



ASC STAFF NOTICE AND REQUEST FOR COMMENT 91-708
OTC TRADING IN CONTRACTS FOR DIFFERENCE, FOREIGN
EXCHANGE CONTRACTS, AND BINARY OPTIONS

June 30, 2016

The purpose of this staff notice is to advise of recent regulatory developments relating to over-the-counter (OTC) trading in contracts for difference (CFDs), rolling-spot foreign exchange contracts, and binary options, and to seek comment on possible relief from certain reporting requirements and from the prospectus requirement in respect of the distribution of such products.

The ASC and other members of the Canadian Securities Administrators (CSA) have issued a number of notices and alerts in respect of these products.¹

Background

CFDs, rolling-spot foreign exchange contracts, and binary options are functionally derivatives but generally have met the definition of a “security” under Alberta securities laws and, as such, have been regulated as securities. As a result of recent statutory amendments, these products also constitute derivatives.

These products typically are not traded on exchanges nor centrally-cleared, but are instead marketed over-the-counter, including to unsophisticated investors. These products commonly are offered with some kind of leverage, effectively allowing investors to borrow money to invest such that gains and losses exceed the amount originally put at risk.

A CFD is a contract that provides a payoff that relates to the difference between a price or level of some underlying variable (such as a stock price or an exchange rate) at the time of closing of the contract and the time the contract is entered into. This permits a party to speculate on changes in the underlying variable. CFDs typically are traded between an investor and a dealer, not between investors. Usually the investor does not receive any ownership interest in the underlying asset. CFDs typically are open-ended, meaning that unlike a forward or futures contract, a CFD generally would not expire.

A rolling-spot foreign exchange contract is a contract for the sale or purchase of a given amount of a currency. While these contracts may ostensibly be spot market contracts that settle (via the

¹ See, for example: CSA, “Backgrounder: Foreign Currency Exchange (Forex/FX) Trading”, March 29, 2012, available from <http://www.securities-administrators.ca/aboutcsa.aspx?ID=1042>; ASC, “Recognizing a Scam”, available from <http://www.albertasecurities.com/investor/recognize-report-a-scam/Pages/recognizing-a-scam.aspx> (click on the “Foreign currency trading” drop-down); Ontario Securities Commission Staff Notice 91-702 *Offerings of Contracts For Difference and Foreign Exchange Contracts to Investors in Ontario* at page 2, available from http://www.osc.gov.on.ca/documents/en/Securities-Category9/sn_20091030_91-702_cdf.pdf; ASC, “Binary Options – Caution for investors in Alberta”, January 13, 2014, available from <http://www.albertasecurities.com/investor/investor-resources/you-ascd-blog/Lists/Posts/Post.aspx?ID=13>; CSA, “CSA alerts Canadians: Beware binary options platforms”, March 23, 2016, available from <http://www.albertasecurities.com/news-and-publications/Pages/customdisp.aspx?pi=1486> and http://www.securities-administrators.ca/uploadedFiles/General/pdfs/20160323_CSA%20Binary_Option_Alert_Eng.pdf.

actual delivery of cash) within two days after the trade, in practice such contracts typically are closed at day-end and then immediately reopened, providing an unlimited delivery timeline. This allows an investor to hold open positions indefinitely for speculative purposes.

A binary option is an option whose payoff at expiry is either zero or some fixed amount (either a fixed amount of money or a fixed amount of some predefined asset or the value thereof), typically expressed as a multiple of the amount invested. Binary options (also sometimes known as all-or-nothing options or digital options) are said to have a “discontinuous” payoff profile because of the all-or-nothing nature of their returns. The binary options that are the subject of this staff notice are cash-settled; they do not entitle the holder to acquire the underlying asset. Binary options often appear to be offered over the internet via offshore platforms that are not legally registered to act as dealers. They present significant risks to investors and challenges to regulators. The products typically are structured with payoff amounts and (short) time horizons that make them more akin to gambling than investing. **No binary options platforms or dealers are currently registered in Canada.**

Regulatory treatment of CFDs, rolling-spot foreign exchange contracts, and binary options As securities

The definition of “security” in the *Securities Act* (Alberta) (**Act**) is broad, and courts have interpreted it expansively. Staff consider CFDs, rolling-spot foreign exchange contracts, and binary options to be securities under the Act, often because they constitute “investment contracts”.²

As they are securities, any distribution of these products is subject to the prospectus requirement in the Act,³ unless the distribution is made pursuant to an available prospectus exemption. The prospectus exemption that we understand has typically been relied on for distributions of these products in Alberta is the accredited investor exemption set out in section 2.3 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**). As a practical matter this means that we generally expect that in Alberta these products would be sold only to accredited investors.

The provisions of NI 45-106 governing distributions that are made pursuant to the accredited investor exemption require that the seller obtain from each investor a completed risk acknowledgement in a prescribed form and require that a report of the exempt distribution be filed within 10 days.^{4, 5, 6}

² Subclause (xiv) of section 1(ggg). Some of these products may also fall under other heads of the definition of “security”, including subclause (iv) (options).

³ Section 110.

⁴ Sections 6.1 and 6.5 and subsections 2.3(6)–(7). In particular, the issuer or seller is required to obtain and retain a risk acknowledgement from individual accredited investors in the form of Form 45-106F9 *Form for Individual Accredited Investors*. Additionally, each distribution that is made pursuant to an exemption must be reported in the form of Form 45-106F1 *Report of Exempt Distribution*.

⁵ In the case of CFDs, rolling-spot foreign exchange contracts, and binary options, in most cases the dealer creates the security and may be thought of as the issuer and is therefore subject to the requirement to obtain a risk acknowledgement form and file a report of exempt distribution. In some cases the dealer may be playing an intermediary role, matching counterparties to transactions. In such cases the acts undertaken by the dealer in furtherance of a trade still constitute trading in the security. We would expect a dealer not to participate in acts in furtherance of a trade where it was reasonable to assume that the distribution would not comply with the prospectus requirement or an available exemption.

As derivatives

On May 27, 2016, amendments to the Act came into force which, among other things, changed the definition of “derivative” in section 1(n.01) with the effect that the definitions of “security” and “derivative” are no longer mutually exclusive. Something that meets the definition of “derivative” and also falls within one of the heads of the definition of “security” is now both a derivative and a security, unless it has been ordered or prescribed to be exclusively one and not the other.

Subclause (i) of the definition of derivative provides that a derivative is, among other things,

an option, swap, futures contract, forward contract or other financial or commodity contract or instrument, whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest, including a price, rate, index, value, variable, event, probability or thing[.]

We consider CFDs, rolling-spot foreign exchange contracts, and binary options to be derivatives under section 1(n.01)(i) of the Act; therefore they are both derivatives and securities.

As derivatives, these products are subject to Multilateral Instrument 91-101 *Derivatives: Product Determination* (MI 91-101) and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (MI 96-101), such that transactions in these products must be reported to a recognized trade repository in accordance with MI 96-101.⁷

Furthermore, in their dual character as both derivatives and securities, these products continue to be subject to the prospectus requirements described above. This includes the requirements to obtain a signed risk acknowledgement and file a report of exempt distribution when they are traded pursuant to an exemption, as described above.

As either securities or derivatives

Certain provisions of the Act apply regardless of whether the contracts or instruments being traded are characterized as derivatives, securities, or both.

Fraud and manipulation – Section 93 of the Act prohibits manipulative and fraudulent practices, in respect of trading in either securities or derivatives.

⁶ Form 45-106F1 *Report of Exempt Distribution* is to be filed by the issuer or underwriter. In many cases this will be the dealer.

⁷ Note that pursuant to a designation order entitled *Re Designation of certain investment contracts and options to be derivatives*, 2016 ABASC 15, which was effective as of May 1, 2016, these products were already designated to be derivatives for the limited purpose of MI 91-101 (and therefore for the purpose of trade reporting pursuant to MI 96-101). However, they are now derivatives for the purposes of Alberta securities laws generally, independently of the designation order.

Registration – The requirement to be registered applies to those in the business (or holding themselves out as being in the business) of dealing or advising, whether in either securities or derivatives.⁸

Relief from report of exempt distribution requirement

As described above, trading in CFDs, rolling-spot foreign exchange contracts, and binary options is subject to both trade reporting under MI 96-101 and the requirement to file a report of exempt distribution under NI 45-106. ASC staff are considering whether to propose some relief from the requirement to file a report of exempt distribution in respect of a distribution where the transaction is required to be and is in fact reported to a recognized trade repository pursuant to MI 96-101.⁹ We are also considering whether such relief should be conditional on the dealer periodically filing with the ASC a supplementary report that lists the trades entered into during the period (along with information identifying the client)¹⁰ and that permits the ASC to be able to match the trades listed in the report with the trade reports from a recognized trade repository.

Prospectus requirement

As described above, trading in CFDs, rolling-spot foreign exchange contracts, and binary options is subject to the prospectus requirement. To date, although some other jurisdictions have granted discretionary exemptions to permit CFDs and rolling-spot foreign exchange contracts to be sold to retail investors (i.e., persons who are not accredited investors),¹¹ the ASC has not. ASC staff have had concerns about the risks inherent in these products and have not been persuaded that an exemption from the prospectus requirement is appropriate.

Questions

We invite comment on the possible relief discussed above. In particular, we would like to receive feedback in respect of the following questions:

1. Do you support an exemption from the requirement to file a Form 45-106F1 *Report of Exempt Distribution* in respect of trades that are reported under MI 96-101? Why or why not?

⁸ Pursuant to sections 75, 1(a) and 1(m) of the Act, no person or company may engage in or hold itself out as engaging in the business of advising or trading in securities or derivatives unless the person or company is registered in accordance with Alberta securities laws.

⁹ Note that unlike reports of exempt distribution, transaction-level data from trade repositories will not be made public, except for a few categories of derivatives that are highly liquid and standardized (which do not presently include CFDs, rolling-spot foreign exchange contracts, or binary options).

¹⁰ Though the reports that are transmitted to a recognized trade repository include an identifier, they do not include the actual identity of individuals with whom a dealer trades. This information is on the report of exempt distribution.

¹¹ For example, see Ontario Securities Commission Staff Notice 91-702 *Offerings of Contracts For Difference and Foreign Exchange Contracts to Investors in Ontario (OSC notice)*, available from

<http://www.osc.gov.on.ca/en/26111.htm>. The relief from the prospectus requirement is conditional on, among other things, the provider: (i) registering with the commission and with the Investment Industry Regulatory Organization of Canada (IIROC); (ii) complying with the *Securities Act* (Ontario) and with IIROC rules, including rules related to proficiency, capital adequacy and margin requirements, and know-your-client and product suitability (at time of account opening only); (iii) providing clients with an appropriate risk disclosure statement (at time of account opening only); and (iv) ensuring that the contract counterparty (if it is separate from the registrant and is not itself a registrant and member of IIROC) is subject to meaningful capital adequacy and financial disclosure requirements. For an example of such an exemption, see

https://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20140814_2110_interactive-brokers.htm.

2. Are there other conditions to such an exemption that you would recommend?
3. If an exemption from the requirement to file a report of exempt distribution were subject to the filing of a periodic supplementary report as described above, how often should dealers be required to file the supplementary report?
4. Do you think that it is appropriate to provide a prospectus exemption to permit the sale of CFDs or rolling-spot foreign exchange contracts to retail investors? Please provide a detailed explanation of your reasons.
5. If you think an exemption from the prospectus requirement for the sale of CFDs or rolling-spot foreign exchange contracts to retail investors is warranted, what protections do you think would be appropriate to address the high risks inherent in these products? Do the measures described in the OSC notice¹² provide sufficient investor protection?
6. What additional investor protection measures do you think should be considered?
7. Would a limit on the amount an investor can put at risk through the trading of CFDs or rolling-spot foreign exchange contracts help to address investor protection concerns?

Comments

We are inviting comments until **September 9, 2016**.

Please submit your comments in writing. If you are sending your comments by email, please also send an electronic file containing the submissions in Microsoft Word format.

Please **address** your comments to the Alberta Securities Commission.

Please **send** your comments to:

Chad Conrad
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Fax: 403.297.2082
chad.conrad@asc.ca

Please note that comments received will be made publicly available and will be posted on the ASC's website at www.albertasecurities.com. We will not keep submissions confidential. You should not include personal information directly in the comments. It is important that you state on whose behalf you are making the submission.

¹² See note 11 above.

Questions

Please direct your questions to:

Chad Conrad
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Phone: 403.297.4295
chad.conrad@asc.ca

INCLUDES COMMENT LETTERS

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights
Fondation canadienne *pour* l'avancement
des droits *des* investisseurs

September 9, 2016

Chad Conrad
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Sent via email to: chad.conrad@asc.ca

RE: ASC Staff Notice and Request for Comment 91-708 OTC Trading in Contracts for Difference, Foreign Exchange Contracts, and Binary Options

FAIR Canada is pleased to offer comments on ASC Staff Notice and Request for Comment 91-708: OTC Trading in Contracts for Difference, Foreign Exchange Contracts, and Binary Options (the “Notice”), which seeks comments on the possible relief from certain reporting requirements and from the prospectus requirement in respect of the distribution of over-the-counter (OTC) trading in contracts for difference (CFDs), rolling-spot foreign exchange contracts, and binary options.

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

1. Executive Summary

- 1.1. FAIR Canada does not support the introduction of an exemption from the requirement to file a Form 45-106FI *Report of Exempt Distribution* (the “Report of Exempt Distribution”) for CFDs, rolling-spot foreign exchange contracts or binary options. Reports of Exempt Distribution are important tools for collecting key information on the exempt market. Regulators can use this information to assist with effective regulation and the development of a strong regulatory framework for the exempt market. The requirement to file a Report of Exempt Distribution is crucial and there should not be an exemption.
- 1.2. FAIR Canada does not support the introduction of prospectus exemptions for CFDs or rolling-spot foreign exchange contracts. These are complex, high-risk products that are often associated with leveraged investing and are unsuitable for the overwhelming majority of retail investors.

2. Exemption from the requirement to file Form 45-106F

Do you support an exemption from the requirement to file a Form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101? Why or why not?

- 2.1. FAIR Canada does not support an exemption from the requirement to file a Report of Exempt

Distribution in respect of trades that are reported under MI 96-101 as contemplated in the Notice. A Report of Exempt Distribution allows securities regulators to collect and publish key information on the exempt market. FAIR Canada has observed that there already is a dearth of basic information required to understand the exempt market. Sufficient data is required in order to regulate effectively and make sound policy decisions.¹ The information collected through a Report of Exempt Distribution is therefore useful as it can help to fill the gap in data that currently exists.

- 2.2. FAIR Canada believes that lower capital formation costs and increased confidence in our markets will be achieved by creating a regulatory framework for the exempt market that delivers strong investor protection while facilitating true (i.e. quality) capital formation. Confidence in our markets, including confidence that the markets are fair and that the rules are effectively enforced, is critical to long term capital formation and economic growth. Obtaining information about the exempt market is necessary in order to ensure that an appropriate regulatory process is established. The requirement to file a Report of Exempt Distribution is, therefore, crucial and there should not be an exemption.²

3. Prospectus Exemption

Do you think that it is appropriate to provide a prospectus exemption to permit the sale of CFDs or rolling-spot foreign exchange contracts to retail investors? Please provide a detailed explanation of your reasons.

- 3.1. FAIR Canada is opposed to prospectus exemptions that would permit the sale of CDFs or rolling-spot foreign exchange contracts to retail investors. FAIR Canada agrees with the ASC: an exemption from the prospectus requirement is not appropriate in light of the inherent risks of such products.
- 3.2. FAIR Canada believes that CDFs and rolling-spot foreign exchange contracts are complex, high-risk products that are unsuitable for the overwhelming majority of retail investors. FAIR Canada is strongly opposed to any regulatory changes that would facilitate the sale of such products to retail investors, and therefore FAIR Canada opposes the introduction of a prospectus exemption.
- 3.3. FAIR Canada is particularly concerned that the deployment of these products appears highly correlated to the use of leverage and may encourage leveraged investing. FAIR Canada is of the view that leveraged investing is not suitable for most investors and that there should be a

¹ Several academics and FAIR Canada have called on regulators to improve their understanding of the exempt market by collecting better information and making that information public. Academic papers include Jack M. Mintz, "Muddling up the Market: New Exempt-Market Regulations May do More Harm than Good to the Integrity of Markets", The University of Calgary School of Public Policy SPP Research Papers, v. 7 issue 35 (November 2014), available online at: <http://www.policyschool.ucalgary.ca/sites/default/files/research/mintz-mudlingmarket.pdf>; and Vijay Jog, "The Exempt Market in Canada: Empirics, Observations and Recommendations", University of Calgary School of Public Policy SPP Research Papers, v. 8 issue (March 2015), available online at: <http://www.policyschool.ucalgary.ca/sites/default/files/research/exempt-markets-jog.pdf>. FAIR Canada has raised this issue in several of its submissions including its 2012 submission to the CSA on reforms to the accredited investor and minimum amount exemptions from consultation note 45-401 published November 10, 2011: available online at <http://faircanada.ca/wp-content/uploads/2011/01/120229-FAIR-Canada-submission-re-MA-AI-exemptions.pdf>.

² See FAIR Canada's previous comments regarding Reports of Exempt Distribution, available online at: http://faircanada.ca/fca_submissioncategory/capital-raising-exempt-market/

presumption of unsuitability in respect of these products.³

- 3.4. Moreover, FAIR Canada believes that the regulatory changes outlined in the Notice ignore the need for investor protection. Ignoring investor protection will only make the exempt market more inefficient and will further erode investor confidence in our capital markets. This will, in turn, hurt economic growth. FAIR Canada therefore urges the ASC to give no further consideration to this prospectus exemption.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408/neil.gross@faircanada.ca or Marian Passmore at 416-214-3441/marian.passmore@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights

³ See FAIR Canada's previous comments regarding leveraged investing, including comments made in response to OSC alerts on the risks of leveraged investing, available online at: <http://faircanada.ca/whats-new/osc-alerts-investors-about-risk-of-leveraged-investing/>; and a letter to the CSA urging regulators to act on leveraged investing, available online at: <http://faircanada.ca/wp-content/uploads/2011/10/111026-letter-to-CSA-re-Leverage-final.pdf>.



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September 9, 2016

Delivered Via Email: chad.conrad@asc.ca

Mr. Chad Conrad

Legal Counsel, Corporate Finance

Alberta Securities Commission

Suite 600, 250 – 5th Street SW

Calgary, Alberta T2P 0R4

Dear Mr. Conrad:

Re: ASC Staff Notice and Request for Comment 91-708 issued by the Alberta Securities Commission on June 30, 2016

CMC Markets Canada Inc. would like to take this opportunity to express its views on the proposed changes via Request for Comment 91-708 issued by the Alberta Securities Commission on June 30, 2016.

CMC Markets Canada Inc. is an IIROC regulated Dealer focusing exclusively on the trading of over the counter Contracts for Difference (CFD's) in the Canadian marketplace. CMC Markets Canada Inc. has operated under this prospectus exemption since its initial registrant in Canada. Each Canadian jurisdiction outside of Alberta has permitted the sale of CFD's to retail clients without reliance on this prospectus exemption. This has ensured that the majority of Alberta residents wishing to trade CFD's are required to open accounts "offshore" without the inherent protections and oversight offered by IIROC regulated Dealer Members.

CMC Markets Canada Inc. would like to thank the Alberta Securities Commission for putting forward the Staff Notice and Request for Comment.

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CMC Markets Canada Inc. is a member of the Investment Industry Regulatory Organization of Canada.



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CMC Markets Canada Inc. is taking this opportunity to comment on the proposed amendments pursuant to Request for Comment 91-708. In particular, we would like to comment on possible relief from reporting requirements, prospectus requirements and harmonization of OTC regulations between provincial jurisdictions.

In addition to our comments, CMC Markets Canada Inc. is also supportive of the comments found in the Investment Industry Association of Canada's (the "IIAC") response to the ASC request.

CMC Markets Canada Inc.'s Response to Questions:

1. CMC Markets Canada Inc. supports the exemption from the requirement to file Form 45-106F1 Report of Exempt Distributions under NI 45-106. The current reporting requirement is not well suited to the reporting of CFD transactions and falls short of the reporting requirements found under MI 96-101. The reporting requirements under MI 96-101 require more detailed reporting than found under NI 45-106. In addition to the redundancy of reporting there are costs related to both reporting requirements which have raised issues regarding the feasibility of offering CFD's in Alberta.
2. CMC Markets Canada Inc. does not believe that additional conditions to such an exemption are required as reporting under MI 96-101 currently provides greater detail on a more frequent (daily) basis.
3. CMC Markets Canada Inc. does not believe that a periodic supplementary report would be an appropriate condition as it would only serve to duplicate information reported to the ASC in a different format. As the ASC would have timely access to transaction reporting The ASC has the authority to audit firm's reporting at any given time which would address any potential issues related to inaccurate reporting.
4. CMC Markets Canada Inc. believes that an exemption to permit the sale of CFD's to retail investors is appropriate. Retail clients in Alberta (the only jurisdiction in Canada that does not permit this type of activity) have been required to trade with un-regulated off-shore Dealers who do not meet the stringent requirements (disclosure, segregation of client funds, internal control requirements, CIPF membership, etc.) imposed by IIROC and the applicable provincial regulators. The inherent risk to Alberta residents who have been forced to open "off-shore" accounts exceeds the perceived risks in trading CFD's.
5. CMC Markets Canada Inc. believes that the current regulatory structure surround the offering of CFD's outside of Alberta is sufficient to protect investors within the province. We are not aware of

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any identified investor protection issues that have arisen in jurisdictions that permit retail clients to trade CFD's.

6. CMC Markets Canada Inc. believes that the current investor protection measures are sufficient to protect retail Alberta investors who wish to trade CFD's.

7. CMC Markets Canada Inc. is currently required to review client losses against established Cumulative Risk Limits set by the client and restrict trading if the clients exceed this limit. In addition the requirement to establish client suitability for what is a suitability-exempt product is currently in place. We are not currently aware of any additional investor protection concerns that are not addressed within the current regulatory structure CMC Markets Canada Inc. is subject too.

Yours sincerely,



Alex Kukic

Chief Compliance Officer

CMC Markets Canada Inc.

a.kukic@cmcmarkets.com

From: [Danny Gordon](#)
To: [Chad Conrad](#)
Cc: [Michael David](#); [Danny Gordon](#)
Subject: RE: ASC Staff Notice and Request for Comment 91-708 comments of Fridberg Mercantile Group Ltd.- Daniel Gordon-
Date: September-02-16 10:55:03 AM

Mr. Conrad,

When the ASC came up with its requirements to file each and every CFD and Rolling spot transaction, many firms decided to no longer do business with clients living in Alberta. Clients that transact in these markets are high frequency traders, and the costs of these filings are quite onerous. Our firm continued to take clients from Alberta, but to be honest, it is not really worth the time and effort required. This is particularly an issue as the ASC recently changed the manner of filing, and our firm incurred huge costs to file the made in Alberta changes put into place, to file the data on SEDAR.

To now require firms to jump through hoops to deal with even more regulatory burdens will likely force more firms to close shop in Alberta. This will not stop Albertans from trading, they will go to the offshore firms to transact with NON- Canadian Regulated firms that are not CIPF insured firms. This will actually put Albertans at risk to the many unscrupulous firms that offer these products in countries that none of us would risk visiting. I do not believe that this is what the ASC wants.

Therefore, I recommend with the strongest words possible that the ASC not require any prospectus requirements, as the unseen consequence of this decision in our opinion is not in the best interest of Albertans. In fact, I would also recommend that they remove the requirement to file a separate report of exempt distribution under NI 45-106F1 through SEDAR – like all other Provinces.

I thank you for your time, and allowing our firm to comment.

Sincerely,
Daniel A. Gordon
CCO
Friedberg Mercantile Group Ltd.



September 9, 2016

Delivered Via Email: chad.conrad@asc.ca

Mr. Chad Conrad
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4

Dear Mr. Conrad:

Re: ASC Staff Notice and Request for Comment 91-708 issued by the Alberta Securities Commission on June 30, 2016

The Investment Industry Association of Canada (the "IIAC") would like to take this opportunity to express its views on the proposed changes via Request for Comment 91-708 issued by the Alberta Securities Commission on June 30, 2016.

The IIAC is the national association representing the position of 132 IIROC-regulated Dealer Member firms on securities regulation, public policy and industry issues. We work to foster a vibrant, prosperous investment industry driven by strong and efficient capital markets.

The IIAC would like to thank the Alberta Securities Commission for putting forward the Staff Notice and Request for Comment in order to advise our members of regulatory developments in over-the-counter (“OTC”) transactions of:

- Contracts for difference (“CFD”);
- Rolling-spot foreign exchange contracts;
- Binary options.

The IIAC is taking this opportunity to comment on the proposed amendments pursuant to Request for Comment 91-708. In particular, we would like to comment on possible relief from reporting requirements, prospectus requirements and harmonization of OTC regulations between provincial jurisdictions.

Relief from report of exempt distribution requirement

During our consultation with our member firms, certain brokers mentioned that when the Alberta Securities Commission implemented its requirements to file each and every CFD and Rolling-spot foreign exchange contract transaction, many firms decided to stop providing services to clients living in Alberta. It was noted by our members that clients that transact in these markets are often high frequency traders and that the resources needed to undertake these filings are quite onerous for brokerage firms.

Some of our member firms indicated that they continued serving clients from Alberta despite the increased time and effort required by the regulatory changes. Members noted that it is particularly an issue as the Alberta Securities Commission recently changed the manner of filing. Firms incurred huge costs to file the required data on SEDAR as requested by the Alberta Securities Commission.

Maintaining or adding to the regulatory burden faced by our members in Alberta would likely force more Canadian firms to stop serving clients in the province. Increased regulation would not stop residents of Alberta from trading but they may look to offshore firms and transact with Non-Canadian firms that may not have similar regulatory requirements and may not have similar protection (such as from the Canadian Investor Protection Fund). Residents of Alberta may be at risk if transacting with firms that offer these products in less regulated jurisdictions.

Therefore, we suggest that the Alberta Securities Commission remove the requirement to file a separate report of exempt distribution under NI 45-106F1 through SEDAR, similar to other Canadian jurisdictions, when the transaction is required to be reported to a recognized trade repository pursuant to MI 96-101.

Furthermore, our members believe that no periodic supplementary filing listing the trades reported to a recognized trade repository should be filed with the Alberta Securities Commission.

Prospectus exemption to permit the sale of CFDs or Rolling-spot foreign exchange contracts to retail investors

Based on our consultation with our member firms, we recommend that the Alberta Securities Commission adopt a prospectus exemption, similar to all other Canadian jurisdictions, to permit the sale to retail investors.

Not granting a prospectus exemption to permit sale to retail investors may not be in the best interest of residents of Alberta since they may choose to trade with offshore firms that may not be as regulated as our Canadian firms.

We believe that the relief from prospectus requirement should be conditional on the provider registering with the Investment Industry Regulatory Organization of Canada (“IIROC”), complying with stringent IIROC rules, including know-your-client and product suitability rules.

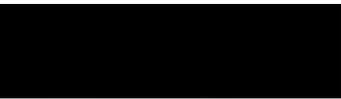
Furthermore, our members do not believe that additional investor protection measures are needed in order to protect retail investors transacting with IIROC-regulated member firms.

Harmonization of OTC regulation between jurisdictions

The IIAC strongly believes that OTC regulation should be harmonized between the different jurisdictions in order to create a user-friendly Canadian OTC environment for our member firms.

Lastly, the IIAC welcomes pre-consultation on upcoming regulatory amendments and remains available for further consultations.

Yours sincerely,



Annie Sinigagliese
Managing Director
Investment Industry Association of Canada
asinigagliese@iiac.ca

From: [Jessy lin](#)
To: [Chad Conrad](#)
Subject: Comments on 91-708 OTC Trading in Contracts for Difference, Foreign Exchange Contracts, and Binary Options
Date: July-18-16 2:09:11 PM

To: Alberta Securities Committee

As a person interested in investing, I would like to address on the point #4.

4. Do you think that it is appropriate to provide a prospectus exemption to permit the sale of CFDs or rolling-spot foreign exchange contracts to retail investors? Please provide a detailed explanation of your reasons.

Absolutely I think it is appropriate to provide exemption to retail investors based on the following reasons.

First, there are other jurisdictions in Canada also providing the exemption, not mention there are also a lots of countries to do so. Then why not Alberta?

Second, every investment has risk. Gambling and marijuana pose more risks for personal life.

Third, if we take this as a naughty kid, prohibition hasn't always been a good way, permitting and monitoring work much better.

Finally, providing exemption is a challenge to the regulators, but the regulators can get improving as time goes on.

Thanks for the chance to share opinions with Albertans.

Regards,
Jessy

INCLUDES COMMENT LETTERS

From: [Scott](#)
To: [Chad Conrad](#)
Subject: Re: ASC Staff Notice and Request for Comment 91-708 OTC Trading in Contracts for Difference, Foreign Exchange Contracts, and Binary Options
Date: July-13-16 7:30:56 AM
Attachments: [91-708.docx](#)

Hi Mr. Conrad, thank-you for raising the interest of and calling for public comments on spot FX and CFDs. In response to the six questions from 91-708, please see attachment.

Hi Mr. Conrad, thank-you for raising the interest of and calling for public comments on spot FX and CFDs. In response to the six questions from 91-708, please see below.

- 1) I do support an exemption from the requirement.
- 2) ???
- 3) Quarterly or semi-annually, depending on regulatory benefits.
- 4) Yes. Many of Canada's CSAs do not impose this requirement. AB's traders should not be restricted by higher regulatory requirements than other traders across Canada.
- 5) Other international regulatory bodies have limited the leverage brokers can provide to their customers. In the US the CFTC limits retail FX traders to 50:1 leverage, while most of Europe is typically 200:1. The ASC could look to other regulatory bodies to discover what leverage struck the optimal balance between trader's benefit and excessive risk taking.
- 6) Brokers wanting access to AB's retail market should be required to provide a short easy to understand explanation and example on the consequences of leverage which customers must view/read to enable account activation.
- 7) Yes. Restrictions on a maximum opening balance and maximum individual trade size would be warranted. There should be no restriction on the size an account is allowed to grow to.



September 8, 2016

Chad Conrad
Legal Counsel, Corporate Finance
Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
chad.conrad@asc.ca

Re: ASC STAFF NOTICE AND REQUEST FOR COMMENT 91-708 - OTC TRADING IN CONTRACTS FOR DIFFERENCE, FOREIGN EXCHANGE CONTRACTS, AND BINARY OPTIONS

Dear Mr. Conrad,

OANDA (Canada) Corporation ULC (“OANDA”) appreciates the opportunity to comment on *Alberta Securities Staff Notice and Request for Comment 91-708 – OTC Trading in Contracts For Difference, Foreign Exchange Contracts, and Binary Options*. Please find below OANDA’s general comments on the notice, and specific responses to the questions posed at the end of the notice.

General Comments

OANDA fully supports eliminating any duplication of reporting that is prescribed in regulation, as every regulatory reporting requirement imposes significant costs on the reporting entity. These costs include the costs of preparing the reports, analyzing and auditing the contents of the reports against regulation, and the risk of penalties and reputational damage for non-compliance. All of these costs are ultimately borne by investors, so it is important to ensure regulatory reporting requirements are well-conceived. Overbearing reporting requirements may also discourage foreign competition from entering Canadian capital markets, resulting in an uncompetitive marketplace that further disadvantages Canadian investors. OANDA believes that the Alberta Security Commission’s proposed supplementary report listing trades entered into during a specific period might be an example of unnecessary duplication of reporting efforts described above. As noted, this requirement would impose significant costs on dealers (and thereby investors) without any substantial benefit.

OANDA applauds the efforts of the Alberta Securities Commission to solicit opinions from the investment industry, and to consider regulatory amendments to bring consistency to the Canadian regulatory landscape. Further responses to the specific questions posed in the Staff Notice are below.

Questions

1. Do you support an exemption from the requirement to file a Form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101? Why or why not?

OANDA fully supports an exemption from the requirement to file a Form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101. This exemption would eliminate a significant reporting cost for investment dealers in Alberta that already report OTC derivatives under MI

96-101, while not significantly impairing the Alberta Securities Commission's visibility into trading of these securities.

2. Are there other conditions to such an exemption that you would recommend?

OANDA recommends that any dealer exempted from the requirement to file a Form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101, should be a member of IIROC and should have an affiliate that is regulated in the United States by the National Futures Association ("NFA") and Commodity Futures Trading Commission ("CFTC"). Given the recent enhanced oversight of the Forex market by the NFA and CFTC, this condition would ensure that dealers offering FX and CFD contracts to investors in Alberta are subject to significant regulatory oversight across multiple North American markets.

3. If an exemption from the requirement to file a report of exempt distribution were subject to the filing of a periodic supplementary report as described above, how often should dealers be required to file the supplementary report?

As noted in OANDA's general comments above, OANDA does not support replacing one duplicate regulatory reporting requirement with another. OANDA believes that a periodic supplementary report would be an unnecessary regulatory burden on dealers that would provide minimal value to regulators and impose needless costs on investors. Reporting under MI 96-101 should be accurate and subject to periodic regulatory review, therefore an additional report for comparative purposes is unwarranted. Additionally, dealers of FX contracts and CFDs typically transact in such large volumes that reports would be of limited use for the comparative purposes proposed. If the Alberta Securities Commission intends on pursuing this requirement, OANDA recommends that the reporting requirement be annual, to minimize the regulatory cost on dealers and investors.

4. Do you think that it is appropriate to provide a prospectus exemption to permit the sale of CFDs or rolling-spot foreign exchange contracts to retail investors? Please provide a detailed explanation of your reasons.

OANDA believes it is more prudent to provide a prospectus exemption to permit the sale of CFDs and rolling-spot foreign exchange contracts to retail investors, than it is to effectively forbid dealers under Canadian jurisdiction from providing this service to Alberta retail investors. Without this prospectus exemption, investors in Alberta that are interested in transacting in CFDs or rolling-spot foreign exchange contracts are forced to open accounts with dealers outside of Canadian jurisdiction. OANDA believes that Alberta investors should be entitled to the strong regulatory oversight and protection provided by Canadian regulation, such as IIROC and securities commission oversight, as well as CIPF protection.

OANDA further believes that retail investors in Alberta may be among the most interested Canadian investors in FX and CFD contracts, due to their exposure to price movements in currencies and certain commodity CFDs. In particular, Albertan retail investors may want to hedge their personal exposure to oil prices or a strong US Dollar. For example, an employee of an Alberta oil company whose employment might be affected by a negative movement in oil prices, may have wanted to hedge that risk by taking a short position in oil prices. Similarly, many Alberta oil companies are also exposed to changes in the USD/CAD exchange rate, and employees of those companies might mitigate their personal employment risk by hedging that exposure.

OANDA believes that Alberta investors should be given the opportunity to access these instruments, which are arguably no less risky than exchange-traded options, through dealers that are regulated in Canada.

5. If you think an exemption from the prospectus requirement for the sale of CFDs or rolling-spot foreign exchange contracts to retail investors is warranted, what protections do you think would be appropriate to address the high risks inherent in these products? Do the measures described in the OSC notice provide sufficient investor protection?

OANDA believes that the measures described in the OSC notice, coupled with any other measures mentioned within this letter, provide sufficient investor protection to Alberta investors.

6. What additional investor protection measures do you think should be considered?

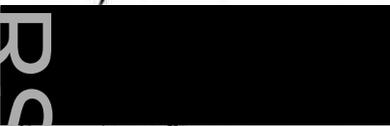
OANDA recommends that an exemption to permit the sale of CFDs or rolling-spot foreign exchange contracts to retail investors be only provided to dealers who primarily transact as a counterparty to retail-off exchange forex transactions. This is consistent with United States regulations which are intended to separate forex dealers from equities and other investment dealers. By separating these dealer types, regulators can minimize the risk that an adverse currency movement resulting in the insolvency of a forex dealer will impact the long-term assets and retirement holdings of investors.

7. Would a limit on the amount an investor can put at risk through the trading of CFDs or rolling-spot foreign exchange contracts help to address investor protection concerns?

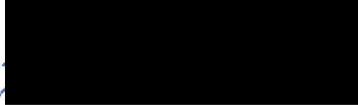
OANDA recommends that dealers obtain a risk tolerance limit (or cumulative loss limit) for retail clients that intend on trading CFDs or rolling-spot foreign exchange contracts. The risk tolerance limit should be approved by a registered Supervisor and should be reasonable in comparison to the investor's financial situation. This requirement is articulated in IIROC's "Regulatory Analysis of Contracts for Differences (CFDs)", and would therefore be a requirement if the Alberta Securities Commission requires IIROC registration for any exemption from the requirement to file a Form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101.

OANDA would like to reiterate its appreciation of the opportunity to comment on the ASC Staff Notice, and looks forward to timely action by the Alberta Securities Commission to address duplicate regulatory reporting requirements and to potentially enable Alberta retail investors to begin to participate in the forex market, the largest market in the world.

Sincerely,


Kevin Ryan
Chief Executive Officer

OANDA
370 King St. W., 2nd Floor, Box 60
Toronto, ON, Canada
M5V 1J9


Richard Therrien
Compliance Manager

OANDA
370 King St. W., 2nd Floor, Box 60
Toronto, ON, Canada
M5V 1J9



INCLUDES COMMENTS LETTERS

Via Email

September 9, 2016

Alberta Securities Commission
Suite 600, 250 – 5th Street S.W.
Calgary, Alberta
T2P 0R4

Attention: Chad Conrad, Legal Counsel, Corporate Finance

RE: **ASC Staff Notice and Request for Comment 91-708 OTC Trading in Contracts for Difference, Foreign Exchange Contracts and Binary Options (the “ASC Staff Notice”)**

Dear Mr. Conrad,

In response to the ASC Staff Notice, Olympia Trust Company (“**Olympia**”) hereby provides the following comments with respect to current regulatory regime respecting over-the-counter derivatives as it relates to foreign exchange contracts.

Olympia currently relies on the provisions of Alberta Securities Commission Blanket Order 91-506 (“**BO 91-506**”) to sell over-the-counter currency forward contracts (the “**OTC Forwards**”) to residents in Alberta. Olympia is able to rely on the provisions of BO 91-506 because it is a trust company organized in accordance with the *Loan and Trust Corporations Act* (Alberta) and consequently is a “qualified party” as such term is defined in BO 91-506. Consequently, Olympia is exempt from both the prospectus requirement and the registration requirement with respect to the sale of OTC Forwards to other “qualified parties.”

It is Olympia’s experience that currently most foreign exchange providers, who are not registrants in accordance with National Instrument 31-103 (“**NI-103**”), do not meet the “qualified party” requirements set forth in BO 91-506 and consequently cannot sell OTC Forwards or similar risk mitigation products.

The other categories of “qualified parties” to whom Olympia can sell OTC Forwards are quite limited. In practice the vast majority of Olympia’s client’s fall into one of following three categories:

1. an individual who either alone or with their spouse, has net assets of at least \$5 million;
2. a person or company, other than an individual or an investment fund, that has total assets of at least \$25 million as shown on their most recently prepared annual financial statements or interim report; and

3. a person or company that is directly or indirectly wholly owned (not taking into account securities required by law to be held by directors) by one or more qualified parties.

The OTC Forwards sold by Olympia require that the counterparty accept electronic or physical delivery of the exchanged currency on the specified settlement date and may not be rolled-over. Consequently, it is Olympia's view that the OTC Forwards sold by Olympia are not used by Olympia's clients for currency speculation purposes, but rather represent a genuine attempt by these clients to reduce the commercial risk that may result from a change in the exchange rates between currencies.

Unfortunately, many small and medium sized Canadian businesses with foreign business operations do not meet the "qualified party" requirements set forth in BO 91-506 and consequently cannot purchase OTC Forwards from Olympia. Olympia acknowledges that such small and medium Canadian businesses can purchase currency risk mitigation products similar to OTC Forwards from registrants registered in accordance with NI 31-103, but do so at 2 to 3 times the cost charged by Olympia.

It is Olympia's view that the current regulatory regime respecting over-the-counter derivatives, such as OTC Forwards, has created numerous barriers to entry that prevent new entrants from entering the market and competing with foreign exchange services provided by the large financial institutions that currently dominate the foreign exchange market. In particular, this lack of competition has a significant adverse effect on small and medium sized Canadian businesses with foreign operations who do not have the financial size to allow them to access the less expensive foreign exchange providers.

Olympia appreciates the consumer protection aspect of the Alberta Securities Commission's ("ASC") mandate and believes that the prospectus and registration requirements are appropriate with respect to transactions entered into for currency speculation purposes. It is however Olympia's position that ASC should consider providing a full or limited exemption from both the prospectus requirement and registration requirement with respect to "bona fide" hedging transaction.

For the purposes of this letter a "bona fide" hedging transaction means any agreement, contract or transaction, where such transaction represents a substitute for a transaction to be made at a later time and that is economically appropriate to reduce risk in the conduct and management of a commercial enterprise, where such risk arises from:

- (i) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising,
- (ii) The potential change in the value of liabilities which a person owns or anticipates incurring, or

- (iii) The potential change in the value of services which a person provides, purchases, or anticipates providing or purchasing.

and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices.

(Please note that this definition “bona fide” hedging transaction is a modified version of the bona fide hedging transaction and positions for excluded commodities definition found in U.S. Commodity Futures Trading Commission regulation 1.3(1)(z).)

It is Olympia’s position that a full or limited exemption to the prospectus requirement and registration requirement with respect to “bona fide” hedging transactions would benefit small and medium sized Canadian businesses. By lessening the barriers to entry that prevent prospective foreign exchange providers from entering the foreign exchange market and competing with the large financial institutions. This in turn would increase competition and lower the cost of “bona fide” hedging transactions for small and medium Canadian businesses. Olympia believes that by restricting this exemption to “bona fide” hedging transactions that the risk to public from such an exemption would be low as it would not allow subject transactions to be used for speculative purposes.

We note that Olympia has operated in the Canadian foreign exchange market for the past 12 years without any regulatory incidences or complaints.

Should you require any clarification with respect to any of the above responses or have any additional questions or comments please contact undersigned at your convenience.

Yours truly,

“Jonathan Bahnuik”

Jonathan Bahnuik
General Counsel, Olympia Financial Group Inc.

INCLUDES COMMENT LETTERS

From: Nathaniel Scott [REDACTED]
Sent: July-11-16 9:53 AM
To: Chad Conrad
Subject: Securities reply
Attachments: 5227482-91-708_SN_ASC_Notice_and_RFC_re_CFDs_FX_and_Binary_Options.pdf;
ATT00001.txt
Follow Up Flag: Follow up
Flag Status: Flagged

Took you guys long enough

From: [Gaganjot singh](#)
To: [Chad Conrad](#)
Subject: ASC exemption comments
Date: July-11-16 2:56:17 PM
Attachments: [ASC Q&A.docx](#)

Hi Chad,

Please find attached a word file for my comments and opinion. I strongly support that retail investors in Alberta should be given the opportunity to trade forex and CFDs as allowed in other jurisdictions in Canada.

There are other ways to control risks such as controlling maximum leverage offered by the dealers, controlling maximum account limit and using risk disclosure statements in plain English language rather than putting restrictions on dealers to only open accounts for wealthy or high net individuals (Accredited investor).

If you have any questions for me, kindly email me.

Best Regards,
Jot

To Alberta Securities Commission,

Q1: Do you support an exemption from the requirement to file a Form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101? Why or Why not?

Ans: I **fully support** an exemption from the requirement to file a form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101 due to the following reasons:

- First of all, ASC should permit CFDs and rolling spot foreign exchange contracts to be sold to retail investors as well, as done in other jurisdictions.
- Secondly, I personally think ASC should opt for random checks on dealers to ensure registered brokers are obeying the laws and are not involved in any manipulation of the markets.

Q2: Are there other conditions to such an exemption that you would recommend?

Ans: Brokers and ASC can work together to use a plain language risk acknowledgment form and get it signed from the retail investor when he or she puts an application to open an account instead of blocking access for all retail investors to trade products like forex.

Q3: If an exemption from the requirement to file a report of exempt distribution were subject to the filing of a periodic supplementary report as described above, how often should dealers be required to file the supplementary report?

Ans: Every 3 months regardless of whether it is a retail investor account or an accredited investor account.

Q4: Do you think it is appropriate to provide a prospectus exemption to permit sale of CFDs or rolling –spot foreign exchange contracts to retail investors? Please provide a detailed explanation of your reasons?

Ans: **Yes it is very appropriate to provide a prospectus exemption to permit sale of CFDs or rolling –spot foreign exchange contracts to retail investors due to following reasons:**

- Forex exchange market is the most liquid market in the world and open 24 hours a day for five days which makes it great for trading without risking your day job. So, retail investors like myself can manage to participate in the markets at any time of the day.
- The minimum positions for buy or sell contracts are highly customizable which in turn provides a retail investor a great parameter to control his or her risk according to their account size.
- Most of the registered Canadian brokers provide free education on their websites on how to trade forex markets and a demo account. So, any individual can learn and practice on demo account which means there is no risk involved. So, there are lot of

resources available such as demo or paper trading which an individual can use to find out if trading is suitable to them or not without risking any money.

- ASC and registered brokers can control leverage offered by brokers to retail investors but it should not be less than 20:1. This is another way of limiting losses.
- **All investors whether retail or accredited shall be treated equally in terms of trading opportunities available to them, as it should be in the hands of an individual to decide whether he wants to take risk or not.**

ASC should allow registered Canadian brokers to open live trading accounts for retail investors as done in other Canadian jurisdictions.

Q5: If you think an exemption from the prospectus requirement for the sale of CFDs or rolling spot foreign exchange contracts to retail investors is warranted, what protections do you think would be appropriate to address the high risks inherent in these products? Do the measures describe in the OSC notice provide sufficient investor protection?

Ans: High risks in these products can be and must be controlled by an individual himself as every investor has different risk tolerance which he or she can control by controlling the amount of leverage he or she uses while trading.

Risk disclosure statements by brokers and ASC are more than enough to warn retail investors about the risks involved. If an individual wants to lose money he or she can find numerous ways to lose it.

OSC notice does provide sufficient investor protection in my opinion.

Q6: What additional investor protection measures do you think should be considered?

Ans: - There should be limit to the maximum leverage offered to the clients by Canadian brokers.

- Minimum age limit of 25 for retail investors, so really young people cannot get distracted to high return investments.
- Again, risk acknowledgement forms in very plain and simple language shall be made available highlighting the potential risks involved.

Q7: Would a limit on the amount an investor can put at risk through the trading of CFDs or rolling-spot foreign exchange contracts help to address investor protection concerns?

Ans: Yes, it would definitely help retail investors in limiting their losses but should not be less than CAD \$50,000 to generate a reasonable return from using limited leveraged products.

Again, I personally strongly support **exemption to permit sale of CFDs or rolling –spot foreign exchange contracts to retail investors.**