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VIA EMAIL

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**Re: Re-publication of Proposed Derivatives Rule Modernization, Stage 1 (the "Proposed Amendments")**

The Canadian Advocacy Council of CFA Societies Canada[1] (the "**CAC**") appreciates the opportunity to provide the following general comments on the Proposed Amendments.

We continue to support updating the IIROC Rules to align to the CSA's related rule proposals, to reduce inconsistencies between the treatment of listed and OTC derivatives, and to create consistent regulation for securities and derivatives-related activities. We believe the Proposed Amendments have been carefully considered and are appropriate to implement at this time.

We are particularly supportive of IIROC's proposed definition of a "hedger", including the changes that have been made from the first iteration of the amendments. It is important to continue to exclude individuals from this potential classification to ameliorate potential mis-selling and suitability concerns.

We would appreciate some clarification with respect to the interaction of clauses (i) and (ii) of the proposed hedger definition. Clause (i) refers to *one or more risks* (emphasis added) that the non-individual/hedger is exposed to as a necessary part of its activities.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

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However, the introduction to clause (ii) indicates that the non-individual/hedger "seeks to hedge ***each*** risk" (emphasis added) by engaging in the specified derivatives transaction(s). We query whether the definition was intended to exclude erstwhile hedgers who may elect to hedge one or more of their risks from activities, rather than all of them, through derivatives transactions. We think that a non-individual/hedger should be able to qualify as a hedger if they engage in qualifying hedging activities with respect to ***one or more*** of their identified risks, but that they need not seek to hedge all of their risks from activities as existing language would suggest is required.

Furthermore, subclause (ii)(c) in the definition references that the market value changes in the position resulting from the hedging transaction(s) should be expected to completely or materially offset market value changes in the underlying interest or position being hedged. We would appreciate further guidance on the meaning of "materially" in this context. We recognize the draft guidance note related to applying and interpreting the definitions of "hedger" and "institutional client" provides some explanation of materiality in the context of the underlying interest being the same as or materially related to the underlying interest for the risk, however we are of the view that the context is different with respect to offsetting market value changes.

We originally had questions about the ability to hedge only part of an underlying position, which is dealt with and explained well in the draft guidance. The note provides that it is possible to hedge only part of an underlying interest or position and still have the transaction regarded as a hedge. We would ask that the guidance note be amended to deal with the clarification request above as well.

We agree with the removal of the requirement for the positions resulting from the transactions to have a high degree of negative correlation with the underlying interest or position being hedged. As we noted in our comment letter relating to the initial proposals, correlations change over time, and proxy hedges or basis hedges can be difficult to distinguish on an ex-post basis, particularly in cases of complex underlying interest(s) or complex risk(s) arising from activities.

We also agree with the decision to exclude derivatives from the definition of a security to more clearly specify which regulatory obligations apply to the respective asset classes.

With respect to risk limits, the Proposed Amendments to IIROC Rule 3200 and IIROC Rule 3900 would require the extension of the current derivatives-specific business conduct requirements to all derivatives transactions, positions, and accounts, other than with respect to a hedging account. It is also proposed that these requirements apply to all derivatives and highly-leveraged securities or derivatives, except for options or similar derivative contracts. We are unclear as to the rationale for entirely excluding options and similar derivative contracts from these provisions, when related underlying positions are at least partially known to the dealer (for purposes of enhanced margining), and a similar methodology to risk capital limits could be applied. We would suggest further policy research to overcome the challenges of including options in the existing proposed provisions.

We appreciate the changes that have been made to the proposed Derivatives Risk Disclosure Statement and believe it is more robust than as initially presented. However,

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we believe that it would still be helpful for derivatives clients to be specifically informed about the concept of counterparty risk and their potential exposure to the creditworthiness of their dealer and any OTC counterparties.

**Concluding Remarks**

We support the Proposed Amendments and believe they will operate as intended to better harmonize the application of the IIROC rules to securities and derivatives related activities. We do think there are a few small items that would benefit from additional review and explanation in the draft guidance note.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of CFA Societies Canada*

**The Canadian Advocacy Council of CFA Societies Canada**