

CFTC/SEC Request for Comments

A. *Status of Regulation*

1. Province of Alberta.

2. Yes. The *Securities Act* (Alberta) (**Act**) provides the Alberta Securities Commission (**ASC**) with the legal authority to regulate derivatives transactions. The Act categorizes derivative instruments in terms of either a ‘futures contract’ or an ‘exchange contract’. An over-the-counter (**OTC**) derivative is captured under the legislated definition of a futures contract. The Act declares a futures contract (and thus an OTC derivative) as a security such that an OTC derivatives transaction is regulated as a securities transaction.

“**futures contract**” means any obligation to make or take delivery of

- (i) a commodity,
- (ii) a security, or
- (iii) cash if the amount of cash is derived from, or by reference to, a variable, including
 - (A) a price or quote for a commodity or security,
 - (B) an interest rate,
 - (C) a currency exchange rate, or
 - (D) an index or benchmark,

but does not include an obligation or a class of obligations that is designated not to be a futures contract pursuant to an order made under section 10 [of the Act].

“**exchange contract**” means a futures contract or an option where

- (i) its performance is guaranteed by a clearing agency, and
- (ii) it is traded on an exchange pursuant to standardized terms and conditions set out in the bylaws, rules or regulations of that exchange at a price agreed on when the futures contract or option is entered into on the exchange,

and includes any instrument or class of instruments that

- (iii) meets the requirements referred to in subclauses (i) and (ii), and
- (iv) is designated as an exchange contract by an order of the Commission.

3. Yes.

a. Alberta is working on proposed amendments to the Act to, *inter alia*:

- provide for a definition of “derivative” and classes of derivative, to modernize Alberta securities laws, harmonize with other Canadian jurisdictions, and

distinguish the regulation of securities from the regulation of derivatives in the Act;

- enhance, amend or add definitions of ‘trade repository’, ‘security’, ‘trade’, ‘off-exchange derivative’ and ‘exchange-traded derivative’;
- amend the Act to expand its scope to include the ability to designate certain classes of derivatives;
- provide for the recognition of trade repositories;
- require the filing of a disclosure document with respect to designated off-exchange derivatives;
- amend the Act to add rule-making authority for new conduct rules applicable to derivatives dealers, such as requiring mandatory central clearing, trade reporting, electronic trading, solvency and other conduct requirements for persons who trade in derivatives.

b. Alberta is working on the proposed amendments with the present intention of putting them forward to the Legislature in 2012.

4. The Act declares a futures contract (and thus an OTC derivative) as a security such that an OTC derivatives transaction is regulated as a securities transaction. This has two primary implications for an OTC derivatives transaction, namely that the transaction is subject to both the registration and prospectus requirements of the Act. These registration and prospectus requirements would apply but for the effect of ASC Blanket Order 91-503 – *Over-the-Counter Derivatives Transactions and Commodity Contracts (ASC Blanket Order 91-503)*, which declares most derivatives transactions as not a futures contract, provided such transactions are made between Qualified Parties (generally confined to large institutional entities) who act as principal. The ASC has published for comment ASC Staff Notice 91-703 – *Over-the-Counter Derivatives*, announcing the proposed repeal of ASC Blanket Order 91-503. This will restore the ASC’s legal authority to regulate these OTC derivatives transactions as futures contracts and therefore as securities under the Act.

5. Retail investors are prohibited from entering into OTC derivatives transactions without a discretionary exemption from the prospectus requirement of the Act.

6.

- a. The Alberta Securities Commission (ASC).
- b. To be determined.
- c. To be determined.
- d. It is proposed that all derivatives transactions entered into by a Canadian counterparty will be reported to a trade repository, but this requirement and regulations relating thereto have not been finalized.

e. Regulatory oversight of the derivatives market in Alberta is conducted solely by the ASC¹. The Investment Industry Regulatory Organization of Canada (**IIROC**) oversees investment dealers who trade derivatives.

f. To be determined.

g. Yes.

h. The regulatory framework applies to Alberta counterparties' derivatives transactions with non-Alberta counterparties.

i. The ability to exercise authority resides with the ASC and any other delegated Self-Regulatory Organization (**SRO**).

B. Regulatory Requirements for Market Participants

1. Derivatives market participants will be regulated through a registration process, which has yet to be determined. It is anticipated that the regulatory framework will also identify derivatives market participants who are exempt from registration but recognized as such by some other means.

2. It is anticipated that there will be a type of derivatives market participant who will be exempt from the registration requirements, but details thereof are yet to be determined.

3. Yet to be determined, but will likely be informed and influenced by the current registration requirements for securities registrants.

4. To be determined.

5. To be determined.

6. To be determined.

7. To be determined.

8. To be determined.

C. Regulatory Requirements for Organized Markets, Electronic Execution Facilities and Other Types of Markets

1. The regulatory framework includes a requirement for organized derivatives markets that carry on business in Alberta to be recognized by the ASC under section 62 of the Act.

¹ Where a derivatives market also operates in other jurisdictions of Canada, it may also be regulated by the securities regulators of those jurisdictions.

2. A recognition under section 62 of the Act is subject to any terms and conditions that the ASC may impose. The criteria for obtaining and maintaining recognition by the ASC has yet to be determined.
3. To be determined.
4. To be determined.
5. To be determined.
6. To be determined, but it is anticipated that this will be the intent.
7. Foreign-based organized derivatives markets will be directed to apply for recognition by the ASC. The recognition requirement contained in section 62 of the Act applies to both Alberta-based organized derivatives markets and to foreign-based organized derivatives markets. There is no special category of recognition for foreign-based organized derivatives markets. A recognition under section 62 of the Act is subject to any terms and conditions that the ASC may impose. The criteria for obtaining and maintaining recognition by the ASC has yet to be determined.

D. Regulatory Requirements for Central Counterparties

1. The ASC is proposing amendments to the Act to include a requirement for clearing agencies that carry on business in Alberta as a clearing agency to be recognized by the ASC. Currently, under section 67 of the Act, the ASC may, *on the application of a clearing agency*, recognize the clearing agency if the ASC considers that it would not be prejudicial to the public interest to do so.
2. A recognition under section 67 of the Act must be made in writing and is subject to any terms and conditions that the ASC may impose. The ASC may, if the ASC considers that it is in the public interest to do so, make any decision with respect to any bylaw, rule, regulation, policy, procedure, interpretation or practice of a recognized clearing agency.
3. There are no statutory exemptions from the requirement to be recognized as a clearing agency. It is proposed that any person or company seeking an exemption from the requirement to be recognized would need to make an application for discretionary relief to the ASC.
4. An application must be made to the ASC in order to update, withdraw, or terminate recognition.
5. A recognition under section 67 of the Act is subject to terms and conditions that the ASC may impose. The criteria for obtaining and maintaining recognition by the ASC has yet to be determined, but the present intention is that the criteria will, *inter alia*, require adherence to the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), as updated, revised or otherwise amended, or

successive standards, principles and guidance for CCPs and financial market infrastructures adopted jointly by IOSCO and CPSS.

6. Yes.

7. Foreign-based CCPs will be directed to apply for recognition by the ASC. A recognition under section 67 of the Act and under the proposed amendments to the Act will apply both to Alberta-based CCPs and to foreign-based CCPs. There is no special category of recognition for foreign-based CCPs. The criteria for obtaining and maintaining recognition by the ASC has yet to be determined, but, as stated above in response to Item 5, the present intention is that the criteria will, *inter alia*, require adherence to the Recommendations for Central Counterparties that have been issued jointly by the CPSS and the Technical Committee of IOSCO.

E. Regulatory Requirements for Data Repositories

1. The proposed amendments to the Act will add a definition of ‘trade repository’ and provide for the recognition of trade repositories.

2. The criteria for obtaining and maintain recognition as a trade repository by the ASC has yet to be determined.

3. To be determined.

4. To be determined.

5. To be determined.

6. To be determined, but it is anticipated that trade repositories will be required to adhere to principles established by international standards-setting bodies, such as CPSS/IOSCO.

F. Regulatory Comparison

1. No comment.

2. No comment.

3. No comment.

4. No comment.

5. No comment.

6. No comment.

7. No comment.

G. Swap Market Information

1. No comment.
2. No comment.
3. No comment.