20 that while the rules have been out for eight  
21 weeks, it's very comprehensive. It's a change in  
22 the way that we're managing the financial industry  
23 in Canada, and I think that what I wanted to do  
24 was just sort of make a high level comparison  
25 between the public securities market and that of  
26 the OTC derivatives market because I think the --  
27 there's quite a difference in the demographic and  
28 the modes of behaviour between the two.

1                   So if I could just sort of  
2 follow on that theme. I would say the public  
3 securities markets are predominantly used and  
4 participated by the public. You know, they are  
5 fairly highly dependent on advice and therefore  
6 fairly prescriptive set of rules with -- in terms  
7 of rules of engagement for them is necessary and  
8 appropriate.

9                   One of the interesting things  
10 and differentiators between the OTC derivatives  
11 market and public securities is that once the  
12 transaction is consummated I suppose in the proper  
13 way, both parties can move unfettered.

14                   And this is in contrast to the  
15 OTC market where the vast majority of participants  
16 are highly sophisticated, rely on their own  
17 intelligence and technology to determine what they  
18 need to execute and what's appropriate for their  
19 needs and risk parameters.

20                   You know, in many instances I  
21 think there's internal governance rules around  
22 ensuring that any derivatives that are transacted  
23 are transacted in a competitive framework, so --  
24 and counterparties to non-clear derivatives are  
25 required to do a significant amount of due  
26 diligence upfront, exchange documentation so that  
27 everybody is aware of the rules and  
28 responsibilities prior to trade. So I think that

1 again is another significant change.

2 I would also say that over the  
3 35-year life span of the OTC derivatives markets  
4 there's been a significant evolution in terms of  
5 the processes involved, the way in which we  
6 transact with counterparties. There's been a fair  
7 bit of, a lot of interaction and guidance with  
8 prudential regulators.

9 We've -- the industry  
10 associations like ISDA have made more of a global  
11 understanding around the responsibilities of the  
12 counterparties, and certainly another part of the  
13 evolution has simply been the experience we've had  
14 over that period of time.

15 So we've got dispute  
16 mechanisms in place. They are codes of conduct,  
17 as Jim has eluded to, and every day the -- front  
18 and centre with respect to how we conduct  
19 ourselves are driven by, you know, risk policies,  
20 you know, legal reputational concerns, and that's  
21 really in the forefront of how our sales and  
22 marketing people conduct themselves with our  
23 clients so...

24 Another issue that I think  
25 Breann may have raised is that the OTC derivatives  
26 market is global in nature. Canadian participants  
27 are -- have co-dependency on international  
28 participants, and so we need to ensure that

1 whatever we're going to put in place here  
2 recognizes the fact that it is global in nature  
3 and we are very dependent on the continued support  
4 and participation of all of the global  
5 organizations that our businesses sort of rely on.

6 Part of that is the -- that  
7 co-dependence creates a certain amount of  
8 liquidity, and in the OTC derivatives markets I  
9 think that liquidity is much more of a necessity  
10 than it is in the public Canadian securities  
11 market. So it's another element here that needs  
12 to be considered.

13 Having said all that, you  
14 know, I realize we're at the start of the process  
15 of trying to come to the rules that will determine  
16 how we act going forward. So I'm optimistic that  
17 we can meld what we've already got with the  
18 concerns that you have so that we can move forward  
19 in a fairly productive way.

20 MR. FINE: Thanks, Ron. Mary?

21 MS. CONDON: Thanks, Kevin.

22 I'm not entirely sure what the academic role on  
23 this panel is yet, maybe I'll find it out, and in  
24 particular I'm a little worried it's to be the  
25 target of other concerns and take that attention  
26 away from the regulators. So I'm willing to step  
27 into that role just to get the ball rolling.

28 I have two or three comments

1 to make of a high level which do connect with some  
2 of the comments that have already been made.

3 First of all, I do want to  
4 congratulate the securities regulators for  
5 developing an approach to thinking about business  
6 conduct in the derivatives space. I can see, or I  
7 think it's obvious from the rule that part of the  
8 rationale here is to develop consistent regulatory  
9 approach to a number of different types of  
10 instruments that investors could participate in.  
11 But the notice I think also points out that one of  
12 the challenges is to figure out to what extent the  
13 rule should be the same across different products  
14 with respect to business conduct and to what  
15 extent they should be customized for particular  
16 practices in the derivatives trading space.

17 So on the latter point with  
18 respect to what might be specific to derivatives  
19 markets, I think the point is worth making that  
20 there is a link between business conduct  
21 regulation and the avoidance of systemic  
22 implications for the markets, and this goes a  
23 little way to underscore the point that Monica  
24 made earlier.

25 In other words, I think that  
26 there is an independent rationale for business  
27 conduct regulation in the derivatives space  
28 because pursued effectively it can assist in

1 preventing systemic risk to the markets. Although  
2 it's not in the derivatives context, one Canadian  
3 point in that direction might be the recent Home  
4 Capital incident. Configured a bit differently,  
5 it's a different product but it could have had  
6 systemic implications for financial markets.

7                   So I think it is important for  
8 securities regulators to think about issues of  
9 systemic risk, and we know that the Supreme Court  
10 recently has indicated that securities regulators  
11 do have a role to think about those issues.

12                   So the connection between  
13 business conduct regulation and systemic risk did  
14 surface a little bit for me in the rule when I was  
15 reading through -- or in particular the policy,  
16 when I was reading through what is otherwise quite  
17 helpful expression of what the business trigger  
18 might actually mean in the derivatives context.

19                   So the articulation of the  
20 scenarios there were helpful, but I did wonder  
21 about the exclusion of organized and repetitive  
22 proprietary trading from the business trigger in  
23 the sense that if one of the rationales here is to  
24 use business conduct regulation to manage systemic  
25 risk, I'm not sure necessarily why we would ignore  
26 the proprietary trading a bank does and focus only  
27 on the trading it does on behalf of others. So  
28 perhaps there's an opportunity to come back to

1       that issue later.

2                       Let me just make a couple of  
3 other points, and here I'm picking up I think on  
4 comments made by Brad in particular on both the  
5 fair dealing and the conflict of interest parts of  
6 the rule. To me there is a difference between how  
7 the rule handles both of those issues.

8                       With respect to fair dealing.  
9 I think -- and again I don't want to come across  
10 as particularly critical here, but there's really  
11 no content to the notion of what fair dealing  
12 means, either in the rule or the policy. I mean,  
13 I understand that it is intended to be a  
14 principle-based approach but I do think that -- it  
15 would be helpful to have a little bit of guidance  
16 from the regulators about some minimum thresholds  
17 here, either by way of saying here are some  
18 examples of what fair dealing might require, which  
19 would be one way of capturing this, or in the kind  
20 of negative billing area to say here's a bunch of  
21 things that are absolutely not fair dealing, so if  
22 you are doing these it's going to cause you  
23 problems.

24                       So we can talk, and I hope we  
25 will talk a little bit later about what some of  
26 the participants in the markets think would  
27 constitute a minimum set of examples of fair  
28 dealing or, as I say, the alternative. But I do

1 think a little bit of extra guidance there might  
2 be helpful.

3                   With respect to the conflict  
4 of interest provisions, the thing that's  
5 interesting there is that the policy does have a  
6 lot of content about what might be appropriate  
7 approaches by derivatives dealers to conflict of  
8 interest problems.

9                   There's a bit of a disconnect  
10 between the policy and the rule, which is that the  
11 policy talks about, in certain cases, the need to  
12 avoid conflicts of interest. The rule doesn't use  
13 the word avoid.

14                   So again, I guess speaking  
15 from perhaps the perspective of those who might  
16 interact with derivatives dealers, I think it  
17 might be worth thinking about whether (inaudible)  
18 context of conflict of interest, it might be  
19 important to actually identify that as the  
20 appropriate response in the rule itself.

21                   So I'll stop there except just  
22 to note that I hope we'll get a chance to talk  
23 about the senior derivatives manager innovation in  
24 the rule because I think there's a number of  
25 interesting issues there, one with respect to  
26 organizationally what's the relationship between  
27 the senior derivatives manager who's got some  
28 personal responsibility for what happens in

1 derivatives trading and the chief compliance  
2 officer, to the extent that the policy  
3 contemplates that they are not the same person,  
4 and then a number of issues in the Canadian  
5 context which might have to do with acting as a  
6 Canadian subsidiary of a global bank and where is  
7 the -- what's the reporting requirement for the  
8 senior derivatives manager in Canada.

9 I know that this issue came up  
10 in the UK with respect to U.S. banks that had UK  
11 subsidiaries, so I think it might be helpful to  
12 talk about those issues too.

13 Thank you.

14 MR. FINE: Thank you very  
15 much, Mary.

16 Before we move onto the next  
17 question, would anyone like to jump in on any of  
18 the comments that just came up? No. Okay.  
19 That's fine. We'll continue.

20 So a question for the dealers  
21 around the table. How did the business conduct  
22 requirements that we propose compare to the  
23 business conduct requirements of foreign  
24 jurisdictions that you're already having to deal  
25 with?

26 If you can speak to your  
27 experiences.

28 MR. BYRD: Sure. So just to

1 give you an idea initially, RBC has a swap  
2 compliance manual already in place, obviously  
3 pre-dating these rules. It's 238 pages long. It  
4 has numerous pages devoted to fair dealing,  
5 conflict of interest, KYC, whatnot. So the rules  
6 are not massively dissimilar in that respect to  
7 the rules that we already have in-house. Sounds  
8 like Mike would say the same thing about BMO in  
9 terms of in-house rules.

10 I think the biggest area of  
11 differentiation is around the definition within  
12 EPD, non-EDP and the sizes compared to the some of  
13 the international rules.

14 The senior management regime  
15 obviously is quite different than anything we have  
16 in Canada, and I would say it's a little bit  
17 different to what's going on in the UK and in the  
18 U.S. Those would be kind of more glaring ones, I  
19 would say, but for the most part I think quite  
20 similar to some of the rules and regulations we've  
21 already seen elsewhere.

22 MR. FINE: Mike?

23 MR. FISHER: Agreed. I've  
24 talked a little bit about our branch manager in  
25 the UK who is now becoming subject to the UK  
26 senior manager regime, and he had previously  
27 worked here in Canada. I asked him, so how is it  
28 different? If we adopt this regime in Canada

1 what am I likely to have to do to deal with this  
2 new situation?

3                   And just for background, he's  
4 responsible for all of our UK branches, includes  
5 equities, commodities and all the different asset  
6 classes. So he said he can't personally be  
7 intimately familiar with all of the activities on  
8 all those desks, so there exists a delegation  
9 structure so that he can choose somebody and say,  
10 you are going to be my delegate- -- you are going  
11 to be responsible for anything that happens in  
12 equities, and so on and so forth, which makes  
13 sense in theory.

14                   However, his complaint or his  
15 observation about that was the papering and the  
16 work that needed to be done to go around that was  
17 significant in many cases. And let's say you were  
18 in his position and you have anywhere from eight  
19 to 10 asset classes that you are responsible for,  
20 that involved a significant amount of work  
21 just to make sure that you had somebody who was  
22 responsible for observing all the businesses under  
23 your supervision.

24                   MR. FINE: Ron, do you want to  
25 comment on that?

26                   MR. HOOVER: Yeah. I think  
27 we're all cognizant of having to create  
28 significantly new compliance programs for -- that

1 may actually already be somewhat adhered to as a  
2 result of different jurisdictional requirements.  
3 So I think the interesting thing about what  
4 happens as we go through this process is where we  
5 think substitute compliance is justifiable, and so  
6 I think from the dealer's standpoint -- again, as  
7 we go through and negotiate what parts are not new  
8 and how we can accommodate what's required based  
9 on what we already do will be an interesting part  
10 of the dialogue.

11 MR. FINE: Thanks.

12 So I take it from the  
13 responses that the UK regime is a new regime, so I  
14 assume some of the kinks are still being worked  
15 out, but it doesn't sound like you've heard that  
16 there were insurmountable issues within the regime  
17 at this point. Is that fair to say?

18 MR. FISHER: Again, this is my  
19 own personal opinion. The idea that there could  
20 be somebody who was manipulating a benchmark and  
21 then for the firm to say that is uniquely that  
22 person and for the person to point out to the  
23 firm, oh, no, it was everybody else, management  
24 was fully aware.

25 I think that this is a type of  
26 regulation that's designed to prevent that from  
27 happening in the future, and I completely  
28 understand that.

1                   I think, again, as you say,  
2     there will be kinks to find out where the  
3     accountability in the event if something does  
4     happen will actually lie in who will have their  
5     bonus clawed back or who will go to jail or how  
6     that sorts itself out.

7                   I don't think we've had  
8     anything happen since they started the senior  
9     manager's regime and I hope we don't but -- and I  
10    hope that certainly that doesn't happen here as  
11    well.

12                   MR. HOOVER:  If I could just  
13    add to that.  It appears to me, not being an  
14    expert on the senior management regime in the UK,  
15    it seems to be more geared around overall culture,  
16    and from an enterprise-wide perspective as opposed  
17    to something that is very product specific.

18                   But I think that's -- again,  
19    it requires a fair program to ensure that we can  
20    represent to the regulators that we're adhering to  
21    what's required.

22                   MR. FINE:  Before we move on  
23    to the next question, are there any questions or  
24    comments from the audience at this point on what  
25    you've heard?  Okay.  So we'll jump forward.

26                   93-101 takes a two-tiered  
27    approach to customer protection based on the level  
28    of sophistication or financial resources of the

1 customer. It establishes a fair dealing  
2 requirement, requirements regarding responding to  
3 conflicts of interest, a subject that has been  
4 brought up already, and know-your-derivatives  
5 party obligations that apply to dealers when you  
6 are advising your customers.

7 The questions are, do these  
8 general obligations sufficiently protect  
9 institutional customers and are there any  
10 requirements that currently only apply to the  
11 retail customers that you think also should apply  
12 in the institutional environment.

13 So I would ask our buy side  
14 perhaps over here, if Breann wants to start.

15 MS. KIRINCICH: Sure. So we  
16 think that taking a two-tiered approach based on  
17 the level of sophistication of clients is  
18 appropriate and is consistent with the regime  
19 currently in place under National Instrument  
20 31-103, which would make it adaptable for a lot of  
21 registrants who already structure their business  
22 in this way.

23 From an asset management  
24 perspective, I would say our main comment on this  
25 is that we were disappointed to see an additional  
26 definition of sophisticated clients entering the  
27 rules given that we already have the definitions  
28 of accredited investor for the client in 31-103.

1                   And in particular I know there  
2 was a question surrounding whether we should be  
3 using the definition of institutional client that  
4 was proposed in this 33-404 amendments. And we  
5 don't support the use of that definition, a  
6 comment we raised during that comment period as  
7 well. We feel this definition is unduly onerous  
8 and introduces too high of a threshold for  
9 institutional clients at 100 million [dollars] given the  
10 size of the Canadian market.

11                   I think inconsistencies in  
12 definition create a lot of issues for both  
13 industry participants and clients alike and  
14 complete confusion, and for that reason we would  
15 strongly advocate that the CSA consider using the  
16 existing definitions in 31-103.

17                   Another comment that we have  
18 on this two-tier approach is that we were  
19 disappointed to see that managed accounts are  
20 carved out of the exemption for eligible  
21 derivatives party.

22                   In our business, the type of  
23 clients that we have managed accounts for are some  
24 of our largest, most sophisticated clients who are  
25 often the most knowledgeable about investment  
26 products and derivatives and simply want the bespoke solutions.

27                   So practically it doesn't make

1 sense they should be provided with full scale  
2 retail late disclosure, as opposed to our other  
3 institutional clients who are carved out.

4           And I guess it's just a third  
5 point. We noted that the general prong of the  
6 eligible derivatives party requirement that  
7 require some sophisticated clients who represent  
8 in writing that they have the requisite knowledge  
9 about the derivatives products. We question the  
10 effectiveness of this and will likely result in us  
11 having to include a rep in our client contracts  
12 which may be difficult to obtain given the  
13 vagueness of the provision and it will likely be  
14 difficult for both clients and industry  
15 participants to really interpret what it means and  
16 what the bar is for the requisite level of  
17 knowledge, and may actually have the impact of  
18 discouraging clients from using derivatives in  
19 their accounts that may otherwise be suitable  
20 given the knowledge qualifier.

21           So we think overall there's  
22 really no need for an additional knowledge  
23 qualifier given the high level of standards that  
24 are already in place in the definition.

25           MR. FINE: Thanks. Brad?

26           MR. TATE: We do support the  
27 two-tiered approach. From my perspective, the key  
28 differences are product suitability as well as

1 other requirement that certain less sophisticated  
2 parties be provided with fair terms and pricing.

3 And from OMERS perspective, we  
4 have very sophisticated program managers who have  
5 a lot of expertise in the area of derivatives and  
6 we also have a full trading desk whose job is  
7 seeking best execution.

8 So certainly there are many  
9 ways that internally we can handle ensuring that  
10 -- first of all, that the products that often we  
11 are going out to look to execute a hedging  
12 strategy or seek broad market exposure, that's us  
13 who has the ability to go out to multiple dealers  
14 and to ensure that we're getting the best pricing  
15 from our various dealers and to know that what  
16 we're seeking to do is something that's in our  
17 best interest.

18 So I don't think that we need  
19 that level of protection in the sense that we are  
20 a sophisticated party in this area. So I see more  
21 the focus again on fair dealing and conflicts of  
22 interest of the areas that we're particularly  
23 focused on and are receptive to.

24 MS. CONDON: If I can just  
25 sort of jump in on that. It does seem to me that  
26 there is an argument to be made. It's admirable  
27 that sophisticated parties are willing to bear the  
28 cost of identifying best execution strategies, but

1 I think there's also an obligation on the  
2 regulators to think about who is the best situated  
3 to bear those costs of execution. It could be  
4 that it's the buy side, but it could also be that  
5 it is -- because of their repeated involvement in  
6 the market, it's more appropriate that the sell  
7 side bear the cost.

8 I guess the related point I  
9 would make is that it seems to me that best  
10 execution is something that speaks to the  
11 credibility and confidence in the markets as a  
12 whole. That's certainly the approach I think  
13 that's taken in the security space, is that best  
14 execution is something that elevates the  
15 credibility of the market.

16 So it does seem to me that it  
17 might be one of those areas where everybody  
18 operating in the market should be entitled to  
19 expect.

20 MR. TATE: Just to counter. I  
21 think -- this is my personal view, but the OTC  
22 market is very different from the securities  
23 market in terms of bid-offer spreads, and you  
24 really need to be able to go to various dealers to  
25 ensure that you're getting the best pricing. And  
26 I don't think -- if one dealer is quoting a  
27 particular price for a less liquid instrument, and  
28 if that is far more expensive than what another

1 dealer is quoting it could just be due to that  
2 dealer's internal costs and not necessarily, a,  
3 that they are not providing you with fair terms  
4 and pricing.

5 In some cases I think it's  
6 difficult for -- I think that institutional  
7 investors certainly have, due to our various  
8 counterparties that we may face, we have the  
9 ability to, for instance, go to four dealers and  
10 get quotes from those dealers and ensure that we  
11 are getting best execution which, I believe if you  
12 are a retail client you don't necessarily have  
13 that same scope to be able to go out to that many  
14 counterparties and ensure that you are getting the  
15 best terms.

16 I do think certainly it  
17 becomes a little bit more of a fuzzy concept if  
18 you're facing a sophisticated counterparty in  
19 terms of -- to impose that requirement that they  
20 provide us with best execution. If that were  
21 something that were inserted within the  
22 regulations it would not hurt, but I don't think  
23 that it's necessary.

24 MR. HOOVER: Can I just...

25 MR. FINE: Sure.

26 MR. HOOVER: One of the things  
27 we all need to keep in mind is that the degree of  
28 information technology that is certain to have

1 emerged over the last few years is such that, you  
2 know, people -- like participants can obtain a lot  
3 of information about underlying products that they  
4 are trying to put together. And at the end of the  
5 day they do have the ability to go out and look  
6 for competitive pricing. So it's not as though  
7 participants are necessarily captive, and  
8 certainly the rationale for different participants  
9 to execute particular transactions could be widely  
10 different, and so sort of trying to put a square  
11 peg in a round hole it's a re-occurring theme here  
12 that this market is a little different, so that  
13 needs to be borne into account.

14 MR. O'DONAHUE: I agree with  
15 that, Ron, and I think the sophistication of the  
16 entities at this particular level -- and I don't  
17 know whether the level is set at the appropriate  
18 level, but when we're talking about institutional  
19 clients that may be another discussion.

20 I think the sophistication is  
21 at least as sophisticated as what you see at a  
22 bank with respect to these institutions. I think  
23 it would be very tough if I had a sell side coming  
24 to me saying you needed to enter into a particular  
25 product because you want to do this when I have  
26 guys that have been trading it for 30 years that  
27 know exactly how our liabilities work and how that  
28 would work better than someone at the sell side

1 can even imagine that would be.

2 So that would be a tough sell,  
3 I think. The sophistication is, as Brad said, one  
4 of the key things here to delineate the difference  
5 between the two sets of groups, and I thought it  
6 met an appropriate balance for sure.

7 Breann, you had some great  
8 points about some definitions. Generally you want  
9 definitions to be pretty consistent across the  
10 board, so you are not trying to think how does  
11 this fit with this rule as opposed to another  
12 rule. Yeah, good points.

13 MR. FINE: Just to follow-up.  
14 The three of you look at the rule, there is no  
15 additional protection you're dying to have that  
16 you see that that's not there. Is that fair to  
17 say?

18 MR. O'DONAHUE: That's fair.

19 MR. FINE: Thank you.

20 Any audience questions or  
21 comments? Okay. We'll keep moving here.

22 So this follows actually up on  
23 the question that Professor Condon brought up  
24 earlier. The companion policy indicates the fair  
25 dealing obligation is context specific depending  
26 on the sophistication of a derivatives party. As  
27 a large institutional client, what are your  
28 expectations on how a derivatives firm or an

1 individual acting on behalf of a derivatives firm  
2 should meet its fair dealing obligation?

3 And we'll start at the opposite  
4 end. Any Comments on that? You don't have to answer,  
5 but if you have comments on that.

6 MR. O'DONAHUE: You know, I'll  
7 think about it a bit, if you don't mind.

8 MR. FINE: Brad, any thoughts?

9 MR. TATE: I think that we  
10 expect our counterparties to deal with us fairly  
11 and in good faith and to be honest. And that's  
12 regardless of what led to the legislation might  
13 say. That's a requirement of ours in terms of  
14 dealing with counterparties.

15 So regardless of what's in the  
16 legislation, if our counterparties are not honest  
17 with us, they are either not going to be a  
18 counterparty for very long or they will be  
19 punished in terms of the amount of trading that we  
20 do.

21 So I think that in terms of  
22 what our expectations are, there's -- I sort of  
23 see it as a wide range between deceptive and  
24 manipulative trading practices and fraud on the  
25 one extreme.

26 And then as Mary mentioned,  
27 it's not really defined what actually constitutes  
28 if you're in breach of acting honestly with us.

1                   For instance, on the other  
2 extreme, if our traders are on the tape line with  
3 a dealer and the dealer says you're the only  
4 counterparty for me but we know, we just have a  
5 sense that no, there are other counterparties out  
6 there, that they are not being honest. That would  
7 not be something that would be offside with the  
8 regs.

9                   So you have a grey zone  
10 between something which is, you know, just chatter  
11 that happens regularly on tape lines or on  
12 Bloomberg, and then sort of things that are  
13 actually looking to manipulate or be fraudulent.  
14 And I think that potentially there are things that  
15 maybe the legislation, being able to prove  
16 deceptive and manipulative trading practices and  
17 fraud is a very tough hurdle for a regulator to  
18 actually prove.

19                   So potentially to have general  
20 language is something which makes sense, although  
21 I can't see it being employed that often short of  
22 something where it's a very clear wrongdoing on  
23 the part of counterparties.

24                   MR. FINE: Breann?

25                   MS. KIRINCICH: I would echo  
26 what Brad said in that we generally have an  
27 expectation that our counterparties will deal  
28 fairly and honestly with us. I think what that

1 means is that we would generally think that these  
2 provisions should apply in the same regard they  
3 would in the securities regime. For example,  
4 insider trading, front running, tipping,  
5 manipulating benchmarks.

6 And I guess just on a broader  
7 note to echo what I said at the beginning, it's  
8 sort of interesting thinking about how the  
9 standard will be applied given that it currently  
10 mirrors the standard set out for other registrants  
11 and in light of that standard being elevated to an  
12 actual best interest standard for registrants. So  
13 for those who have overlap, I think it's an  
14 interesting area.

15 MR. FINE: One more chance.

16 MR. O'DONAHUE: Ultimately I  
17 agree. The point that we -- yes, we have multiple  
18 people that we transact with on any given day and  
19 we can move our transactions around and almost in  
20 the sense of rewarding other people if someone is  
21 -- and punishing people if they are not treating  
22 us fairly is something that's out there obviously.

23 But at the same time it's nice  
24 to have this in an actual rule. I wouldn't say  
25 this should not apply to the institutional  
26 investors but it's nice to have it in a rule that  
27 it's there, it's general.

28 Some specifics would be great,

1 but it is a general rule. I don't know if we can  
2 necessarily get to specifics at this point. Maybe  
3 over time we can. But yeah, it's an important  
4 rule to have in with respect to everyone, not just  
5 the retail investor.

6 MR. FINE: And our dealer  
7 friends around the table, any comments on what  
8 fair dealing means to you?

9 MR. BYRD: I would agree with  
10 all the buy side participants. I do think to some  
11 extent, not that this is in the rule, but there is  
12 a two-way street on fair dealing. But I would  
13 certainly expect our desk to act with integrity,  
14 deal fair, no such thing as front running,  
15 confidential client information, you know, and  
16 providing liquidity at a price that's reflective  
17 of our capital and the return on equity that the  
18 bank requires as well.

19 MR. HOOVER: As Greg and Brad,  
20 Breann have said -- I mean, in every instance when  
21 we go into a transaction we're of the  
22 understanding that it's more than likely going to  
23 be in competition that there will be sort of a  
24 postmortem on the transaction. So we're incented  
25 to maintain our relationship with our particular  
26 counterparty to act in both of our best interest,  
27 as Jim has said, with respect to return on capital  
28 that we need to employ, but also just continue to

1 support the franchise.

2 So I think some of the  
3 concerns about self-serving behaviour are less  
4 than they maybe used to be.

5 MR. FINE: Okay. And then the  
6 next question is kind of --

7 MS. CONDON: One -- I take it  
8 that the fair dealing requirement, however it's  
9 articulated, is a requirement that applies both to  
10 the individual trader and the firm. So  
11 it's even making that clear might be something  
12 that will be of assistance in particular instances  
13 I would have thought.

14 MR. FINE: So conflicts of  
15 interest is another one of the requirements that  
16 falls in the institutional place on the dealer's  
17 part. So in the context of bilateral derivatives  
18 transactions what types of material conflicts of  
19 interest do you expect a derivatives firm to  
20 disclose?

21 Maybe I'll go back to starting  
22 with Breann.

23 MS. KIRINCICH: Sure. I think  
24 what we would say about this is that, you know, we  
25 noted the CSA's comment in the companion policy  
26 that disclosure should be specific to the relevant  
27 context. And we're very supportive of that. And  
28 in our experience in the U.S. with similar rules,

1 we found the conflicts disclosure to be of limited  
2 use, given that what we are often provided with is  
3 enormous amounts of boilerplate disclosure that  
4 covers every potential conflict of interest that  
5 may arise, which isn't particularly useful to us.  
6 As a sophisticated client who generally  
7 understands the conflicts that may apply, we would  
8 welcome more targeted specific disclosure.

9 MR. TATE: In terms of -- I  
10 agree with Breann in terms of that we would want  
11 specific disclosure if there is a material  
12 conflict of interest. Some ideas that I had in  
13 terms of when we would want to be notified is,  
14 first of all, if there is material non-public  
15 information in a situation where we can be  
16 notified, and so it doesn't involve tipping or  
17 something along those lines, we would either  
18 expect the dealer to decline to enter into the  
19 trade or provide us with a notification which is  
20 specific to that.

21 But again, they can't actually  
22 provide the details in that scenario. And that  
23 probably -- I was trying to figure out, you know,  
24 that would be outside of the trading and public  
25 market securities context. So it would have to be  
26 something else.

27 The other situation that we've  
28 seen which -- where it's helpful to receive

1 notification is if you say you have a trading  
2 strategy where in between the time of initially  
3 entering into the transaction and when you go to  
4 roll the trade, if all of a sudden the dealer is  
5 now serving as sort of a tier one M&A adviser for  
6 that. Well, that has changed the relationship and  
7 we would expect to -- either for them to decline  
8 to roll the trade or to disclose the conflict in  
9 that scenario.

10 A few other things -- and just  
11 trying to figure out what could be material  
12 conflicts. And it's tough to really come up with  
13 an exclusive list, but potentially if the dealer  
14 is a sponsor of an index and it's not directly  
15 apparent that they are the owner of that index,  
16 that could be a material conflict of interest that  
17 they should be disclosing.

18 Similarly, if you're entering  
19 into say derivatives and say emerging markets  
20 where there is much less equity, to the extent  
21 that the dealer is -- and this is my view only, I  
22 don't know whether or not my colleagues at OMERS  
23 would share those views -- but potentially to the  
24 extent that it is a very illiquid market and that  
25 the dealer essentially is the market or is a major  
26 part of the market, to the extent that that's not  
27 readily apparent then it could be helpful for them  
28 to disclose that.

1                   Again, like Breann mentioned,  
2 we received these conflicts, statements that sort  
3 of try to -- it's boilerplated. It mentions, you  
4 know, under the sun, you know, we're facing you,  
5 we're here to make money, there's FX risk. And  
6 they list all the various risks. That's  
7 absolutely useless to us. So if there is a  
8 specific material issue then we would expect to be  
9 notified of that in terms of conflicts.

10                   MR. FINE: Greg?

11                   MR. O'DONAHUE: I think they  
12 covered it all. We get those same general  
13 statements as well that aren't very helpful.

14                   MR. FINE: Would Mike like to  
15 respond?

16                   MR. FISHER: Come back with a  
17 question. Disclosure of Mid is like a foundation  
18 for Dodd-Frank. Is that useful to you in general  
19 or do you think it would be useful to perhaps  
20 investors who are less sophisticated in your  
21 firms?

22                   MR. O'DONAHUE: I think it's a  
23 good question, but I think it's outside of the  
24 scope of the people that on the side of the table  
25 acting for the buy side at this point. But it is  
26 a good question, whether it is useful or not.

27                   MR. HOOVER: Can I just  
28 follow-up? You really need to stratify the kinds

1 of businesses that the OTC derivative dealers  
2 participate in. You know, there's a number of  
3 asset classes and there's various levels of  
4 complexity that -- you know, products that are in  
5 those different asset classes. So to require some  
6 sort of regime where specific conflict of interest  
7 statements need to be made for every trade is  
8 really impractical.

9 I can see points where Brad is  
10 thinking, you know, if there is some sort of  
11 corporate M&A transaction where the dealer has a  
12 significant interest then certainly that's  
13 something that should be disclosed, or whether we're the  
14 constructor of an index, maybe that's important.  
15 But to just create reams of paper that try to  
16 manage the risks in the different products is  
17 going to be challenging.

18 MR. O'DONAHUE: I agree, Ron.  
19 On this side of the table I wouldn't want to  
20 receive an e-mail every time we entered into an  
21 transaction. I would not know what is a conflict  
22 at that point. It ends up being the same as  
23 getting a general statement at the beginning,  
24 right.

25 MR. FINE: I'll pause again  
26 after that great discussion. Any questions or  
27 comments from the audience?

28 AUDIENCE MEMBER: I think

1 sometimes certainly in the equity space, sometimes  
2 the dealers' hedging activity is itself a conflict  
3 just by existing. And so, you know, I think  
4 people go into it knowing --I'm just  
5 saying that I think in some cases I think everyone  
6 who goes into transactions understands that there  
7 are some of these conflicts going in place. I  
8 mean, dealers often say my hedging is for my own  
9 benefit. I'm not, you know, in the business of  
10 hedging to help you out. I'm doing it for myself.  
11 Particularly sometimes in issuer equity  
12 transactions where a company is entering into a  
13 transaction on its own shares, for instance, or in  
14 activist transactions where a company is trying to  
15 get a toe hold but not have to deal with usually  
16 Competition Act matters. The Securities Act is  
17 pretty good at catching those transactions in  
18 these days.

19 In those cases sometimes the  
20 hedging of the dealer is sort of been not in  
21 direct conflict but has conflicts built into it,  
22 right.

23 So for instance, if we do an  
24 issuer equity swap at VWAP the dealer is trying

1 to beat VWAP, right, to make some money on that  
2 part of the transaction as well. It has an impact  
3 on the transaction itself. And I think, you know,  
4 in those type of very specific cases, I'm not sure  
5 that just disclosing a conflict does anything,  
6 right. It's as if we're sitting across from each  
7 other and saying, you know, we're entering into a  
8 transaction but I'm not necessarily your friend on  
9 this transaction, right. I'm going to be your  
10 enemy throughout the deal.

11 Does that achieve anything for  
12 the corporation who is entering into the swap on  
13 its own shares? I don't know, right, to learn  
14 that the person who is sitting across from you  
15 isn't necessarily in it for your interest. I'm  
16 not sure, right.

17 MR. FINE: I think I would say  
18 that, as has been mentioned, there's a wide  
19 variety of clients.

20 AUDIENCE MEMBER: I'm sure.  
21 I'm just saying in certain spaces, certainly with  
22 interest rate swaps, you are not going to get into  
23 that, right. It's not something where there  
24 necessarily will be, but as you get into the sort  
25 of more niche ends of the marketplace,  
26 particularly for corporates that are trying to do  
27 balance sheet management or activists who are  
28 trying to get toe holds and things of that sort,

1       there are these instances where conflicts become  
2       more and more apparent, right, on the nature of  
3       the transactions.

4                   MR. FINE:  So I just point out  
5       that the -- that there is a difference between 25  
6       million in assets corporation and Teachers or  
7       OMERS.  So I think there's a lot of folks that  
8       fall into the same threshold here.  Thank you.

9                   MR. HOOVER:  Can I just....

10                   I think if you're going into a  
11       structured transaction of that nature, the amount  
12       of dialogue and disclosure you are going to have  
13       with your eventual counterparty should surface all  
14       of those issues, and then you, as a participant,  
15       can determine whether you're comfortable with what  
16       the initial impact on a hedge might be.

17                   So it's all -- you know, again  
18       there's nothing really cookie cutter about all of  
19       this.

20                   MR. FINE:  Okay.  So now I  
21       would like to get back to the senior manager  
22       regime that we've introduced here.

23                   I just want to state off the  
24       top, we think it's very important.  We think it is  
25       very valuable, and that's our position going into  
26       this.  We do acknowledge that it's novel.  Not  
27       completely, but the UK and now Hong Kong are the  
28       jurisdictions that have introduced something

1 similar at this point.

2 So we would like to know if  
3 you think these requirements will have a positive  
4 effect on the Canadian derivatives market and what  
5 impact will these senior manager provisions have  
6 on your operations.

7 I would like to start with the  
8 dealers on that.

9 MR. BYRD: Yeah. So in terms  
10 of impact. I would say I'm not sure it will be  
11 material given that we already adhere to a lot of  
12 these rules. Basically take the highest standard  
13 around the globe and we're kind of applying it  
14 domestically already. I already have an  
15 attestation for Dodd-Frank, for instance, at a  
16 desk head level. So we have attestation for all  
17 our desk heads, Dodd-Frank.

18 So as it pertains to the UK  
19 rules. Mike kind of talked to it earlier, but  
20 it's definitely more broad than what we're talking  
21 about here in terms of this being very derivatives  
22 specific.

23 We go through this in other  
24 regions. There's a USC attestation for Volker  
25 . There's a U.S. CCO attestation for Dodd-Frank.  
26 The one thing that sort of stood that test that  
27 felt a bit excessive was the board level, like the  
28 bank board level attestation. Quite a lofty sort

1 of goal.

2 If we're drafting it ourselves  
3 and we're accepting that this rule is happening, I  
4 would suggest something like more the dealer  
5 Capital Markets operating committee or the CCO  
6 level of the dealer would be more appropriate than  
7 the board of directors of the bank itself.

8 There's also a question there  
9 about who is the person to sort of administer  
10 this, and I would suggest somebody, probably --  
11 hate to say this but like Mike's level. Sort of a  
12 global (inaudible), seems like the right sort of  
13 level....

14 MR. FISHER: Thanks for that.

15 MR. BYRD: I guess the only  
16 thing I would suggest is, I understand the idea of  
17 putting responsibility on the desk and ensuring  
18 that the desk head owns these structures. I would  
19 just be cautious about having them owning it  
20 completely without compliance involved, because  
21 you're getting into this sort of -- you could  
22 conceivably, if you had some nefarious purposes,  
23 own it and contain it at the desk level and sign  
24 off on it yourself, as opposed to bringing  
25 compliance and having them, you know, do the  
26 actual research and you attest and sign off on it.

27 MR. FISHER: I agree in  
28 principle. I think it makes sense. I think the

1 devil is in the details. You want somebody close  
2 enough to the business so they know exactly what  
3 is going on and they can give an honest opinion  
4 that people are not doing anything untoward or  
5 there is no malfeasance. But then you want -- a  
6 high enough level so that you have somebody with  
7 authority so they can make sure the regulation  
8 works.

9                   And finding that right balance  
10 and right amount of the engagement in the  
11 compliance department versus the actual traders, I  
12 think that is going to be what's going to make  
13 this regulation work very well, if you and we are  
14 able to find that right balance.

15                   MR. HOOVER: You know, I mean,  
16 it goes back to the idea of harmonization. As Jim  
17 has said, we've already got a lot of programs that  
18 try to ensure that management is aware of and  
19 responsible for conduct generally.

20                   So the extent to which we can  
21 lever on what we already do so that we don't have  
22 make a complete separate program would be helpful.  
23 And certainly I think, you know, the attestation  
24 program is all built on the cooperation of audit,  
25 compliance. So there's a whole bunch of elements  
26 of the firm that ensure that whatever is being  
27 attested to actually is valid.

28                   MR. FINE: And general support

1 for senior manager provisions in a business  
2 conduct rule from the buy side or not?

3 MS. KIRINCICH: I think the  
4 one thing that I would say is -- kind of echos  
5 back to my initial comments about thinking of  
6 National Instrument 31-103 for registered firms  
7 and if that regime covers some of the policy goals  
8 already.

9 I think, you know, when you  
10 are thinking about registered firms they have  
11 already got rules of oversight in the UDP and the  
12 CCO, and I would encourage the CSA to think about  
13 whether those rules can adequately cover this  
14 necessity in terms of people who are ultimately  
15 responsible for the firm's conduct and legal  
16 compliance, and maybe would suggest a carveout  
17 from the rules for registered firms.

18 MR. TATE: Yes. I don't have  
19 any concerns from the capital markets perspective.

20 MR. FINE: Greg?

21 MR. O'DONAHUE: Yeah. Tone is  
22 set from the top so it's always nice to have a  
23 position like that where someone is ultimately  
24 responsible, but at the same time I don't know if  
25 it's this position or something that is already  
26 out there. It's just a general support for  
27 something.

28 MS. CONDON: Just to follow up

1 on the tone from the top point though and Jim's  
2 point about the board level being too elevated a  
3 requirement in terms of reporting. I'm not sure  
4 how one could actually implement the reporting to  
5 the regulator piece of this where there is  
6 non-compliance if you didn't have already  
7 something elevated internally to the board. I  
8 mean, otherwise you would have the situation of  
9 board being unaware of something that a  
10 derivatives manager was reporting to the  
11 regulator. That presumably is not  
12 organizationally really feasible.

13 So I don't know what the  
14 answer here is, but it does seem as though -- I  
15 assume that was part of the rationale for the  
16 reporting to the board issue.

17 MR. FINE: Then a follow-up  
18 question for the dealers.

19 Can you provide an example of  
20 who you will expect will meet the criteria of the  
21 senior derivatives manager at your firm. And  
22 maybe in the context --

23 MR. BYRD: I volunteer Mike.

24 MR. FINE: Do you want to  
25 volunteer Jim?

26 MR. FISHER: Why not. It  
27 makes sense that somebody who is in a role like  
28 mine that is close to the business that actually

1 sits on the desk rather than an office, and I make  
2 that my own distinction, should be involved so  
3 that they are close enough to know what is  
4 happening on a day-to-day basis, again, yet still  
5 senior enough so they can attest and have that be  
6 significant to the regulator.

7 I guess the difference is when  
8 you go too high or you have people that are  
9 responsible. You know, for instance, I would have  
10 no line of sight what is happening into equity  
11 derivatives or commodity derivatives. You get in  
12 the different asset classes. It's very difficult  
13 to know where to get the right balance between the  
14 compliance department and the business manager who  
15 is close enough to the day-to-day.

16 MR. FINE: So can I take from  
17 that that you think it would be helpful to have  
18 some more guidance in the companion policy with  
19 regards to those types of issues?

20 MR. FISHER: Please.

21 MR. FINE: Okay --

22 AUDIENCE MEMBER: Kevin, can  
23 you ask that same to Breann? Because advisers  
24 also have to have senior derivatives manager --  
25 like, they have the exact same rule apply them as  
26 well.

27 MS. KIRINCICH. That's right.

28 AUDIENCE MEMBER: So who would

1 be a senior derivatives manager for you guys?

2 MS. KIRINCICH: I think I  
3 would echo what Mike said in that we would like  
4 some more clarification around what that  
5 requirement would entail before we would be able  
6 to really define who that would be.

7 And I guess just to go back to  
8 my comment, as a registered adviser we already  
9 have the rules of CCO and EDP in place which we  
10 think adequately cover the investor protection and  
11 other policy goals of the rule. So definitely we  
12 would like to see some more guidance surrounding  
13 this rule in general.

14 AUDIENCE MEMBER: One of the  
15 things that I've had come up already as a question  
16 is that -- and you mentioned this before, was that  
17 certain derivatives are entered for hedging  
18 purposes, for instance for currencies or interest  
19 rates, while others are entered into more as an  
20 investment activity. So some are covered by  
21 people who do investments but some are covered by  
22 people in roles like treasury, right, who are  
23 dealing with hedging on a day-by-day basis. So  
24 are both those considered to be senior derivatives  
25 -- you know, it's a question that's -- for  
26 advisers it's a little more difficult than for  
27 dealers I think.

28 MR. FINE: Any other questions

1 or comments from the audience on senior manager?

2 AUDIENCE MEMBER: Kevin and  
3 Aaron, thank you for including corporates at the  
4 roundtable. Lawrence Truong, Husky Energy.

5 So as a corporate, first of  
6 all, I would like to say hopefully we're going to  
7 be covered by the end user exemption, more of  
8 broad terms.

9 But with respect to senior  
10 manager level, I kind of echo Mary's initial  
11 comments about I guess corporate structure and  
12 also Jim's concerns about potential conflict of  
13 interest between somebody that's leading the desk  
14 and is close to the business and understands the  
15 transactions, and then also at the same time  
16 responsible for the compliance of such  
17 transactions.

18 MR. FINE: Thank you. Any  
19 other comments or questions? Remember, if you  
20 don't want to speak up you can slip us a card.

21 Okay. So heading into the  
22 home stretch here. Question back to foreign  
23 dealers.

24 An exemption from certain  
25 requirements in the rule exists for foreign  
26 derivatives dealers that are regulated under the  
27 laws of a foreign jurisdiction.

28 And to just also add that

1 there is an equivalence concept, though, that  
2 doesn't happen unless there is an appropriate  
3 review and their rules on similar to this proposed  
4 rule.

5 Do you agree with that  
6 approach? And we heard some concerns already. I  
7 don't know, Mike, do you want to follow-up on  
8 that?

9 MR. FISHER: Again, I think  
10 it's striking the right balance. We do want  
11 foreign dealers to participate in the market.  
12 They are an important source of liquidity and  
13 we've seen that go away, as some of them have  
14 chosen to return to their market, so we would like  
15 to continue to do business with them here in  
16 Canada.

17 At the same time, we have  
18 spent a lot of time and resources on getting  
19 compliant for Dodd-Frank and we're in the process  
20 of doing that for MiFID. So I think that whatever  
21 rules the Canadian banks are subject to, that  
22 foreign dealers should also be subject to them  
23 when they are dealing with Canadian clients in  
24 Canada and that clients I think deserve better  
25 protection.

26 MR. FINE: Ron?

27 MR. HOOVER: Can I just add to  
28 that? So obviously there's a number of global

1 regulatory regimes that we're subject to, and to  
2 the extent that we can actually get to some kind  
3 of harmonization so that they are -- we can apply  
4 what we're subject to in different jurisdictions  
5 and vice versa. That would have the probably  
6 least impact on the dislocation perhaps and the  
7 decrease in liquidity as a result of potentially  
8 some people saying this is more than we're subject  
9 to and we're not going to be billed for it just because --  
10 limited business we do in Canada vis-a-vis the  
11 rest of our enterprise, so bear that in mind.

12 MR. BYRD: I think this one is  
13 really tricky. It's not obvious. Canadian market  
14 is just a lot smaller than other markets in the  
15 world that we're already adhering to in terms of  
16 U.S. and Europe, in terms of their implication,  
17 size and global financial marketplace.

18 So it's a tough balance to  
19 strike to encourage, you know, foreign  
20 participation in our marketplace while yet not  
21 disadvantaging the domestic dealers who really  
22 provide the bulk of the liquidity in the  
23 marketplace, right, and where is the right volume  
24 notch on that equation is a hard one to settle on.

25 I think one of the things we  
26 discussed when we were reading the rules. First  
27 off, I would exempt the inter-bank market from  
28 this. So any dealer-to-dealer, bank-to-bank

1 transaction I would exempt from these rules, in  
2 terms of the conduct rules specifically when  
3 dealing with one another.

4 I think -- you know, the trade  
5 reporting rules have actually cost us customers,  
6 dealers that used to trade in Canada and no longer  
7 want to because they don't understand the trade  
8 reporting rules, they don't understand if they are  
9 subject to them themselves or not. So it's a  
10 tricky one.

11 And there's not a definitive  
12 yes or no answer, and I think you are going to  
13 have to kind of wiggle your way through it for a  
14 while and see how people react to it. I'm sure  
15 there's several international dealers who participate  
16 in Canada currently, not in significant  
17 fashion but they look at these rules and just say  
18 I'm not going to do this.

19 And depending on how you break  
20 down, whether it's Dodd-Frank or MiFID or whatever  
21 it might be, and try to give them some sort of  
22 credit for those rules, I think it's even  
23 debatable whether they are going to spend the  
24 money to decide whether Dodd-Frank is enough to  
25 cover them on or whatnot. I think it's hard.

26 MR. FINE: And we will be  
27 reaching out to the foreign entities, encouraging  
28 them to comment on the rule so that we can get as

1 much info as we can.

2 MR. O'DONAHUE: I think the  
3 liquidity point there is pretty key as well,  
4 right, because we do, like obviously transaction  
5 with our Canadian counterparts but at the same  
6 time we transact with a lot of international  
7 counterparts as well, and we would need that to  
8 continue.

9 MR. FINE: Any thoughts on  
10 that issue? Okay. So that's -- the last question  
11 to this panel then is an open one. What would you like to  
12 see changed?

13 MR. TATE: I think the trigger  
14 of directly or indirectly carrying out the  
15 activities with repetition, regularity or  
16 continuity brings us some concerns in that -- for  
17 instance, if you have an FX hedging strategy and  
18 you are hedging your non-Canadian exposures and  
19 you would constantly be rolling those FX trades  
20 and that those would be with continuity. So  
21 various strategies that the buy side might employ,  
22 whether it's hedging or for broad market exposure  
23 purposes, by the size of our plans would entail  
24 entering into transactions continuously.

25 So I think that if there was,  
26 as Greg had mentioned, something within the  
27 regulations rather than I guess directly within  
28 the regulations that carves that out, I think that

1 would give us more comfort from a capital markets  
2 perspective.

3 MR. O'DONAHUE: I agree.  
4 When I'm looking down list, when I first read the  
5 rule everyone is caught because everyone  
6 transacts, so you are automatically caught by the  
7 definition of dealer. But then when you look  
8 through the companion policy, okay, those are  
9 indications so maybe you hit one because maybe you  
10 do repetitive trading because that's what you do,  
11 you trade derivatives.

12 So you may be caught by that  
13 but you're not caught by the other ones, and you  
14 are not offering something to the marketplace.  
15 And I think that's probably the more key  
16 indication is, are you offering a product out to  
17 the market? And that would exempt all end users  
18 at that point if that was kind of captured.

19 The definition is used in  
20 other securities context as well, and it would be  
21 -- I would have the same comment there, even  
22 though I know that we're not -- when you look down  
23 the indications that we're end user and we're  
24 clearly not a dealer. But it's just that initial  
25 -- you look at it, you read it, you're like -- but  
26 this says everyone is a dealer, so where do I fit  
27 in, and then you got to find it somewhere else.

28 MR. FINE: It's an interesting

1 challenge. I'm sure all the securities lawyers in  
2 the room will tell you there are lots of issues on  
3 the securities side with business trigger, and  
4 even it being applied the same way across the  
5 country. So we are then in some sense bringing in  
6 those difficulties.

7 But the difference is where  
8 this isn't in force yet, so that's why any  
9 specific suggestions or comments, we're absolutely  
10 open to hearing them.

11 MR. O'DONAHUE: The big  
12 indication in my perspective is offering products  
13 for sale to the public or offering some service to  
14 a third party, right.

15 MR. TATE: Or making the  
16 market.

17 MR. HOOVER: In the  
18 business of and organized around. I think that's  
19 a pretty clear distinction.

20 AUDIENCE MEMBER: Could there  
21 also be some sort of de minimis exemption for the  
22 foreign banking entities that maybe have regular  
23 activity here but if they have got two  
24 counterparties, Royal Bank and BMO, or something  
25 or some small pension plan that's related to  
26 pension plans they are managing in Europe, they  
27 just have to have a Canadian plan with six

1 employees or something.

2 But the level of their  
3 business is not really high, and it would add some  
4 clarity because it's often difficult for them to  
5 determine whether they are or not a dealer in  
6 Canada, or in Ontario or in Alberta or in Quebec.

7 MR. FINE: And would you like  
8 that on the securities side as well?

9 AUDIENCE MEMBER: I don't care  
10 about them. No.

11 MR. FINE: Any other comments  
12 on the panel or audience on business trigger?

13 MR. BYRD: I would like to see  
14 something a little bit more prescriptive.  
15 Dodd-Frank talks to derivative notionals  
16 outstanding in terms of something more definitive  
17 as opposed to -- certainly when you read it  
18 initially has very catch-all sort of feel to it.

19 I think Brad made an  
20 interesting point, I'll sort of use it and  
21 manipulate it a little bit about FX. He talked  
22 about rolling FX forward. There's lots of  
23 examples where FX has been carved out of  
24 derivative rules around the globe, whether it's  
25 for margin. You know, they're not subject to SEF  
26 (ph). They are not subject to mandatory clearing.  
27 And I think they cause a lot of problems when  
28 you're trying to apply this rule broadly, is

1 foreign exchange.

2                                 Maybe give FX more  
3 consideration about how it's involved in the  
4 rules, especially when you talk about rules around  
5 EDPs and the sizes. You catch a lot of fairly  
6 commercial customers in the rule.

7                                 MS. KIRINCICH: I think from  
8 an adviser perspective in terms of the derivatives  
9 adviser trigger, I think we're generally  
10 supportive of the way that it's lined out and you  
11 won't be surprised that my comment here is that we  
12 would support harmonization with the 31-103  
13 trigger as much as possible.

14                                 AUDIENCE MEMBER: Just on the  
15 business trigger for advisers. So under the  
16 Commodity Futures Act, right, there is that -- you  
17 know, if it's just incidental to your business you  
18 can enter into commodity futures. And then  
19 there's been some clarification there that  
20 basically incidental means if you are not  
21 profiting from your futures activity.

22                                 I think it should be the same  
23 for the derivatives in the sense that there should  
24 be -- advisers should be able to at least do those  
25 for currency forwards or options or whatever they  
26 do on their -- you know, for their -- if you have  
27 a U.S. dollar fund that you make a

1 Canadian dollar class for, I don't think that that  
2 one derivative should -- especially because you're  
3 not really necessarily profiting from it, you are  
4 just trying to meet a different market need is  
5 something that should trigger, and there are a lot  
6 of Canadian advisers who the only derivatives  
7 activity they have is literally having their U.S.  
8 class and having a Canadian class in that one  
9 currency forward on it. That shouldn't be enough  
10 to trigger them (inaudible) -- in this case  
11 there's no registration, but it would have meet  
12 the business conduct requirements of a derivatives  
13 adviser.

14 MR. FINE: Thank you. So  
15 that's it for the questions. I was going to ask,  
16 does anyone have any closing thoughts or comments  
17 you want to pass along? You don't have to.

18 Does anyone in the audience  
19 have any -- this is also your opportunity if there  
20 is a comment, if you've looked at the rule, that  
21 you would like to pass along this is your chance.  
22 Okay.

23 That  
24 was a great discussion so I really want to thank  
25 our panelists for their openness and their  
26 willingness to discuss the whole subject. I heard  
27 general support for the objectives' principles,  
28 concern with regards to the scope and some of the

1 drafting and those are all great comments that  
2 will start to work through.

3 This is really the startup of  
4 the discussion that we would like to engage with the  
5 public in the market with regards to the rule. I  
6 remind you, we are looking for comments. We  
7 absolutely encourage you to provide comments to us  
8 in writing.

9 I do have an announcement.  
10 The rule was originally drafted with a very long  
11 comment period so we could overlap with the  
12 registration rule for derivatives, which will be  
13 coming out soon.

14 Unfortunately, it's not going  
15 to be ready by the date, so there won't be an  
16 overlap. So what we're going to do instead is  
17 say this  
18 in the registration rule when it comes out, because  
19 it's not a year later, we're talking a few months  
20 I think, encourage you to provide any new comments that  
21 have arisen after you read the registration rule  
22 that apply to the business conduct rule because of  
23 what's in there, we'll absolutely take those in as  
24 formal comments as part of the registration rule comments.  
25 It's just the dates that will be different.

26 So the date of the first  
27 report -- September 1st is the closing date for  
28 comments. So because we are no longer going to

1 have this overlap because you all want to enjoy  
2 your August holidays in the summer. We would  
3 encourage you to get your comments in sooner than  
4 later.

5 We encourage that to come soon.

6 Ron?

7 MR. HOOVER: Kevin, given the  
8 discussion we've had, this is a pretty  
9 comprehensive proposed rule. Certainly we'll be  
10 providing a bunch of comments across the board for  
11 September. But do you perceive, given what you've  
12 heard, that the process will be extended so that  
13 there will be a revision to the proposal and sort  
14 of resocialization?

15 MR. FINE: The registration rule will come out  
16 just a few months later than we thought, not a  
17 long period of time. So we'll actually still be  
18 reviewing the comments from the September period  
19 and working on changes and adjustments to the  
20 rule. So we absolutely will still be able to take  
21 in and reflect the comments that we get when  
22 you've looked at it.

23 We ask that you don't give  
24 comments that have nothing to do with the  
25 registration rule a second time. September is

1       supposed to be the deadline. But absolutely, once  
2       you see some of the definitions in the  
3       registration rule and some of the provisions, it  
4       absolutely might reflect on some additional  
5       comments here as well.

6                   MR. UNTERMAN: And depending  
7       on the comments we receive it is possible there  
8       would be a second round of comments on this rule.

9                   MR. HOOVER: That would be  
10      helpful.

11                  MR. FINE: So I would like to  
12      -- a general comment from us. We think this is a  
13      very important rule. We encourage you to read the  
14      notice. If you are still a little bit unsure as  
15      to why the CSA is doing this, it sets out the  
16      rationale. This does align us with what's  
17      happening internationally with securities  
18      regulators all over the world. It does address a  
19      gap with regards to banks and specific conduct  
20      rules that currently exist in Canada, and that  
21      really does tell the story of the rule.

22                  To hear these comments was just  
23      tremendous and we'll absolutely be taking them  
24      into consideration. Those of you who have been  
25      working with us on some of the other rules, you'll  
26      see that we have absolutely taken the comments and  
27      made adjustments where appropriate so we'll

1 continue to work to do that.

2                   The last thing I would like to  
3 do is just to publically thank the banking  
4 community, including those around the table here.  
5 It's a bit of a new world for bankers to have to  
6 deal with securities regulators and we would  
7 really like to commend the openness of the  
8 Canadian banking community with regards to dealing  
9 with us and working with us with regards to new  
10 rules and your willingness and openness has been  
11 much appreciated and we would like to thank you that for  
12 that as well.

13                   So we're going to take a break  
14 now, let's say a ten-minute break, till quarter to  
15 and then we'll switch over to our retail panel.  
16 Thanks very much.

17 --- Recess taken at 10:39 a.m.

18 --- Upon resuming at 10:56 a.m.

19 GENERAL DISCUSSION OF TOPIC 2

20                   MR. FINE: We're going to  
21 get started again on the next panel. So this is  
22 our retail panel. I will introduce everyone on  
23 the panel and then give you a bit of an intro  
24 statement.

25                   Paul Hayward is from our  
26 CRR, compliance and registrant regulation, branch.  
27 And then we have Shannon Seitz who is from Western  
28 Union, legal counsel. Then Neil Gross from

1 Component Strategies Consulting. And then we have  
2 Bob Wong from OTT Financial Limited, he's a  
3 director there. Then over here we have Allister  
4 Field who is a manager of enforcement at the OSC,  
5 and Professor Condon from Osgoode Hall.

6 So just to reiterate again,  
7 comment cards if you don't want to speak up, feel  
8 free to write those and put your hand up and  
9 someone will come and get it for you. You can  
10 also ask questions if you like. That would be  
11 great.

12 Some of the concepts obviously  
13 are going to be similar with regards to the  
14 previous panel, but the retail panel does have a  
15 slightly different focus. And we did hear from  
16 Jim the example that even the banks have many,  
17 many corporate customers who would be under the  
18 threshold and would actually technically fall  
19 under the retail regime as well, so this could have  
20 wide consequences with regard to that as well.

21 Let's just jump in. We're  
22 going to start again with a general question of  
23 people's feelings with regard to the rule that we  
24 get from everyone and we'll proceed with other  
25 questions.

26 So what are your general  
27 impressions of the rule, and we'll start with  
28 that. Shannon, would you like to start?

1 MS. SEITZ: Sure. Thank you,  
2 Kevin, and thank you for advancing rules. I know,  
3 speaking from our perspective, we've been really  
4 excited to see the registration rule, and first  
5 the business conduct rules and look forward to  
6 receiving the registration rule.

7 I think this morning's  
8 conversation was very engaging and hopefully our  
9 panel will be as well and appreciate being  
10 involved.

11 I think, generally speaking,  
12 this is going to have a two-tiered system and  
13 approach, and that is something that will be new  
14 for our business.

15 By way of background, Western  
16 Union Business Solutions offers FX derivatives, so  
17 forwards and option products for small businesses  
18 that are looking to hedge their underlying  
19 business needs. So we offer them for hedging  
20 purposes.

21 So the two-tiered approach  
22 obviously presents the need to have perhaps  
23 different compliance regimes with respect to the  
24 difference of the client base, adding the separate  
25 retail component. So that's new in understanding  
26 the complexity of that.

27 I did appreciate Jim saying  
28 that that was going to be challenging and onerous

1 for the bank to implement. So for a large player  
2 who already has large compliance regimes, noting  
3 that that is going to be challenging for them is  
4 obviously also going to be maybe more so  
5 challenging for the smaller players.

6 In light of that, I think, one  
7 of the comments that I would have is the timing of  
8 implementation. Because there's more requirements  
9 on the retail customer-focused dealer, I would ask  
10 that there be a longer lead time. You know, I  
11 think with MiFID it was a year or two years, and  
12 similarly we had hoped that there would be long  
13 lead time before the rules take effect.

14 We spoke -- or we listened  
15 this morning about the need for harmonization, and  
16 that's obviously exciting that this is a national  
17 rule in the hope that it would be interpreted and  
18 applied consistently across the country is very  
19 much welcomed.

20 I know that the goal is  
21 harmonization internationally, but that's  
22 obviously more challenging and each jurisdiction  
23 takes their own approach, and so that's tricky.

24 I think the conversation this  
25 morning in identifying UK and Hong Kong gives me  
26 some information to go back and consult internally  
27 with my other global colleagues to get an  
28 understanding to offer more insightful comments

1 perhaps into some of the proposals in the rule.

2 MR. FINE: Thank you. Neil?

3 MR. GROSS: Thanks, Kevin.

4 I'm glad to see that about  
5 half the people have left the room, and it tells  
6 me that the retail aspects of this are much less  
7 controversial.

8 I want to start by commending  
9 the CSA for going forward with this initiative.  
10 It's very important, very good to see a focus on  
11 appropriate regulation of business conduct for any  
12 product that can make its way into the retail  
13 space. That appropriate regulation is vital to  
14 maintaining public confidence in our capital  
15 markets. So it's good to see the CSA reinforcing  
16 the notion that basic principles of fair dealing  
17 and disclosure, KYP, KYC, suitability and all  
18 those things apply as much to OTC derivatives as  
19 any other product area.

20 But if I can sort of address  
21 an 800-pound gorilla in the room. We really  
22 shouldn't fool ourselves into thinking that an  
23 initiative like this is going to be sufficient in  
24 and of itself to fully address public concerns and  
25 public expectations.

26 We know from studies and  
27 polling that consistently show the retail public's  
28 assumptions and expectations are that retail

1 firms, investment firms and advisers will conduct  
2 themselves in a manner that is consistent with the  
3 best interest of the clients.

4 And, you know, for those  
5 provinces that have made a decision at this point  
6 not to go forward with the best interest standard,  
7 that gap between the public's beliefs and  
8 expectations on the one hand and the regulatory  
9 reality is going to continue to be a gap. And  
10 with that, we will continue to see what amounts to  
11 a bit of a trap for the unaware, and that's very  
12 unfortunate.

13 But that said, I don't think  
14 we should allow that to overshadow the opportunity  
15 that we have before us right now today with this  
16 proposal. 93-101 is a step forward and we should  
17 appreciate that and work to make it the most  
18 effective and productive step forward that it can  
19 be. So today's discussion will move that forward.

20 MR. FINE: Thank you. Bob?

21 MR. WONG: Thank you, Kevin.

22 So without breaking ranks with  
23 colleagues on the panel, I also want to echo the  
24 sentiment that we welcome the proposed instrument,  
25 and that's because we think it's going to create a  
26 more structured regulatory climate around  
27 something which has been rather controversial,  
28 especially in the retail market.

1                   Before I go on I just want to  
2 say -- I just want to give some background about  
3 what we do.

4                   Our clients are retail  
5 investors who speculate in over-the-counter  
6 derivatives called CFDs, or contracts for  
7 difference.

8                   Retail clients use margin to  
9 go long or short on a wide range of financial  
10 products such as currencies, commodities, stocks,  
11 bonds or indices without the obligation of  
12 assuming or taking ownership of the underlying  
13 asset when they go long, or making delivery on  
14 the underlying asset when they go short.

15                   Now, the profit or loss is the  
16 difference between the opening and closing prices  
17 of each trade. Now, these OTC derivatives are  
18 primarily short term triggering vehicles, although  
19 one can keep the position open for as long as  
20 there's sufficient margin equity in the account  
21 provided there is no expiry on the contract, or  
22 the contract itself does not expire.

23                   The proposed instrument is  
24 intended to apply to firms like ours that trade  
25 CFDs with the retail public. But as a practical  
26 matter, every CFD provider in Canada is already  
27 required to become registered as an investment  
28 dealer, comply with the ongoing registrant

1 obligations under National Instrument 31-103, and  
2 also comply with the business conduct and  
3 financial conduct compliance requirements of our  
4 regulator IIROC.

5 Our current business practices  
6 already encompass most, if not all, of the  
7 business conduct requirements of the proposed  
8 instrument, and we look forward to be able to  
9 incorporate additional requirements into our  
10 procedures should it become necessary.

11 Complying with 93-101 may be a  
12 little bit more challenging for dealers who are  
13 not registered under either securities or  
14 derivatives legislation. An example would be a  
15 money services business providing individuals and  
16 small businesses with currency hedging solutions  
17 such as FX forwards, options, or any other  
18 contracts that settle more than two days out.

19 The money services business  
20 will be required to register under the proposed --  
21 well, under another proposed instrument,  
22 93-102, registration. They would be required  
23 to register as a derivatives dealer. And because  
24 very few MSBs are securities registrants this  
25 would represent a rather steep learning curve to  
26 comply with the requirements.

27 Those are my opening remarks.

28 MR. FINE: Thank you.

1 Allister?

2 MR. FIELD: No surprise. We  
3 like rules and (inaudible) in the enforcement  
4 context. Rules set up expectations for people.  
5 People know what to expect. A very important  
6 protection of the parties involved in these types  
7 of transactions and also to in terms of the  
8 integrity of the market.

9 I think it's really important  
10 what your retail investor, one of the parties  
11 selling these products, you know what the  
12 expectations are for everybody involved. And I  
13 think from an enforcement point of view obviously  
14 we would come into picture a little later perhaps  
15 when something has gone wrong, but I think it's  
16 really important for us to know in a written down  
17 type of fashion what those expectations are so  
18 that we can take a look at something when we  
19 assess it that there perhaps has been a breach of  
20 the Act or instruments and be able to move  
21 forward on that in an effective way to deal with  
22 the situation.

23 I really like the consistency  
24 part of this. We work with other provinces, other  
25 international regulators on a regular basis and to  
26 bring us closer together in terms of how we view  
27 these things, how we operate, is very helpful in  
28 moving forward in an investigation.

1                   Myself, I've had experience  
2     dealing with other jurisdictions internationally  
3     and provincially, and when there has been kind of  
4     a difference in the rules or what exemptions that  
5     they use, it becomes problematic sometimes and  
6     it's a little harder to work out.

7                   Also on the investors side,  
8     the enforcement branch, we partner up with the  
9     office of the investor here at the OSC and go on a  
10    lot of talks and presentations to members of the  
11    public, the retail investors, and the whole idea  
12    of people understanding what they are getting into  
13    and the proper use of a KYC form very important  
14    because I've had some very stark conversations  
15    with people that have no idea what they are  
16    investing in sometimes. It hasn't been explained  
17    to them. They signed a KYC form but really  
18    sometimes they don't understand what it means.

19                  I think the more push we can  
20    put in those types of areas, I think much better  
21    for the retail investor.

22                  MR. FINE: I have a quick  
23    follow-up question. We sometimes hear the  
24    principle put forward that conduct is other  
25    people's problems, that it's a non-Canadian issue,  
26    that certainly the large public cases with regards  
27    to market manipulation happened outside of Canada  
28    and that Canadians wouldn't believe in such a way and

1 Canadians wouldn't conduct any misconduct in this  
2 area.

3 Just based on your years of  
4 experience and enforcement here in Ontario, do you  
5 have any thoughts on how you would respond to  
6 that?

7 MR. FIELD: Problems exist.  
8 Enforcement exists. We work with all the  
9 operating branches here at the Commission and  
10 there is misconduct out there. Every time we talk  
11 about misconduct I kind of go back to the  
12 securities side of it and try and relate it to  
13 this sector which seems different but somewhat the  
14 same. And wherever there is money and there's an  
15 opportunity, there may be people that want to step  
16 up and take advantage of any situation, and we  
17 call them poli-criminals.

18 There's people that every time  
19 there's a new product out there -- we have  
20 legitimate businesses that deal with it in a fair  
21 way and then we have people who enter into those  
22 areas to make money for themselves and don't  
23 operate in an appropriate way.

24 That's why it's nice to have a  
25 set of rules that we can put against them and to  
26 do a proper investigation. So there is misconduct  
27 out there. By far most people involved in the  
28 industry are very helpful, very -- they know what

1 the rules are, they want to do what's best for  
2 their clients, but there are people out there that  
3 do misbehave.

4 MR. FINE: Mary?

5 MS. CONDON: Thanks, Kevin.

6 Just to follow up a little bit on Allister's  
7 point, I have a few comments just to make to kick  
8 us off.

9 The first one would be that we  
10 certainly have anecdotal information about the  
11 presence of retail investors in this space. I  
12 think one of the difficulties for you and your  
13 fellow regulators at the CSA is that the space  
14 will run the gamut from an individual with a very  
15 small amount of money at risk all the way to a  
16 corporate -- with quite a decent balance sheet.

17 But with respect to  
18 individuals, it's a sort of historical point. But  
19 I would just make the observation because it's  
20 close to my heart as a securities teacher, that  
21 the case that we teach that is intended to  
22 identify the definition, the principle-based  
23 definition a security, what is an investment  
24 contract.

25 Pacific Coast Coin Exchange is  
26 actually a case involving a commodity futures. So  
27 a complex product that -- where the judge has sort  
28 of wrestled us to the ground by defining it as a

1 security and then the various protections ensued  
2 from there.

3 But it's sort of an historical  
4 example of how we get individuals involved in  
5 these kinds of complex products and then from the  
6 regulator's perspective need to figure out what is  
7 the best way to respond in a more holistic  
8 preventative way.

9 The point, though, that --  
10 that point leads me to make a point about data  
11 which is not something -- you've heard me make  
12 this point before, but in other context. But I do  
13 think that going along with the introduction of a  
14 rule imposing business conduct standards on people  
15 operating in the area is an opportunity to  
16 actually generate better information about who is  
17 in the space from a retail investor perspective  
18 and exactly what the types of asset classes are  
19 that retail investors in Canada are interested in.  
20 And I think it would be very helpful to go along  
21 with all of the work that you're already doing to  
22 use perhaps the business conduct rule or the  
23 registrant rule to really generate good  
24 information so that your subsequent rulemaking in  
25 this space could be data-driven about retail  
26 investors and what they are interested in and what  
27 they need.

28 I just want to endorse some of

1 the points that Neil made about all of the  
2 references to the suitability standard in this  
3 rule. We know from the security space that the  
4 suitability standard causes difficulties for  
5 retail investors, and I would say that in  
6 particular in this area it's issues around risk  
7 that are particularly significant for retail  
8 investors in terms of both disclosure of risk and  
9 also a sense of retail investors' access to  
10 product based on a fairly impartial analysis of  
11 the type of risk that investors are being exposed  
12 to by investing in particular types of  
13 derivatives.

14 I wanted to make a couple of  
15 points, and I won't do it now but a little bit  
16 later, just in relation the information in the  
17 draft rule about derivatives parties, specific KYC  
18 information and the collection of that  
19 information.

20 I'll come back to those  
21 detailed points in a moment.

22 And I guess the last thing,  
23 just on a general basis that I might say, again  
24 comes back to an issue that I've been very  
25 interested in on the securities side, and that's  
26 the question of how to do complaint handling.

27 Here this rule focuses very  
28 much on internal responses to complaint handling

1 when investors complain about the way that their  
2 adviser or their dealer has dealt with them.

3 There's no indication in the  
4 rule as it currently sits that there's any  
5 external involvement until resolving complaints  
6 with respect to investors investing in  
7 derivatives, and that seems to me something that  
8 maybe needs another look as we proceed in this  
9 area.

10 MR. FINE: Thank you.

11 So this rule sets out a number  
12 of market conduct requirements that are similar to  
13 existing market conduct requirements applicable to  
14 registered dealers and advisers under National  
15 Instrument 31-103, as has been mentioned. But  
16 they have been modified, reflected different  
17 nature of the derivatives markets.

18 Do you agree with this  
19 approach and are there any requirements that have  
20 been included but you don't think they are  
21 necessary for retail trade in OSC derivatives, or  
22 that have not been included but you think should  
23 have been put into retail. And anyone who would  
24 like to comment on that is open to. Neil?

25 MR. GROSS: Kevin, my concern in  
26 this area is a little more fundamental, if I can  
27 take one step back on this.

28 I appreciate the desire to

1 have symmetry of 31-103, and I can see the merit  
2 in having as much similarity here as possible. At  
3 the same time when looking at division lines that  
4 are adopted there, and trying to then tailor them  
5 to the derivatives specific market, I'm wondering  
6 if you have to look more fundamentally in the  
7 retail space though where the true division line  
8 for retail investors, individual retail investors.

9           It's not actually along the  
10 lines of sophistication. It's not actually along  
11 the lines how much money they've got to invest and  
12 what their potential resources are. The real  
13 division line amongst individual retail investors  
14 is between those that expect their relationship  
15 with their dealer to be advisor and those that  
16 don't.

17           I think it would be better if  
18 the rule making followed that division line more  
19 closely because that's where the rubber hits the  
20 road in terms of a lot of issues that arise for  
21 retail investors.

22           If there is an expectation of  
23 the relationship being advisory, that can be the  
24 situation even with a fairly sophisticated  
25 individual investor.

26           On the other hand, you can  
27 have some that foolishly don't want to get advice  
28 and are prepared to do it themselves, oftentimes

1 to their detriment.

2 But I would suggest  
3 particularly we're dealing with complex  
4 investments such as derivatives, especially OTC  
5 derivatives, where individual retail investors  
6 might be wading into that, that it is very  
7 important to view this through a lens of whether  
8 the relationship is advisory or not, because that  
9 drives a great many other things.

10 If the relationship is  
11 expected to be advisory in nature, then fair  
12 dealing takes on a different complexion. It's no  
13 longer about so much best execution. It's much  
14 more about objectivity and the advice that's  
15 given. And if the business structures are such  
16 that they are actually designed to diminish the  
17 objectivity of the adviser, then that has the  
18 greatest impact on the retail individual,  
19 customer.

20 MR. FINE: Anyone else to  
21 comment on...

22 MR. WONG: Yeah. In the space  
23 that we are in, a typical firm that offers online  
24 trading and OTC derivatives operates a order  
25 execution only model. And that is based on a  
26 trade suitability exemption.

27 So the client relationship is  
28 really, I wouldn't say exclusively but it's more

1 or less based on giving market access to the  
2 client and really execution-based. Still we take  
3 very seriously our responsibility to inform the  
4 clients about the risks of entering this  
5 particular -- or taking on this particular  
6 activity of trading derivatives.

7 So we think it would be  
8 beneficial for all clients to be able to rely on a  
9 very robust suitability determination degrees  
10 account opening in order to make sure that when we  
11 look at the client's financial condition they are  
12 such that the client would not be put out of  
13 sorts, you know, if they were to sustain any type  
14 of loss in terms of what it might do for their  
15 financial well being or their future retirement  
16 goals.

17 MS. CONDON: Can I jump in to  
18 ask a question here, which is that one of the  
19 shortcomings of the suitability standard in the  
20 securities space is really around the question of  
21 fees. And the fact that the suitability standard  
22 doesn't really preclude someone selling something  
23 where the fees for engaging in that transaction  
24 are not as advantageous to the retail client as  
25 some other product.

26 So to me it would be  
27 interesting to spell out the issues of the extent  
28 to which fee disclosure or fee management is still

1 an issue with respect to an order execution model  
2 as opposed to an advisory model because I do think  
3 that that could well have an impact on retail  
4 investor outcomes.

5 MR. FINE: Thank you.

6 MR. HAYWARD: Just following  
7 on Mary's comment, just a question for the  
8 dealers. How transparent are the fees? I think  
9 the assumption is that the different platforms  
10 will offer spreads, and that's something that  
11 investors can compare how many points or beeps or  
12 whatever each platform offers.

13 But it's a spreads  
14 against what? How transparent with the underlying  
15 sort of exchange or benchmark or rate? So is this  
16 something -- can an investor really go to order  
17 execution earning platforms and compare them?

18 MR. WONG: Right. In our  
19 particular model we have a counterparty from whom  
20 we get wholesale price fee. So one particular  
21 model would be to add a markup on the spread. We  
22 call it an embedded commission. And the other  
23 option would be to show the wholesale spread  
24 directly to the client and simply charge a  
25 transparent commission on top of that.

26 I believe under CRM2 there is  
27 now a requirement to disclose to the client, I  
28 think it's on annual basis, how much fees, whether

1 it's generated from an embedded commission or  
2 transparent commission.

3 MR. FINE: That brings to mind  
4 a meeting that we had a number of years ago when  
5 we were first putting together our first concept  
6 paper about the various rules because of the  
7 financial meltdown and the derivatives reforms  
8 and we had meetings with a number of small and  
9 mid-level and larger corporations with regards to  
10 their experiences with using derivatives.

11 And uniformly what we heard  
12 was that they didn't shop around for prices, they  
13 went to their bank that they already had a  
14 relationship with, and that they had no concerns,  
15 they trusted the banks and assumed that the prices  
16 that they were getting were appropriate.

17 So it's interesting to -- I  
18 always keep that in mind when I think about  
19 working through these issues of how perception  
20 versus perhaps the reality of the situations.

21 MS. SEITZ: I can say that I  
22 think from our perspective the marketplace has  
23 become more competitive and we are seeing more  
24 frequent customers price shopping and saying well,  
25 we're getting this rate or that rate. I think  
26 there has been an increase in the competitive  
27 price shopping, decision-making process for  
28 customers.

1                   MR. FINE: All right. Do you  
2 have any comments or concerns with how we have  
3 defined a retail investor or core customer, i.e.,  
4 any vendor/customer who does not meet  
5 (inaudible) the eligible third party definition in  
6 the proposed rule.

7                   Then the sub questions of that  
8 are do you have any comments or concerns on what the  
9 financial threshold for small businesses and  
10 individuals is, and then after that I'm going to ask  
11 about the best interest proposal..

12                   Anyone want to jump in on the  
13 definition of retail customer?

14                   MS. SEITZ: Sure. So I spoke  
15 earlier that we have sold our products to our  
16 customers for hedging purposes and there exist in  
17 several provinces hedging exemptions. And I know  
18 as part of the definition of an eligible contract  
19 participant, separate and distinct just the asset  
20 test, there was a lower financial test of a  
21 million dollars net worth with commercial hedging.  
22 And currently the definition doesn't include any  
23 sort of prong or qualification with respect to  
24 hedging. So that is something that I think we'll  
25 be commenting on.

26                   MR. FINE: Anyone else?

27                   MR. WONG: The vast majority  
28 of our clients would not meet the definition of

1 permitted client or eligible derivatives party  
2 under the proposed instrument. We believe that  
3 the current definition for retail investor is  
4 appropriate.

5 MR. FINE: Neil?

6 MR. GROSS: Kevin, can I  
7 comment on the five million dollar --

8 MR. FINE: Absolutely.

9 MR. GROSS: Not so much in  
10 terms of it being a mechanism for separating two  
11 sides of the divide, but more so on -- when I read  
12 the companion policy the underlying rationale was  
13 stated as that at that level of net financial  
14 assets those individuals would have the ability to  
15 purchase advice for themselves to help protect  
16 them in these transactions.

17 I don't doubt that's true in a  
18 monetary sense, but I would like to just draw one  
19 thing to your attention, and it comes from the  
20 experience I have as litigator involved in cases.

21 When I started out actually  
22 many of them were derivatives cases, and  
23 interestingly I found that there was not ready  
24 access to real expertise in the derivatives space  
25 for retail investors; that outside of the  
26 institutional world there's a very limited supply  
27 of that expertise out there.

28 So even very wealthy

1 individuals might actually have great deal of  
2 difficulty getting the type of advice that the  
3 companion policy assumes that they will be able to  
4 purchase. That's something that I suggest to you  
5 give some thought to in terms of how you approach  
6 the waiver issue because no doubt firms like --  
7 would be like Bob said, preferring the order  
8 execution only model. They will prefer that their  
9 clients waive the protections because, hey, who  
10 wants extra liability. It's easier if they limit  
11 themselves to clients who are prepared to waive  
12 those rights.

13                   So there will be pressure on  
14 individual retail investors if they want to get  
15 involved in these types of investments, to do that  
16 waiver. I would suggest that you give some  
17 thought, if you are going to continue with the  
18 waiver concept, to potentially making those  
19 waivers effective only if the client obtains  
20 independent legal advice before signing.

21                   I say that somewhat -- safely  
22 acknowledge that very few lawyers will recommend  
23 that clients sign them. But like I said, there  
24 are some individuals out there who are prepared to  
25 go forward even though it may not be the smartest  
26 thing to do.

27                   MR. FINE: Mary?

28                   MS. CONDON: Just to follow up

1 on that point. I think this is one of those areas  
2 where, you know, regulators have really taken on  
3 board a lot of the findings of the behaviour  
4 economics research, and this seems again like one  
5 of those classic situations in which one could  
6 benefit from thinking through the process of  
7 signing the waiver from that kind of perspective.

8                   It's not -- we learn from that  
9 kind of thinking that, you know, masses of  
10 disclosure doesn't really help, people don't read  
11 that disclosure. What they benefit from more is  
12 actually having their minds focused on what are  
13 the implications of waiving this opportunity at  
14 the moment when they have to do the signing.

15                   I think there are tricky  
16 questions here about the extent to which, if we're  
17 going to focus on disclosure of information to  
18 them then it has to be actually written in such a  
19 way that people really understand the implications  
20 of what it is they are doing as opposed to classic  
21 lawyer-type writing.

22                   MR. FIELD: Kevin, I think  
23 we've touched on it here. It's the quality of  
24 that conversation at the beginning deciding to  
25 become a client to purchase one of these types of  
26 instruments. The 46-page memorandum outlying what  
27 it is or seeking legal advice, there could be a  
28 lack of people that could give those types of

1 advice, people willing to do it. But it's the  
2 quality of that initial transaction which I think  
3 sets the tone for many things, and if there is  
4 ever a point where there could be misconduct or  
5 people not doing what they are supposed to do  
6 that's actually when it's going to take place.

7           So whether it's filling out  
8 the KYC form or having a conversation saying hey,  
9 listen, maybe you should get outside legal advice,  
10 we can rule these things as much as we want but  
11 it's how it actually takes place, but the quality  
12 of the relationship between the two people.

13           I know in the OSC and  
14 community context we've had lots of conversations  
15 with people who don't actually know their  
16 adviser's names. People are really not aware of  
17 everything that is going on. We see things like  
18 fun facts come out and help people get through  
19 these large amounts of information to get to the  
20 actual information that they need.

21           I think that transaction,  
22 we're going to do rules about those transactions,  
23 but I think it's really the spirit of that  
24 transaction that is so important. Because we see  
25 it afterwards talking to victims of a fraud or  
26 misrepresentation of some sort and they really --  
27 it was that point of time when they did not  
28 understand what was going on, when they were taken

1 by whatever means they were taken.

2                   So I think we've touched on it  
3 in different ways here but it's that transaction  
4 that really needs the focus of our attention.  
5 Whether it's rules -- but it's also the spirit of  
6 those rules and how people execute those  
7 conversations.

8                   I think it's partly for the  
9 investor as well to ask those questions because  
10 something the OSC in the community we're telling  
11 people, ask the questions. There are no stupid  
12 questions to ask. Whatever you don't understand  
13 ask that person, come in with a list of questions  
14 so that you feel comfortable with this situation.  
15 But that I think is the crux of the matter, is  
16 that initial conversation.

17                   MS. CONDON: Just to follow on  
18 from that point as well, I guess I would also say  
19 that we probably need to expect, and Bob will have  
20 some experience in this, that much of that canned  
21 opening is actually happening in an online  
22 context.

23                   So this is going to require  
24 some granular oversight, I think at least  
25 initially, from the perspective of the regulators  
26 to actually get a good feel for what are the  
27 issues that are being put front and centre for the  
28 investor when they are engaged in this online

1 interaction and is there an opportunity to ask  
2 further questions by way of follow-up is the way  
3 in which the information is presented  
4 electronically, actually capturing a sense of what  
5 the risks are, what the pitfalls might be.

6 MR. HAYWARD: So not just like iTunes  
7 where you just accept...

8 MS. CONDON: Well, you know,  
9 that turns out to be the default approach, but it  
10 may not be appropriate for this context.

11 MR. FIELD: 30 minutes of  
12 reading which you accept in the first 2 seconds  
13 that the screen pops up.

14 MR. FINE: So best interest.  
15 I want to get back to asking about that. Should  
16 we consider using the definition institutional  
17 client that excludes individuals and includes a  
18 higher financial threshold for companies \$100  
19 million that was proposed in April 28th CSA  
20 consultation paper, 33-404 as a basis for the  
21 definition of paper EDP in 93-101.

22 What we say in the proposed  
23 rule was that we're following what's happening  
24 with regards to that rule and its development and  
25 would make appropriate changes once that was done.  
26 But now we have the opportunity, just wondering  
27 whether anyone had a comment on that.

28 Neil, any thoughts?

1                   MR. GROSS: Let me ask this  
2 question. How much efficiency do you think you're  
3 going to achieve by this tailoring of the  
4 standards around individual retail investors?

5                   Is it going to be enough to  
6 make it worth the exercise? Do you expect that  
7 there are going to be enough individual retail  
8 investors that, you know, it's worthwhile to do  
9 that much tinkering around this, or would it be  
10 just largely as efficient to simply say, if you  
11 are dealing with an individual you've just got to  
12 give them a full suite of protections and let the  
13 tailored aspect of it be institutional versus  
14 individual, and then draw an appropriate monetary  
15 line through the institutional for size?

16                   I mean, what's your  
17 expectation in terms of how much efficiency you're  
18 going to build into this by having a tailored  
19 process around the individuals?

20                   I would guess that you're not  
21 going to accomplish very much efficiency by doing  
22 this. In theory, it's a good concept, but if we  
23 get to the practicality of how much benefit are  
24 you actually going to provide to firms that are  
25 engaged in the day-to-day work here, you know,  
26 maybe it's unnecessary.

27                   MS. SEITZ: And we heard this  
28 morning, you know, what type of need is there to

1 focus on product or asset class and are we  
2 considering a different approach on a product or  
3 asset class basis that might make sense. And I  
4 can appreciate from a regulator's perspective  
5 that's very challenging so you're probably  
6 thinking absolutely not.

7 So from my perspective on FX,  
8 I spoke earlier about adding a broader  
9 qualification for hedging, about also considering  
10 whether or not 25 million is the right number. So  
11 I would say from my perspective, 100 million is  
12 too high.

13 MR. FINE: Paul?

14 MR. HAYWARD: So, Neil, just  
15 to clarify your question. You seem to be  
16 suggesting that we simply distinguish between  
17 individuals and non-individuals.

18 As was discussed in the first  
19 panel, the current definition of eligible  
20 derivatives party, or EDP, is generally similar to  
21 the existing permitted client concept in 31-103.  
22 And we did have some comments this morning that  
23 why do we need another definition, isn't there  
24 some efficiency in staying with sort of existing  
25 concepts?

26 So what I was just wanting to  
27 clarify is, are you saying we should simply say  
28 individual, non-individual, because that could

1 presumably mean some fairly small corporations  
2 that would fall below the permitted client or EDP  
3 definition, would be considered sophisticated or  
4 have sufficient resources. Or are you saying  
5 remove any individual category from EDP that  
6 currently -- it's a kind of waiver model. If it's  
7 the additional obligations don't apply at first  
8 instance if you are dealing with a non-individual  
9 EDP the way we've drafted it is if you're an  
10 individual EDP they are presumed to apply but you  
11 are free to waive as long as it's a meaningful  
12 waiver.

13 So can I just put the question  
14 back to Neil, just ask you to clarify.

15 MR. GROSS: Yeah. Having  
16 regard to the greater complexity involved in  
17 derivatives, in particular the derivatives that  
18 this policy is aimed at, it seems to me that you  
19 are likely to get very few individuals who  
20 meaningfully will waive, or should meaningfully  
21 waive, if I can put it that way, and therefore, is  
22 it simply -- notwithstanding that it's nice to  
23 have this sort of parallel with permitted client  
24 definitions, is that really all that sensible when  
25 we're talking about these particular types of  
26 products that are so much more complex, that  
27 interact in the real world markets in more  
28 complicated ways than securities might, you know,

1 and given that there is far less availability -- I  
2 think far less availability and expertise for  
3 potentially waiving individuals to access, might  
4 it not be more appropriate to just simply say, you  
5 know, all individuals should get the full set of  
6 protections.

7 MR. FINE: Mary, any thoughts  
8 on best interest threshold?

9 MS. CONDON: Actually, I was  
10 just going to offer a comment on this, which is  
11 that this may be a problem that you can really  
12 only solve with experience. I know that it is  
13 tempting to try to solve all these problems before  
14 you put the rule out in its final form, but this  
15 may be an issue that you really need to think  
16 about revisiting with a bit of experience over the  
17 course of a few years in terms of whether or not  
18 the thresholds that you've decided on initially  
19 really appear to be benefitting retail investors  
20 and also making life manageable for providers of  
21 these sorts of products.

22 So, again, going back to my  
23 comment about gathering information. I think you  
24 do need to see this as something where the  
25 regulators make an investment in follow-up  
26 information gathering just to be able to make a  
27 more informed assessment in a short period of  
28 time.

1                   MR. FINE: Pause there for  
2 questions or comments from the audience? No.  
3 Okay.

4                   So I would like to ask similar  
5 questions I asked in the first panel with regards  
6 to fair dealing and conflicts of interest, so I  
7 will put this to out dealers at the table.

8                   How do you currently deal with  
9 those, since those are not new concepts to you.  
10 Anything you want to pass on on that subject?

11                  MR. WONG: I think for our  
12 experience the fair dealing model is really very  
13 closely tied into the types of conflicts of  
14 interest that we have to deal with.

15                  One particular material  
16 conflict of interest that we would like to point  
17 to would be in the situation of whether the dealer  
18 is acting in the capacity of agent or principal,  
19 because that goes to the fundamental nature of  
20 being -- of the dealer being able to act in the  
21 best interest of the client.

22                  If the dealer profits from  
23 client losses, the execution could be skewed in a  
24 way that would benefit the dealer, either on the  
25 client entering the position or exiting.

26                  Granted that there's nothing  
27 to -- there's no rule currently that says the  
28 dealer cannot be either an agent or a market

1 maker, I think there should be a disclosure that  
2 requires a very clear explanation to the client  
3 that in certain situations the interest of the  
4 dealer and the client may diverge, and it should  
5 be -- I'm not saying pass it back to the client  
6 but then the client would have a better  
7 understanding of the relationship that they were  
8 getting into. So that's my take on that.

9 MR. FINE: Shannon?

10 MS. SEITZ: You know, it's  
11 interesting, and I guess I was also excited to see  
12 what the registration rule was going to say with  
13 respect individual traders working at a dealer and  
14 the distinction there. I don't know if we'll see  
15 more information on that and the types of  
16 disclosures with respect to those two parties or  
17 not, but I think that that is -- we saw in the  
18 companion policy comments related to compensation,  
19 but there's also that distinction as well.

20 MR. FINE: Okay. Business  
21 trigger. We also heard that discussion this  
22 morning and I just wanted to know what your  
23 thoughts are on it in terms of the companion  
24 policy and its description, the business trigger  
25 for being the business and dealing in derivatives,  
26 and also exemptions that would be available there  
27 too.

28 And we heard some comments

1 this morning about -- it probably would be similar  
2 to perhaps commenting in the securities world  
3 about more specific examples and sometimes the  
4 difficulties in determining whether you are in or  
5 out. But any particular points you want to bring  
6 out?

7 MS. SEITZ: I think we  
8 expected in.

9 MS. CONDON: Well, I guess I  
10 just make the obvious point that I think the  
11 business trigger analysis is probably going to be  
12 more important in the retail space than in the  
13 institutional space in the sense that you may have  
14 more providers or actors who are attempting to  
15 keep themselves outside of the regime.

16 And this is, sort of, I'm sure  
17 the experience that Allister has had that people  
18 operating sort of at the perimeter of the  
19 regulation will want to make an argument that they  
20 are not -- they are not covered by these rules and  
21 will use the business trigger to do that.

22 So again, this might be  
23 somewhere where you need to do a bit of reverse  
24 engineering from an enforcement context back to  
25 say if this was behaviour that you would have  
26 wanted to have captured, then it needs to be  
27 identified in the business trigger context.

28 On the face of it, it seems as

1     though you really have hit a number of important  
2     indicia of what you would want to have in order to  
3     give investors the benefit of being protected from  
4     in these business conduct environments. But I  
5     think again you'll need to stress test it over  
6     time with activities of the perimeter.

7                     MR. FIELD: I think the rubber  
8     hits the road for us in two places here, actually  
9     three. One, when we're in-taking matters say  
10    there's a concern and we're looking at where these  
11    people fall in. Do they have an exemption, have  
12    they claimed the exemption. But also when we get  
13    to the hearing side of things, how is that  
14    interpreted by the panel.

15                    The history of these types of  
16    things before the panel is built is precedent.  
17    The Criminal Code is full of sections that are no  
18    longer enforced because of Supreme Court rulings  
19    and yet they are still in the Criminal Code.

20                    And as we move forward to the  
21    hearing context, we could get some help from the  
22    panel on what this means as well, so there might  
23    need to be some reverse engineering later on. I'm  
24    not saying I want any new business, but if  
25    business comes up later on down the road when  
26    something gets litigated or it's been litigated in  
27    another province, we may get some more guidance  
28    from those panels as well about business trigger.

1                   It's nice that this is a  
2           national instrument, but the panels are provincial  
3           at the moment. So we may get some help in the  
4           business trigger that you are proposing, get some  
5           more clarification from those panels about what it  
6           actually means, which would be helpful for us  
7           going forward when we're investigating new matters  
8           we take a look at something go, okay, the panel  
9           has had a decision about this, has feelings about  
10          this. As we move forward it's very, very  
11          important to us.

12                   MR. FINE: And we are looking  
13          forward to comments on the business trigger,  
14          this is the first opportunity here. There will be  
15          another opportunity in the registration rule  
16          when it comes out as well.

17                   One thing I would like to  
18          mention, we would like to hear from the MSB.  
19          There are around 500 money service businesses in  
20          Canada. For many of them derivatives are not their  
21          business, but a small part of their business  
22          may offer certain foreign exchange forwards  
23          for some of their clients and customers. And they  
24          would fall under the -- arguably under the  
25          definition of dealing under the rule. And we want  
26          to look at what that means.

27                   If it means that they all drop  
28          those services because they don't want to enter

1 into an oversight regime, what's the effect of  
2 that on the market? Is that a good thing or bad  
3 thing? So we very much would like to hear from  
4 the money service businesses with regard to their  
5 take on those issues.

6 Any other comments on this  
7 trigger? I think that was it. So audience, on  
8 business trigger?

9 Okay, those were our  
10 general questions. Any concluding comments anyone  
11 would like to make about conduct? It is actually  
12 a bit of a hot topic now. Reading the news we have  
13 seen lots of interesting articles and discussions  
14 with regard to conduct generally and also in the banking world that  
15 involves retail.

16 MR. WONG: This may be gearing  
17 into 93-102, but we are looking for a little bit  
18 more clarity on how the whole thing is going to  
19 come together, particularly given our situation of  
20 being an IIROC dealer and that we already comply  
21 with the ongoing registrant obligations under  
22 National Instrument 31-103. How is all that going  
23 to dovetail with the -- whether there are going to  
24 be any new obligations under the proposed  
25 instrument. How is that all going to come  
26 together for us. So that's one thing that I would  
27 like to look forward to hearing a little bit more

1 from.

2 MS. CONDON: Can I just make  
3 my two little small comments about the  
4 know-your-party -- know-your-derivatives party  
5 provision.

6 One that targets the I guess  
7 investor and the other the firm. So with respect  
8 to the provision which requires derivatives firms  
9 to establish the insider status of a party, it  
10 only -- it appears to apply at the moment only  
11 when the underlying is securities. And to me that  
12 is potentially a bit too narrow in the sense that  
13 I can imagine that there might well be other  
14 circumstances where somebody's status as an  
15 insider of a reporting issuer might bear on the  
16 extent to which they are entering into a  
17 derivative, let's say a credit derivative just as  
18 much as a derivative where the underlying is  
19 security.

20 So given that -- I assume that  
21 we're all focused on manipulative trading here,  
22 that you might want to take a look at the issue  
23 around establishing inside status and the extent  
24 to which it applies.

25 Then on the firm side. You  
26 know, in the CP I was interested in the idea that  
27 the obligation to gather information about the  
28 derivative party does vary depending on derivative

1 firm's business model.

2                   Again, I can see how that's  
3 important in the sense that if the derivative firm  
4 is only in a specific asset class then they may  
5 only need to collect information about the parties  
6 with whom they are transacting in a narrower  
7 framework.

8                   But I suppose you also don't  
9 want this to end up having sort of a perverse  
10 incentive on the firm to only -- to characterize  
11 themselves as adopting a particular business model  
12 because it limits their need to collect KYC  
13 information from the parties with whom they are  
14 transacting.

15                   So I guess just really a small  
16 point about perhaps fleshing out what exactly you  
17 mean by the requirement to gather the information  
18 being limited by the firm's business model.

19                   MR. FINE: Thank you.

20                   MR. GROSS: And we had good  
21 discussion in the earlier panel about the  
22 responsibilities of the senior derivatives  
23 manager. But one of the things that caught my eye  
24 when I looked at the proposal was the wording  
25 about how to take reasonable steps to prevent and  
26 respond to non-compliance. The absence of any  
27 specific wording about responsibility to test for,  
28 detect non-compliance struck me as a significant

1 omission and I would imagine that prudent firms  
2 would make that part of their operational  
3 structure in the event, but it would be  
4 appropriate I think to have the regulation like  
5 that.

6 MR. FINE: Thank you. Last  
7 chance for comments anyone? Okay.

8 Well, this has just been  
9 tremendous. I very much would like to thank the  
10 panelists again for a great conversation. We feel  
11 this is an important rule. We'd like to think  
12 this is the introduction for some of you if you  
13 haven't read the rule yet, you now know a little  
14 bit about it and we encourage you to go and read  
15 it and provide comments to us. You don't have to  
16 hire a lawyer to provide comments. Anything you  
17 write out we're happy to take the comments as part  
18 of the process, so we thank you for that.

19 I would also like to mention the CSA binary options ban.  
20 We have  
21 a binary options ban proposal out. It's an important piece  
22 amongst many that the CSA is doing to try and  
23 address a very serious situation in Canada with  
24 regard to fraudulent foreign dealers.

1                   But we do want to -- of  
2           course sometimes there's unintended consequences,  
3           so we are hoping for -- somehow we caught a  
4           legitimate short term binary option that you don't  
5           think should be affected by the ban, please we  
6           would like to hear about that as well.

7                   Also, keep your eye out for the  
8           registration rule. We don't have an exact date  
9           for you, my apologies, but it will be coming out  
10          in the next few months. And as I said, you can  
11          provide comments that we'll take back with regards  
12          to the business conduct rule.

13                   And most of all, thank you  
14          very much everyone for attending. This is how we  
15          improve these rules as best as we can, these open  
16          dialogues. Have a great  
17          day and hopefully it's cooler when you get outside  
18          the room. Thank you.  
19          --- Whereupon the proceedings concluded at 11:53 a.m.

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This is to hereby certify that  
the forgoing to be a true and  
accurate transcript of the  
proceedings to the best of my  
skill and ability.

---

Sandra Brereton  
Certified Shorthand Reporter  
Registered Professional Reporter