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BY E-MAIL

March 9, 2017

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Attention: Me Anne-Marie Beaudoin, Corporate Secretary

Ladies and Gentlemen:

Re: Notice dated February 1, 2017 of the Regulation to amend the *Derivatives Regulation* [Identification of Hedgers]

This comment letter is submitted in response to the Notice of the *Regulation to Amend the Derivatives Regulation* under the *Derivatives Act* (CQLR, chapter I-14.01) (the "**Derivatives Act**") published on February 1, 2017 (the "**February 2017 Notice**") by the *Autorité des marchés financiers* (the "**AMF**") with respect to the proposed requirement relating to the identification of hedgers[1] (the "**Hedger Identification Proposal**").

Reference is also made to the Notice of the *Regulation to Amend the Derivatives Regulation* published on January 14, 2016 in which the AMF proposed to introduce a new certification requirement (the "**Hedger Certification Proposal**") for a person who seeks to qualify as a hedger for purposes of the exemption for over-the-counter ("**OTC**") derivatives transactions under section 7 of the Derivatives Act (the "**OTC derivatives exemption**"). We understand from the February 2017 Notice that, in light of industry comments it received on the Hedger Certification Proposal, the AMF decided to revisit the mechanism by which it is proposing to obtain information on hedgers.

Overview of the Hedger Identification Proposal

The February 2017 Notice includes a new requirement that an "accredited counterparty" which engages in an OTC derivatives transaction with a hedger who does not otherwise qualify as an "accredited counterparty" provide prescribed identification

[1] Paragraph (12) of the definition of "accredited counterparty" under section 3 of the Derivatives Act (i.e., "hedgers").

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information on the hedger to the AMF within 30 days after the end of the quarter in which the transaction was completed.

The prescribed information which the "accredited counterparty" would be required to deliver electronically to the AMF includes the following:

(a) the unique legal entity identifiers (LEI) assigned to the accredited counterparty and the hedger in accordance with the standards set by the Global Legal Entity Identifier System as defined *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* ("**Regulation 91-507**");

(b) if the hedger is an individual or is not eligible to receive an LEI, the name and address of the hedger as well as the alternate identifier used by the accredited counterparty to identify the hedger as contemplated in that situation under section 28(4) of Regulation 91-507; and

(c) the unique transaction identifier (UTI) assigned to the transaction by the trade repository in accordance with section 29 of Regulation 91-507.

In its notice to the proposal, the AMF states that delivery of this information will enable the regulator to "*determine the identity and number of hedgers in order to assess their status as accredited counterparties*".

Comments

ISDA appreciates the opportunity to provide the following comments on the February 2017 Notice:

1. While we understand the general policy and market protection considerations underlying this initiative, we would respectfully urge the AMF not to proceed with the Hedger Identification Proposal at this time. We understand that the AMF is the only member of the Canadian Securities Administrators (the "**CSA**") which is currently seeking to impose this requirement. Other CSA jurisdictions have adopted local exemption orders applicable to OTC derivatives transactions between "qualified parties", including with respect to persons and companies that meet the specified factual conditions to qualify as hedgers (a "**hedging exemption**").[2] To our knowledge, however, these other jurisdictions have not issued proposals similar to the Hedger Identification Proposal.

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[2] For example, subsection 1.1, paragraph (p) of Alberta Blanket Order 91-507 *Over-the-Counter Trades in Derivatives*; subsection 1.1, paragraph (p) of British Columbia Blanket Order 91-501 *Over-the-Counter Derivatives*; subsection 1.1, paragraph (p) of Manitoba Blanket Order 91-501 *Over-the-Counter Trades in Derivatives*; subsection 1.1, paragraph (q) of New Brunswick Local Rule 91-501 *Derivatives* and Clarifying Notice; subsection 1.1, paragraph (p) of Nova Scotia Blanket Order 91-501 I*n the Matter of Over The Counter Derivatives*; and subsection 1.1, paragraph (p) of Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*.

2. For the last several years, the AMF and other CSA members have sought to coordinate and adopt generally harmonized rules in the area of derivatives data reporting. Market participants have expended considerable resources to develop common reporting infrastructures and compliance systems on the basis of this generally harmonized regulatory framework. We respectfully submit that the proposed introduction of this entirely novel and Quebec-specific reporting requirement runs counter to the efforts of all industry stakeholders to avoid piecemeal and non-harmonized rulemaking.

3. The Hedger Identification Proposal is a clear improvement over the Hedger Certification Proposal since it seeks to leverage LEI and UTI information for the purposes of derivatives trade reporting requirements of Regulation 91-507. We note, however, that the Hedger Identification Proposal would also give rise to a number of practical documentary, compliance and operational issues for both banks and non-bank counterparties entering into OTC derivatives transactions on the basis of the hedger exemption. In particular, the mandatory minimum data fields prescribed by Regulation 91-507 and the equivalent instruments in other jurisdictions do not include any field to capture information on whether a counterparty is relying on a hedging exemption. The existing common reporting infrastructures developed at great expense by market participants could not therefore be leveraged to support this new requirement. Counterparties in and outside of Quebec to which this requirement would apply would therefore have to take additional measures to extract from their books and records (in many cases manually) information on Quebec-resident counterparties that are qualified only as hedgers. They would then have to match that information with the corresponding LEI and UTI information and deliver this information to the AMF within 30 days of each quarter. Since these items of information would likely not be available in readily accessible and reliable form, many dealer counterparties would have to take further measures to due diligence existing information for a substantial cross-section of their pool of counterparties and re-screen and re-document many of these.

4. We respectfully submit that, for some derivatives dealers in and outside of Quebec, the costs and operational/compliance burdens associated with these additional measures may be significant. These costs and operational/compliance burdens may for some dealers outweigh the commercial benefits in entering into OTC derivatives transactions with Quebec-resident hedgers and may create an incentive to terminate these account or trading relationships altogether. Since trading arrangements with Quebec-resident hedgers typically involve interest rate and FX forwards and similar products for hedging and risk management purposes (including in support of commercial lending arrangements), termination of these relationships could give rise to material commercial issues and paradoxically increase, rather than decrease, the risk exposure of Quebec-resident hedgers.

5. We are also concerned that the Hedger Identification Proposal is a departure from current G20 data reporting practices. We would respectfully urge the AMF to remain harmonized with the existing global framework of reporting through trade

repositories, which has been developed with considerable thought, expertise and expense in Canada and other jurisdictions globally. The AMF currently receives reporting under Regulation 91-507 and it has other regulatory recourses under the Derivatives Act to address market or institution-specific concerns.

6. Neither the Hedger Identification Proposal nor the Hedger Certification Proposal contain any specific findings based on normal course market oversight and examinations or domestic or global policy positions to clearly explain the rationale underlying the AMF's separate rulemaking initiative in this area. In our view, this exercise would best be undertaken as a broader part of the CSA's work on the harmonized registration/product qualification rules. If the CSA can substantiate their policy concerns in relation to a common "hedging exemption", the solution at that time may be to develop harmonized amendments to existing mandatory minimum data fields to capture standardized data regarding a counterparty's status as a hedger, which may only be reportable on a static (one time and not trade-by-trade basis) to identify hedgers to the regulator enabling the regulator in turn to look up the hedger's trading activity (via their LEI) in all reported data.

We would therefore respectfully request that the AMF consider withdrawing the Hedger Identification Proposal, that it coordinate with the other CSA members as part of pending rulemaking initiatives in this area and that it avoid any material departures from existing global reporting standards unless a compelling case to do so in the Quebec market is more clearly articulated.

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ISDA appreciates the opportunity to provide its input on the February 2017 Notice and would be pleased to work further with the AMF to find a solution to this issue. Please feel free to contact the undersigned or ISDA staff at your convenience.

Yours truly,

Katherine Darras
ISDA General Counsel