

Monsieur Éric Stevenson
Chef de service
Service de la réglementation et des pratiques professionnelles et commerciales
Autorité des marchés financiers

March 26, 2010

Madame Sophie Jean
Conseillère en réglementation
Autorité des marchés financiers

Object: Exigences pour les chefs de la conformité
Loi sur les instruments dérivés

Monsieur/Madame:

Thank you again for providing an opportunity for members of the Investment Counsel Association of Canada (“ICAC”) to meet with you to discuss our concerns regarding the January 8, 2010 edition of the Bulletin de l’Autorité which outlines the new educational proficiency requirements that will be imposed on chief compliance officers (“CCOs”) pursuant to section 11.13 (“section 11.13”) of the Regulation under the *Derivatives Act* (Quebec) (the “Derivatives Act”).

We would like to start by reiterating our appreciation for the AMF taking a leadership role in updating Derivates Regulation in Canada. This is a regulatory area that we believe required updating to reflect today’s investment industry realities and to achieve the appropriate balance of investor protection and capital market efficiency.

As discussed at our meeting with you, we are recommending that section 11.13 be amended to allow firms the option of appointing an “officer responsible for derivatives trading” who satisfies the educational and experience requirements contemplated by section 11.13 in the event the CCO does not possess the qualifications outlined in section 11.13. We have provided proposed wording for this amendment in the Appendix. Although we are suggesting this option to facilitate a simple solution to address the problems identified with the current wording, we remain fundamentally opposed to imposing any technical product knowledge or product experience requirements on CCOs for reasons which will be further outlined below. We believe that the wording in the Appendix will provide an alternative to the CCO having these qualifications and would maintain an important distinction between the monitoring and internal control role of CCOs and the day-to-day, supervisory responsibilities registered investment management staff.

The following summarizes our rationale for making these recommendations.

Distinction Between Supervisory and Compliance Functions

As indicated above, ICAC members are strongly supportive of maintaining a clear distinction between the monitoring and internal control role of CCOs, on the one hand, and the supervisory role of individuals who are responsible for managing and overseeing investment management staff on the other hand. In that regard, we strongly support the Joint Regulatory Notice on “The Role of Compliance and Supervision” (the “Joint Regulatory Notice”) issued by the Bourse de Montreal Inc., the Investment Dealers’ Association (as it then was), the Mutual Fund Dealers Association of

Canada and Regulatory Services Inc. (as it then was) which makes a very helpful and appropriate distinction between those two roles. We believe that the formal regulatory requirements applicable to CCOs' roles, including the requirements under the Derivatives Act, should be designed to support the thinking behind the Joint Regulatory Notice. To the extent that section 11.13 imposes on CCOs a level of specific product knowledge that is more appropriate for investment management staff and their supervisors, we believe it confuses the distinctions between those roles.

We are confident that this approach and the option suggested in the Appendix will not detract from your objective of ensuring that derivatives portfolio managers are subject to a robust internal monitoring and reporting process with respect to their derivatives activities. In our view, the Derivatives Act is a form of securities legislation. Accordingly, to the extent that s. 11.1 and 5.2 of NI 31-103 and Part 11 of Companion Policy 31-103CP create a comprehensive regime for ensuring monitoring, compliance and supervision with respect to securities legislation, we believe those provisions would apply equally to the monitoring, compliance and supervision of a firm's activities under the Derivatives Act. To the extent that you believe there is any ambiguity in this respect, the Regulation under the Derivatives Act could be amended to make this clear.

Distinction between Product Expertise and Regulatory Expertise

Although we recognize that certain types of derivatives are currently the focus of much regulatory and risk management discussion (eg. credit default swaps), we are concerned that requiring CCOs to become highly expert with respect to one set of investment instruments may result in compliance departments losing sight of their more general obligations to monitor and oversee all aspects of a firm's compliance obligations, including monitoring and oversight of other, potentially risky product lines.

CCOs typically have legal, regulatory or audit expertise and their skill is in implementing policies and procedures designed to assist a firm's compliance with regulation and in the event of non-compliance, a control process which flags issues which can be raised with the CIO, UDP and/or Chief Risk Officer. As the investment industry continues to develop new products and services, we agree that CCOs must be aware of new product development and to liaise frequently with their firm's Chief Investment Officer or Chief Risk Officer to ensure appropriate compliance oversight. However, we believe it is neither practical nor necessary that CCOs have the level of product specific knowledge contemplated by section 11.13 in addition to their compliance qualifications.

NI 31-103 – Harmonization of CCO Qualifications

National Instrument 31-103 ("NI 31-103", which was implemented in Quebec as Regulation 31-103) has made great strides to harmonize the registration and registrant regulation regime across Canada. In our view, the broad and well-rounded proficiency requirements applicable to CCOs of registered portfolio managers set out in section 3.13 of NI 31-103 are appropriate to support the broad responsibilities assigned to CCOs under section 5.2 of NI 31-103.

In our view, the requirements of section 11.13 are inconsistent with the approach adopted under NI 31-103 to the extent that they would focus CCOs attention so narrowly on a single set of issues arising out of a registered firm's use of a single set of investment instruments. As indicated above,

we are concerned that requiring CCOs to focus so heavily on derivative instruments may inappropriately divert attention from other elements of a firm's activities.

Reduction of Pool of CCOs

We are very concerned that the section 11.13 will significantly reduce the number of qualified CCOs available to firms that carry on an investment management business in Quebec. On the basis of a very informal consultation with many of ICAC's members, we believe it is unlikely that large firms that have broad or multiple investment mandates currently have CCOs with specific, significant derivatives education or experience. Smaller firms that specialize in derivatives or derivative portfolio manager firms in which the top portfolio managers is also the CCO are more likely to have the proficiency contemplated by section 11.13.

Even if current CCOs were grandfathered, we are concerned that hiring a replacement CCO with the additional qualifications may prove to be very difficult in the event of a vacancy. We are also concerned that a heavy focus on derivatives proficiency may result in the most skilled CCO from a more general compliance perspective not being hired in favour of an individual who has the derivatives qualifications.

Potential Decrease in Derivatives Available in Quebec

Finally, to the extent that investment management firms both inside and outside Quebec find it difficult or impossible to find a CCO who is able or willing to satisfy the requirement of section 11.13, we are concerned that they may be unable or unwilling to offer derivatives to Quebec investors. In our view, this would be detrimental to Quebec investors, private and institutional, since, in many circumstances, derivatives form an important part of a prudent overall investment portfolio

Thank you again for your consideration of our concerns with the new Derivatives Portfolio Manager requirements.

We would be happy to meet at some point in the future again with a cross section of our membership to discuss other regulatory priorities of the AMF.

Sincerely,

Katie Walmsley
President, ICAC



Mark Pratt
Chair, ICAC Industry, Regulation & Tax Committee
Sr. Legal Counsel, Mackenzie Investments

APPENDIX

CCO Or Officer Responsible For Derivatives Trading Qualifications

11.13 (a) In addition to the education and experience requirements of section 3.13 of Regulation 31-103 Registration Requirements and Exemptions, the chief compliance officer of a derivatives portfolio manager must meet the following requirements:

1. have at least 3 years of relevant derivatives experience;
2. have passed all required exams of the Investment Industry Regulatory Organization of Canada in respect to derivatives for an officer of a dealer.

(b) The chief compliance officer of a derivatives portfolio manager is exempt from the requirements of section (a) if the derivatives portfolio manager has appointed an officer responsible for derivatives trading who meets the requirements of section (a)