ANNEX I

COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Summary of Issues/Comments	Response
Part 1 – Definitions and Interpretation		
s. 1 – Definition of "derivatives adviser"	Two commenters noted the compliance requirements of National Instrument 31-103 *Registration Requirements and Exemptions* ("NI 31-103") and suggested the Instrument would be duplicative.	Many of the requirements in the Proposed Instrument are similar to existing business conduct requirements applicable to registered dealers and advisers under NI 31-103 but have been tailored to reflect the different nature of derivatives markets. In the case of firms that are registered under NI 31-103, we would expect these firms to have policies and procedures in place aimed at complying with these obligations. To the extent compliance requirements under the Instrument are similar to compliance requirements under NI 31-103, a registered firm will be able to satisfy the requirements through its existing policies and procedures. However, to the extent compliance requirements are dissimilar, these firms will need to adopt additional policies and procedures that reflect the different nature of derivatives markets.
	One commenter suggested that the list of factors for determining whether a party is in the business of advising in respect of derivatives should not be the same as that for trading.	Change made. The CP has been revised to include additional guidance on the business trigger for advising. See revised CP guidance on factors in determining a business purpose – derivatives advisers.
s. 1 – Definition of "derivatives dealer"	One commenter requested clarification on which agency roles fall within the scope of the definition.	Change made. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer. See revised CP guidance on factors in determining a business purpose – derivatives dealer.
	One commenter suggested the definition of derivatives dealer be harmonized across Canada into a national instrument.	No change. The definition of derivatives dealer and the criteria used to assess if a firm is a derivatives dealer found in the CP to this Instrument will be applied consistently across Canada and in Proposed National Instrument 93-102 *Derivatives: Registration* ("**Proposed NI 93-102**"). To the extent necessary, any further consequential amendments to other rules, such as rules relating to trade reporting, will be made at a later date.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", General	Two commenters requested clarification of the definition of "derivatives adviser" and "derivatives dealer" to enable derivatives parties to receive definitive legal advice on whether their activities bring them into scope.	Change made. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer or a derivatives adviser.
	Two commenters suggested replacing the word "trading" with "dealing" in the definition and CP guidance on "derivatives dealer".	No change. The registration requirement in Canadian securities legislation is generally based on the concept of a "business trigger" for registration, namely whether a person or company is in the business of "trading" securities or derivatives or advising others in relation to

		securities or derivatives.
	Two commenters requested clarification of the jurisdictional scope of the Instrument and CP.	Changes made. The CP has been revised to include guidance on the jurisdictional scope of the Instrument under factors in determining a business purpose –general.
	One commenter requested a specific exemption or guidance that investment-related services provided by pension plan sponsors to their sponsored plans, such as hiring third party investment managers, is not captured. The commenter submitted that the inclusion of "directly or indirectly carrying on the activity with repetition, regularity or continuity" and "transacting with the intention of being compensated" may capture pension plans or their sponsors.	No change. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer or a derivatives adviser. The registration requirement in Canadian securities legislation is generally based on the concept of a "business trigger" for registration, namely whether a person or company is in the business of trading securities or derivatives or advising others in relation to securities or derivatives. Accordingly, the Instrument does not fundamentally alter the nature of the existing registration requirement for market participants, but merely extends the requirement to OTC derivatives. If a firm, after considering the guidance in the CP, remains uncertain as to whether or not it has tripped the business trigger for registration, the firm should consider the exemptions in Part 6 of the Instrument, including the exemption in s. 37 for certain derivatives end-users.
	One commenter requested guidance that a person acting as a manager of investment managers providing derivatives advisory services will not be considered a "derivatives adviser" solely on the basis of engaging in hiring, and providing investment guidelines to, third-party investment managers.	No change. The revised CP provides additional guidance on when a person or company will be considered to be a derivatives dealer or a derivatives adviser. The Instrument and Proposed NI 93-102 do not contemplate a separate category of registration for fund managers of funds that invest in derivatives. However, the existing registration category of investment fund manager in NI 31-103 would likely cover these activities.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", Routinely quotes prices	Several commenters suggested that routinely providing quotes should not be treated as indicia of dealing or advising. The commenters suggested that "derivatives dealer" be limited to market making activity, which absent other factors, should not be determined solely by quoting prices, routinely or not. The commenters requested clarification of the end-user exemption.	Partial change. Further revisions have been made to the indicia described in the CP to determine whether a derivatives dealer or derivatives advisor is in the business of trading derivatives. The CP explains that the end-user exemption may be available to a party that trades derivatives with regularity but does not engage in specified dealer-like activities.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", Derivatives clearing services	One commenter requested clarification of clearing services that would result in a clearing broker being considered a "derivatives dealer".	No change. Providing clearing services is one of the indicia of being in the business of trading derivatives.
s. 1 – Business trigger to "derivatives adviser" and	Several commenters submitted that a notional value-based *de minimis* exception to "derivatives dealer" requirements be provided to alleviate risk concentration and decreased liquidity.	No change. The Instrument creates a uniform approach to regulating conduct in derivatives markets and promotes consistent protections for market participants. However, a *de minimis*

"derivatives dealer", *De minimis*		exemption from certain requirements imposed on derivatives dealers is contemplated in Proposed NI 93-102. This is intended to strike a balance between addressing liquidity/market access concerns without significantly impacting protections for market participants.
s. 1 – Business trigger to "derivatives adviser" and "derivatives dealer", Incidental advisory activities	Several commenters suggested express exclusions of professionals whose advisory services are solely incidental to their business or profession.	Change made. Clarifying language has been added to the CP. Appropriately licensed professionals would generally not be considered to be advising on derivatives if their activities are incidental to their *bona fide* professional activities.
	Commenters suggested express exclusion of otherwise-regulated persons including banks, trust companies and insurance companies. Pension plan sponsors and affiliates providing investment-related services to a Canadian regulated pension fund or subsidiary were requested to be expressly excluded.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
s. 1 – Definition of "eligible derivatives party", General	Several commenters supported the concept of an eligible derivatives party ("EDP") to classify sophisticated market participants. One commenter recommended reconsideration of EDP status for advisers that only advise on an incidental basis (and accordingly do not require registration as derivatives advisers). One commenter suggested that managed account clients be subject to the same carve-outs applicable to EDPs.	We thank the commenters for their comments. We have specifically requested comment in the Notice and Request for Comment in relation to Proposed NI 93-102 as to whether and in what circumstances registered advisers (portfolio managers) under NI 31-103 should be considered derivatives advisers. We will consider these responses in determining whether registered advisers (portfolio managers) should remain included within the EDP definition. We have deleted proposed subsection 7(3) of the version of the Instrument published for comment in April 2017. Accordingly, a derivatives firm acting as an adviser in respect of a managed account of an EDP will be subject to the reduced set of obligations contemplated by s. 7 of the Instrument unless otherwise agreed by the firm and the EDP.
s. 1 – Definition of "eligible derivatives party", Consistency with other regulatory definitions	Several commenters suggested that the definition of EDP be expanded to include all "permitted clients" under NI 31-103, including mutual fund dealers, exempt market dealers and charities. The commenters noted the compliance burdens on the derivatives industry if the "permitted client" status cannot be leveraged to determine EDP status under the Instrument.	We have amended the definition of EDP to include certain new categories; however, the definition of EDP has not been extended to expressly include mutual fund dealers, exempt market dealers and registered charities. In terms of the compliance burden, we point out that the financial asset test for companies found in the definition of "permitted client" may be higher than the threshold contemplated in this Instrument. For example, the net asset test that applies to a company that qualifies as a specified commercial hedger in this Instrument is $10,000,000. Furthermore, we are permitting a derivatives firm to leverage a pre-existing "permitted client", "accredited counterparty" or "qualified party" representation from its client as set out in s. 45 of the Instrument for pre-existing transactions. If the conditions in that section are satisfied, then those transactions are only subject to s. 8 [*Fair dealing*], s. 20 [*Daily reporting*] and s. 30 [*Derivatives party*

		statements]. The definition of EDP is built on the knowledge and experience test found in the *Derivatives Act* (Quebec). Unless a person or company qualifies as an EDP under any of the prescribed categories, we are not persuaded that they otherwise have sufficient sophistication, derivatives-related expertise, or financial resources so as to not require the additional protections afforded to non-EDP customers.
	Several commenters suggested harmonization of the definition of EDP with existing definitions, noting liquidity and equivalence concerns. These definitions included "eligible contract participant" used by the U.S. Commodity Futures Trading Commission ("**CFTC**")[1], "qualified party" in Blanket Order 91-507 *Over-the-Counter Trades in Derivatives* ("**BO 91-507**"),[2] "accredited investor" in National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"), and "permitted client" under NI 31-103.	Change made. We have amended the definition of EDP to include certain new categories, including: • (n) non-individual commercial hedger that has net assets of $10,000,000, • (p) non-individual entity whose obligations under derivatives are fully guaranteed by another EDP, other than an individual or commercial hedger, and • (q) non-individual entity that is a commercial hedger and whose obligations under derivatives are fully guaranteed by another EDP, other than an individual. We believe that, with these changes, the definition of EDP is sufficiently harmonized with the definitions cited by the commenter, recognizing that there are differences in the overall regulatory approach that warrant certain distinctions.
s. 1 – Definition of "eligible derivatives party", para (m)	Several commenters requested a lower asset threshold necessary to qualify as an EDP and specifically requested harmonization with the $10 million threshold applicable to an "eligible contract participant" under the U.S. *Commodity Exchange Act*[3] ("**CEA**") and an "accredited counterparty" under the Quebec *Derivatives Act*.[4] One commenter suggested a threshold of $25 million of total assets instead of net assets. Another commenter suggested that individuals with net assets reaching an aggregate realizable value of $25 million should be treated as EDPs that are not individuals.	Change made. See new paragraph (n) of the EDP definition.
s. 1 – Definition of "Eligible Derivatives Party", para (n)	Two commenters suggested that individuals with minimum net assets of $5 million should be treated as EDPs. One of these commenters suggested harmonization with the definition of	No change. Based on our analysis, the threshold aggregate realizable value before tax but net of any related liabilities of at least $5 million of *financial assets* is appropriate for the

1 See s. 1a(18)(a)(v) of the U.S. *Commodity Exchange Act*.

2 In Quebec, "accredited counterparty" under the Quebec *Derivatives Act*.

3 The U.S. Commodity Exchange Act sets out a $10 million total assets test in the definition of "eligible contract participant" (calculated as $10 million in total assets, or, if hedging, a minimum net worth exceeding $1 million).

4 "Accredited counterparty" under the Quebec *Derivatives Act* is calculated as "cash, securities, insurance contracts or deposits having an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, of more than $10,000,000" (Derivatives Regulation, c. I-14.01, r.1, s. 1).

	"accredited counterparty" under the Quebec *Derivatives Act*.[5]	determination of eligible derivatives party status for an individual. This is consistent with the current financial threshold for individuals in the definition of "permitted client" in NI 31-103.
s. 1 – Definition of "eligible derivatives party", Knowledge and experience requirements of paras (m)-(n)	Several commenters suggested a "bright line" financial resources test eliminating the knowledge and experience requirements, consistent with the approach in NI 31-103 and NI 45-106. Alternatively, the knowledge and experience requirements should apply generally with no transaction-specific determination. One commenter submitted that investable assets do not necessary imply financial sophistication, such that tests based on financial assets may not be indicative of better access to information and less need for protection.	No change. Appropriate knowledge and experience is necessary for a derivatives party to transact in derivatives without the additional protections provided to non-EDPs. This is also consistent with requirements that currently apply in Quebec under the Quebec *Derivatives Act*.
	Several commenters suggested that the Instrument allow representations as to the knowledge and experience requirements to be given in ISDA Master Agreements or protocols amending them.	Change made. Representations are required to be made in writing and can be included as an element of a broader written agreement.
	One commenter noted that to the extent previously given representations are no longer true or reliable about a party's knowledge and experience with particular types of derivatives, the knowledge and experience requirements may potentially trigger default events, followed by transaction terminations, under derivatives trading agreements. As the OTC derivatives market is characterized by inter-related transactions, such default and subsequent termination may spread to other derivatives transactions among different parties.	No change. The CP provides guidance on when a derivatives firm may rely on a representation. See CP guidance on subsection 1(7).
	One commenter submitted that it is practically remote to receive written representations from each counterparty and requested that derivatives firm be allowed to otherwise confirm, acting reasonably, that the counterparty satisfies the requirements.	No change. Representations form part of the written agreements that document derivatives transactions.
s. 1 – Definition of "eligible derivatives party", Waiver and representations *See also s. 7 below.*	Several commenters suggested that market participants who would not otherwise qualify for EDP status be allowed to affirmatively represent their qualification to evaluate risks associated with derivatives transactions and waive the applicability of certain provisions.	No change. However, new paragraphs have been added under the definition of eligible derivatives party. A person or company, other than an individual, may qualify for EDP status under these new paragraphs.
	One commenter submitted that allowing an investor to waive protections may result in abuse.	No change. Derivatives firms have an obligation to act in good faith. Applying undue pressure on a derivatives party to waive protections would be a breach of that obligation.
	Several commenters requested clarification that there is no affirmative duty to perform an investigation of a party's representation or warranty, unless a reasonable person would have grounds to believe that such statements are false	Change made. We have further clarified that a derivatives firm may rely on written representations unless it would be unreasonable to do so. See CP guidance on subsection 1(7).

[5] Calculated as "cash, securities, insurance contracts or deposits having an aggregate realizable value, before taxes, but after deduction of the corresponding liabilities, of more than" $5,000,000 (Derivatives Regulation, c. I-14.01, r.1, s. 1).

	or otherwise unreasonable to rely on.	
s. 1 – Definition of "eligible derivatives party", Commercial hedger	Several commenters requested that the definition of EDP include an exemption for hedgers. The commenters suggested a definition similar to the existing exemptions in BO 91-507 for "qualified parties" or "eligible contract participants" in the U.S., and broad enough to include all end-users who currently transact in OTC derivatives transactions for hedging purposes. One commenter submitted that regardless of size, many commercial operations need to hedge their foreign currency or interest rate risks and no market other than the OTC derivatives market can provide an equivalent tailored risk management solution.	Change made. Please see new paragraphs (n) and (q) under the definition of EDP. A person or company, other than an individual, will qualify for EDP status subject to certain requirements when it meets the definition of commercial hedger.
s. 1 – Definition of "eligible derivatives party", Guarantees	Several commenters suggested that the definition of EDP also include an entity whose obligations are guaranteed by an entity that otherwise qualifies as an EDP. One of these commenters suggested that the definition of EDP also include an entity that wholly, directly or indirectly, owns, is owned by, or is under common ownership with, one or more EDPs.	Change made. Please see new paragraph (p) under the definition of EDP. A person or company, other than an individual, whose obligations under a derivative are fully guaranteed or fully supported (under a letter of credit or credit support agreement) by one or more eligible derivatives parties will qualify for EDP status subject to certain conditions.
Part 2 – Application		
s. 3 – Application - scope of instrument	One commenter submitted that the imposition of the same requirements on derivatives advisers as those on derivatives dealers creates a duplicative and unnecessary compliance burden.	Change made. The CP has been revised to include additional guidance on the business trigger for advising. The requirements in the Instrument are generally similar to existing business conduct requirements applicable to registered advisers under NI 31-103 but have been tailored to reflect the different nature of derivatives markets. Accordingly, we do not believe that the proposed regulatory regime for derivatives advisers unnecessarily duplicates the regime for derivatives dealers.
	One commenter suggested that members of the Investment Industry Regulatory Organization of Canada ("**IIROC**") not be required to comply with the Instrument.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	One commenter suggested exempting derivatives firms that adhere to the FX Global Code of Conduct, whether or not their counterparty is an EDP. Alternatively, that such exemption applies in respect of physically-settled FX swaps and FX forwards.	No change. The FX Global Code of Conduct does not impose legal or regulatory obligations on market participants. Many of the requirements in the Instrument are principles-based and may be satisfied in different ways. We encourage derivatives firms that trade or advise others in relation to FX-related derivatives to consider the contents of the FX Global Code of Conduct in developing their policies and procedures aimed at complying with the requirements of the Instrument.
s. 4 – Application – affiliated entities	One commenter supported the inclusion of s. 4, which exempts a person providing derivatives advisory services to an affiliated entity from the Instrument. The commenter requested an exemption for the person providing investment	We thank the commenter for their comment. A person or company that deals with or advises an entity that meets the definition of "affiliated entity" may qualify for the exemption. However,

	advisory services for no compensation to an associated or related person that does not otherwise fall within the definition of an affiliated entity. Alternatively, that guidance clarify that such person does not trip any business trigger as a "derivatives adviser".	the exemption is not available if the affiliated entity is an investment fund. We have specifically requested comment in the Notice and Second Request for Comment in relation to this Instrument and in the Notice and Request for Comment in relation to Proposed NI 93-102 as to how we should define the concept of affiliated entity for the purposes of these rules.
s. 5 – Application - qualifying clearing agencies	One commenter requested clarification on whether derivatives firms are exempt from the Instrument when facing regulated clearing agencies. The commenter also requested that EDP status be granted for clearing agencies that enter into proprietary trades that are not cleared transactions.	Change made. Qualifying clearing agencies have been added to the definition of EDP. See new paragraph (r) under the definition of EDP. A clearing agency will be an EDP for all trades, including proprietary trades.
s. 6 – Application - governments, central banks and international organizations	Two commenters requested clarification on whether derivatives firms are exempt from the Instrument when facing entities listed under s. 6.	Clarifying language has been added to the CP to make it clear that derivatives firms are not exempt from their obligations when facing government entities, central banks and international organizations. However, these entities will generally be EDPs.
	One commenter suggested expanding the list of excluded entities to include (1) crown corporations, government agencies and any other entity wholly owned or controlled by, or all of whose liabilities are guaranteed by, one or more governments, central banks and international organizations, and (2) state, regional and local governments in foreign jurisdictions.	No change. To ensure a level playing field, all derivatives dealers and derivatives advisors are subject to a minimum set of standards in their dealings with derivatives parties.
s. 7 – Exemptions from the requirements of this Instrument when dealing with or advising an eligible derivatives party, General	Several commenters supported the two-tiered approach of the Instrument with the effect that a substantial portion of the Instrument will not apply to transactions with an EDP and submitted that no additional requirements are necessary when a derivatives firm deals with an EDP. Two commenters suggested a three-tier approach with the effect of an outright exemption for the inter-dealer market.	No change. The Instrument sets out a two-tiered regime with the effect that a derivatives firm is not required to comply with certain requirements in the Instrument when dealing with eligible derivatives parties. The obligations of a derivatives firm differ depending on the nature of the derivatives party. Please see s. 7 of the Instrument and related guidance in the CP. The inter-dealer market will typically involve transactions between two EDPs and since those parties can bargain for appropriate protections, they are subject to a limited set of provisions in this Instrument. It is inappropriate and inconsistent with the rule to provide an outright exemption for the inter-dealer market and also inconsistent with the approach taken internationally.
s. 7 – Exemptions from the requirements of this Instrument when dealing with or advising an eligible derivatives party, subsection (2)	Three commenters submitted that the Instrument requires individual EDPs to waive in writing the second tier of requirements. The commenters suggested that individual EDPs be exempt from the second-tier requirements similar to other categories of EDPs. In the alternative, the commenters requested that no new waiver be required from the individual every 365 days and instead the onus for revocation be placed on the individual.	Change made. An individual eligible derivatives party may waive, in writing, any or all of the requirements of the Instrument, other than as set out in s. 7(1). Waiver may be included in account-opening documentation or other relationship disclosure, and there is no obligation to update the waiver once a derivatives party has begun trading. A derivatives party may withdraw their waiver at any time.
s. 7 – Exemptions from the requirements of	Several commenters suggested that s. 7(3) be deleted on the basis that disclosures and protections are not affected by whether the	Change made. The requirements of the Instrument are not dependent on whether a derivatives firm is acting as an adviser to an EDP

this Instrument when dealing with or advising an eligible derivatives party, subsection (3)	trading decision is client-directed or at the discretion of the adviser. Managed account clients benefit from both the fiduciary obligation owed to them by their adviser and the contractual terms of the investment management agreement. In the alternative, the commenters requested that managed account clients be permitted to waive sections of the Instrument that but for s. 7(3) would not apply.	or an adviser in respect of a managed account of an eligible derivatives party. We have deleted proposed subsection 7(3) of the version of the Instrument published for comment in April 2017. Accordingly, a derivatives firm acting as an adviser in respect of a managed account of an EDP will be subject to the reduced set of obligations contemplated by s. 7 of the Instrument unless otherwise agreed by the firm and the EDP.
Part 3 – Dealing with or Advising Derivatives Parties		
Division 1 – General Obligations Towards All Derivatives Parties		
s. 8 – Fair dealing	Several commenters supported the fair dealing requirements, noting the importance of regulatory tools necessary to enforce against deceptive and manipulative trading practices or fraudulent activity. One commenter requested clarification on s. 8 as compared with s. 19.	We thank the commenters for their comments. Change made. Former stand-alone provision in s. 19 on fair terms and pricing has been removed and clarifying language in the CP has been added that fair terms and pricing may, in certain circumstances, be viewed to fall within the overall fair dealing principle in s. 8.
	Two commenters suggested higher requirements for derivatives advisers, while other commenters noted that fiduciary standards apply, NI 31-103 regulates derivatives advisers, and that transactions are often of a bespoke nature.	We have deleted proposed subsection 7(3) of the version of the Instrument published for comment in April 2017. Accordingly, a derivatives firm acting as an adviser/investment counsel to an EDP will be subject to the same set of obligations under the Instrument as a derivatives firm acting as an adviser/portfolio manager for an EDP. However, where a derivatives firm is acting as an adviser to a fully managed account for a derivatives party, including an EDP, the derivatives firm may be subject to a fiduciary duty under certain statutes and under common law.
	One commenter requested an exemption for derivatives firms dealing with other derivatives firms or financial institutions.	No change. However, clarifying language has been added to the CP. Fair dealing obligations will be interpreted flexibly and in a manner sensitive to context.
	One commenter submitted that the need for regulation has not been identified, as no appreciable or material examples of banks or other derivatives firms have been identified in Canada as violating existing fair dealing rules.	No change. Canadian jurisdictions are committed to implementing harmonized business conduct rules that will protect derivatives parties in the Canadian market.
	One commenter submitted that fair dealing should not change depending on the sophistication of counterparties and s. 8 should be deleted. The commenter submitted that the derivatives dealer relationship is not a fiduciary one, nor does good faith generally apply to the negotiation of transactions at common law. In the alternative, s. 8 should be harmonized with other regulatory regimes, which do not impose requirements on individuals acting on behalf of a derivatives firm.	No change. Fair dealing obligations will be interpreted flexibly and in a manner sensitive to context.
s. 9 – Conflicts of interest	Two commenters requested clarification of the Instrument and CP, particularly with respect to the divergent nature of two parties' interests. For conflicts of interest not prohibited by law, the only regulatory requirement should be to identify and disclose material conflicts. One of the commenters suggested limiting the requirement to	No change. Requirements relating to conflicts of interest are a central pillar of business conduct regulation.

	conflicts of interest relating to research and clearing activities.	
	One commenter suggested eliminating specific conflict of interest requirements with respect to derivatives advisers, as they face fiduciary obligations.	The requirements in the Instrument are generally similar to existing business conduct requirements applicable to registered advisers under NI 31-103 but have been tailored to reflect the different nature of derivatives markets. These requirements include requirements in relation to identifying and responding to conflicts of interest. We acknowledge that, where a derivatives firm is acting as an adviser to a fully managed account for a derivatives party, including an EDP, the derivatives firm may be subject to a fiduciary duty under certain statutes and under common law. However, this may not be the case where the derivatives adviser is merely providing advice in relation to derivatives or strategies but does not exercise discretion over the EDP's account.
	One commenter submitted that the Instrument overlaps with conflicts of interest requirements under existing Canadian laws[6] and that overlapping requirements should be removed from the Instrument.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	Two commenters submitted that disclosure must be specific and provided before a transaction takes place, recognizing that in certain situations disclosure may be more appropriate after the transaction. Another commenter requested that the use of standardized disclosures be permitted, provided that additional or particularized disclosures are made available as appropriate.	Change made. Please see revised CP guidance related to s. 9. We expect derivatives firms to provide general and specific disclosures.
s. 10 – Know your derivatives party, General	Several commenters suggested harmonization of s. 10 with similar regulatory requirements in other jurisdictions.[7] Several commenters submitted that an exemption is needed for derivatives dealers that do not know the identity of their counterparties prior to execution of the transaction.	Change made. New s. 41 exempts a derivatives firm in certain circumstances where it does not know the identity of its derivatives party prior to the execution of the transaction. The exemption in s. 41 is applicable to transactions executed on a derivatives trading facility (or analogous platform) where at the time of the transaction, the derivatives party to the derivative that is submitted for clearing is an eligible derivatives party. We have specifically requested further comment in the Notice and Second Request for Comment in relation to this Instrument about the availability of a similar exemption in respect of derivatives traded anonymously on a derivatives trading facility that are not cleared, derivatives that are not traded on a derivatives trading facility but are submitted for clearing to a regulated clearing agency, and otherwise if it is appropriate to extend the scope of the exemption to other sections of this Instrument.

[6] The *Bank Act* requires Canadian banks to establish procedures to identify and address conflicts of interest. OSFI Guideline B-7 requires federally regulated financial institutions that are dealing in derivatives to take reasonable steps to identify and address potential material conflicts of interest.

[7] See CFTC's relief in No Action Letter 13-70 in respect of swaps that are intended to be cleared.

		We understand that a trading platform would perform know-your-derivatives-party diligence prior to accepting a derivatives party for trading on the platform. We consider this to be a reasonable steps obligation and we would accept that if it is not possible to know the identity of the counterparty, that information is not required.
s. 10 – Know your derivatives party, subsection (2)	Several commenters requested that s. 10(2)(c) be removed, submitting that it is disproportionately impracticable to require derivatives advisers, in connection with securities-based derivatives, to establish if the party they are advising (i) is an insider of a reporting issuer or any other issuer whose securities are publicly traded, or (ii) would be reasonably expected to have access to material non-public information relating to any interest underlying the derivative.	No change. These obligations already exist for registered firms under securities legislation. In the case of derivatives firms that are not currently registered under securities legislation but nevertheless provide products or services in relation to equity derivatives, we would expect these firms today to have policies and procedures in place aimed at preventing illegal insider trading and tipping. This information is necessary to ensure that securities law is being complied with.
s. 10 – Know your derivatives party, subsection (4)	Two commenters requested that information be deemed current, unless a client informs a derivatives firm otherwise.	No change. The requirements in relation to "gatekeeper" KYDP in s. 10 of the Instrument and "derivatives-party-specific" KYDP in s. 11 of the Instrument are generally consistent with existing "know-your-client" obligations under Canadian securities legislation and comparable requirements in foreign jurisdictions. This information is necessary to ensure that securities law is being complied with.
s. 10 – Know your derivatives party, subsection (5)	Two commenters requested an expansion of s. 10(5) to cover EDPs, registration-exempt entities, and foreign financial institutions.	No change. Know-your-derivatives party requirements do not apply to a registered securities firm, registered derivatives firm, or a Canadian financial institution.
Division 2 – Additional Obligations when Dealing with or Advising Certain Derivatives Parties		
s. 12 – Suitability	Two commenters requested clarification on what constitutes a recommendation by a derivatives dealer. The commenters suggested that suitability be limited to recommendations, and not instructions.	No change. Reasonable steps must be taken to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative.
	One commenter requested that s. 12 clarify that a determination of suitability need not be made on a trade-by-trade basis if a discrete trade fits into a larger trading strategy or series of trades, for which suitability can be assessed.	No change. Reasonable steps must be taken to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative. If a discrete transaction fits into a larger trading strategy or series of transactions, and the derivatives firm has determined that the larger trading strategy or series of transactions is suitable for the derivatives party, it is unclear why there should be a concern over the discrete transaction.
	One commenter submitted that specific suitability obligations are not necessary in the case of a derivatives adviser, as they have broader fiduciary obligations.	We acknowledge that, where a derivatives firm is acting as an adviser to a fully managed account for a derivatives party, including an EDP, the derivatives firm may be subject to a fiduciary duty under certain statutes and under common law. However, this may not be the case where the derivatives adviser is merely providing advice in relation to derivatives or strategies but does not exercise discretion over the EDP's account.

	Two commenters requested safe harbours from the suitability requirements, including for derivatives dealers and intended to be cleared derivatives.	No change. Suitability requirements are crucial to the protection of non-EDPs. Suitability requirements do not apply when trading with or advising non-individual EDPs and apply, but may be waived, when trading with or advising individual EDPs. As explained in the Notice and Request for Comment for the Instrument published in April 2017, this is generally similar to the regime that applies to registered securities firms under NI 31-103.
s. 13 – Permitted referral arrangements	Three commenters submitted that s. 13 imposes broad obligations. One commenter requested clarification that establishing a relationship with a dealer on behalf of an advisory client does not constitute a referral arrangement. Other commenters requested that s. 13 be removed to better align with the absence of comparable obligations in CFTC rules. Alternatively, that s. 13 apply only to referral arrangements that specifically involve derivatives and that exemptions be provided for inter-group referrals.	No change. The requirements in relation to permitted referral arrangements do not apply if the firm is trading with or advising non-individual EDPs and apply but may be waived if the firm is trading with or advising individual EDPs. In the case of firms trading with or advising non-EDPs, these requirements are generally consistent with requirements in NI 31-103 applicable to IIROC CfD/forex firms.
Former s. 16 – Disclosure regarding the use of borrowed money or leverage	One commenter requested that to avoid duplication, the disclosure statement apply only to derivatives dealers. The commenter requested clarification that posting of the disclosure statement on a website in a readily accessible location will be sufficient.	Change made. Disclosure regarding the use of borrowed money or leverage has been incorporated into new s. 19. Disclosure must be delivered to a derivatives party.
Former s. 17 – Handling complaints	One commenter suggested harmonization with CFTC rules by eliminating complaint handling obligations.	No change. The requirements in relation to complaint handling do not apply if the firm is trading with or advising non-individual EDPs and apply, but may be waived, if the firm is trading with or advising individual or specified commercial hedger EDPs. In the case of firms trading with or advising non-EDPs, these requirements are generally consistent with requirements in NI 31-103 applicable to IIROC CfD/forex firms. Please see the Instrument and related guidance in the CP.
Division 3 – Restrictions on Certain Business Practices when Dealing with Certain Derivatives Parties		
Former s. 18 – Tied selling	One commenter suggested that tied selling obligations are duplicative of existing Canadian legislation and should be eliminated to better align with other regulatory regimes.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 19 – Fair terms and pricing	Two commenters supported the requirement. One commenter submitted that the terms are better suited to CP guidance on s. 8. Another submitted that the inclusion of an express best execution requirement would be beneficial to avoiding conflicts. Two other commenters suggested that the	Change made. Former s. 19 on fair terms and pricing has been merged with s. 8. Clarifying language has been added to the CP in relation to guidance on s. 8. Both the compensation and market value or price components of a derivative are relevant to a derivatives firm's obligation to transact with derivatives parties under terms and pricing that are fair. Derivatives firms are expected

	requirement should be deleted. The commenters suggested that given the negotiated, bilateral and bespoke nature of transactions, there is no fair price beyond what the parties agree, and that legal obligations and remedies already exist.	to set and follow policies and procedures that are reasonably designed to achieve the most advantageous terms for the derivatives firm's derivatives parties.
Part 4 – Derivatives Party Accounts		
Division 1 – Disclosure to Derivatives Parties		
Division 1, General	Several commenters suggested harmonization of the requirements with CFTC rules. Derivatives firms should not be required to provide valuations or related inputs and assumptions and that instead "mid-market marks"[8] should be used. Several other commenters supported the requirement to provide valuations that are accompanied by inputs and assumptions in order to make the estimates/prices more meaningful. Commenters suggested that daily marks should only be required for uncleared transactions. One commenter suggested limiting "inputs and assumptions" to "methodology and assumptions".	Change made. Please see revised CP guidance on the definition of valuation.
Former s. 20 – Relationship disclosure information	One commenter submitted that certain relationship documentation listed in former s. 20(2) is not applicable for a derivatives relationship.	No change made. The requirements in relation to client relationship disclosure do not apply if the firm is trading with or advising non-individual EDPs and apply, but may be waived, if the firm is trading with or advising individual or specified commercial hedger EDPs. In the case of firms trading with or advising non-EDPs, these requirements are generally consistent with requirements in NI 31-103 applicable to IIROC CfD/forex firms. The required disclosure is important for non-EDPs to understand the risks associated with derivatives.
Former s. 21 – Pre-transaction disclosure	One commenter requested that the use of standardized disclosures be permitted provided additional or particularized disclosures are made available as appropriate.	No change. Where standardized disclosure meets all requirements, it is acceptable.
	Two commenters requested clarification that pre-transaction disclosures do not apply where the transaction is an intended to be cleared derivative or executed on an exchange.	No change. Pre-transaction disclosures are required for all transactions with non-EDPs.
	One commenter requested clarification on when disclosure would not be required as result of the application of subsection (2)(b) and what additional information is intended by subsection (2)(c).	Change made. The phrase "if applicable" has been removed from new s. 19(2)(b). Compensation not reflected in the price would be required to be disclosed pursuant to s. 19(2)(c).
Former s. 22 – Daily reporting	Only derivatives dealers should have a daily reporting obligation, and it is sufficient for derivatives advisers to provide reporting on a monthly basis, unless otherwise agreed.	Change made. See new s. 20(2).
Former s. 23 – Notice to derivatives parties by non-resident	One commenter submitted that the notice requirement for non-resident derivatives firms is duplicative of former s. 20 and standard information that is provided in relationship	No change. However, clarifying language has been added to the CP. A separate statement is not required when information required is already provided to counterparties under standard form

[8] CFTC rules do not include amounts for profit, credit reserve, hedging, funding, liquidity or other costs or adjustments in the mid-market mark.

derivative firms	documentation.	industry documentation.
Division 2 – Derivatives Party Assets		
Division 2, General	Several commenters requested a revision of Division 2 of Part 4 to recognize that re-hypothecation is a private commercial matter, unless otherwise subject to existing regulatory restrictions, such as segregation, margin, and specific types of counterparty requirements. Two commenters submitted that only former s. 24 should apply to EDPs. Two commenters requested clarification of the application of the requirements to derivatives advisers fulfilling discretionary mandates, for which they are generally given authority by their clients with respect to the use and investment of assets.	Change made. A derivatives firm is exempted from the requirements of the division if it is subject to and complies with or is otherwise exempt from National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* ("**NI 94-102**"), securities legislation relating to margin and collateral requirements or National Instrument 81-102 *Investment Funds*. We note that ss. 25 and 26 only apply to transactions with non-EDPs. We have specifically requested further comment in the Notice and Second Request for Comment in relation to this Instrument about the appropriate model for protecting customer assets of derivatives parties.
Former s. 24 – Interaction with NI 94-102	Several commenters submitted that the Instrument was more onerous than securities instruments such as NI 94-102. One commenter requested clarification regarding the application of provisions relating to the segregation, use, holding and investment of derivatives party assets as applied to a portfolio manager acting on behalf of a managed account client, where the adviser has been granted authority with respect to portfolio assets that include but are not limited to derivatives. Another commenter requested clarification of the exemption from Division 2 for parties relying on the substituted compliance provisions in NI 94-102.	Change made. In circumstances where initial margin has been delivered by a non-EDP to a derivatives firm, the requirement is that this collateral will be (i) segregated and held at a permitted depository and (ii) the derivatives firm has obtained written consent from its counterparty to the use or investment of the collateral. Division 2 does not apply to a derivatives firm for transactions that are subject to NI 94-102, including firms relying on exemptions in that instrument.
Division 3 – Reporting to Derivatives Parties		
Former s. 29 – Content and delivery of transaction information	Two commenters supported the requirement that transactions be confirmed in writing but submitted the prescriptive contents of those confirmations are not appropriate. The commenters requested harmonization with CFTC requirements. The commenters requested clarification of the application of the requirement to uncleared derivatives and that electronic confirmations satisfy the "in writing" requirement.	No change. However, clarifying language has been added to the CP. New s. 41 exempts a derivatives firm from the requirement in subsection 27(1) to deliver a written confirmation of the transaction in certain circumstances. The exemption in s. 41 is applicable to transactions executed on a derivatives trading facility (or analogous platform) where at the time of the transaction, the derivatives party to the derivative that is submitted for clearing is an eligible derivatives party. We have specifically requested further comment in the Notice and Second Request for Comment in relation to this Instrument about the availability of a similar exemption in respect of derivatives traded anonymously on a derivatives trading facility that are not cleared, derivatives that are not traded on a derivatives trading facility but are submitted for clearing to a regulated clearing agency, and otherwise if it is appropriate to extend the scope of the exemption to other sections of this Instrument. The requirements in relation to client relationship disclosure do not apply if the firm is trading with or

		advising non-individual EDPs and apply, but may be waived, if the firm is trading with or advising individual or specified commercial hedger EDPs.
Former s. 30 – Derivatives party statements	One commenter noted that there are no requirements to prepare monthly statements under either the CFTC rules or MiFID II.[9] As it would require derivatives dealers to implement new reporting technology, the commenter requested that the requirement to deliver monthly statements be removed.	No change. Monthly statements contain important information for non-EDPs to monitor their derivatives transactions. The requirements in relation to client relationship disclosure do not apply if the firm is trading with or advising non-individual EDPs and apply but may be waived if the firm is trading with or advising individual or specified commercial hedger EDPs.
Part 5 – Compliance and Recordkeeping		
Division 1 – Compliance		
Former s. 33 – Responsibilities of senior derivatives managers	Several commenters requested that former s. 33 be eliminated or the responsibilities reassigned to a chief compliance officer to reflect current industry best practices. A derivatives manager's oversight of activities within the derivatives manager's functional business unit is a conflict of interest. Any reporting to the regulators should be the obligation of the chief compliance officer. One commenter, noting the Office of the Superintendent of Financial Institutions ("**OSFI**") Guidelines,[10] submitted that the proposed requirements are at odds with the existing compliance structure. Two commenters submitted that the context where a specific duty has been introduced for senior managers in other jurisdictions is distinguishable from that in Canada. There has not been any crisis of confidence in Canada. Where specific duty has been imposed, it has been part of a comprehensive framework across business lines and the responsibility is shared across multiple functions. Several commenters noted that personal liability for a senior derivatives manager is unwarranted and inconsistent with best practices.	Change made. Revisions have been made to the Instrument and CP to better reflect existing compliance structures at derivatives firms.
	One commenter requested clarification of CP guidance on "serious misconduct" and "material non-compliance".	No change. The CP provides guidance on these terms. See CP guidance under new s. 31 – responsibilities of senior derivatives managers
	One commenter requested an optional carve-out for firms registered under NI 31-103 from the senior derivatives manager requirements to allow the senior derivatives manager to be the chief compliance officer. A separate senior derivatives manager regime should not be mandated for firms registered as portfolio managers under NI 31-103.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	One commenter submitted that there should be flexibility to former s. 33(2) to submit reports to senior management in lieu of reporting to the board. Another commenter submitted that all	Change made. The instrument has been revised in new s. 31 to permit a senior derivative manager to delegate its responsibility for submitting the report to the board to the firm's chief compliance

[9] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("**MiFID II**").

[10] For example, OSFI Guideline E-13 *Regulatory Compliance Management* and OSFI Guideline E-21 *Operational Risk Management.*

	instances of material non-compliance should be reported no less frequently than on an annual basis and following the review of the annual report by the board.	officer.
Former s. 34 – Responsibility of derivatives firm to respond to material non-compliance	One commenter submitted that former s. 34(b) places a broad and onerous self-reporting burden on derivatives firms without precedent in Canadian securities legislation and should be removed from the Instrument. One commenter requested clarification of the CP guidance related to former s. 34 to expressly provide an opportunity for derivatives firms to raise issues with their board before being required to report to regulators.	No change. Self-reporting is a key element of the Instrument. The Instrument does not prohibit issues of material non-compliance with the Instrument from being raised with a board as long as the report is submitted to the regulator in a timely manner.
Division 2 – Recordkeeping		
Division 2 – General	One commenter submitted that recordkeeping obligations already exist under OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and OSFI Guidelines for federally regulated financial institutions. One commenter submitted that federally regulated financial institutions should be exempt from compliance and in the alternative, should be granted substituted compliance.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 35 – Derivatives party agreement	Two commenters requested an exemption for transactions that are executed on an exchange and for transactions that are cleared.	No change. However, clarifying language has been added to the CP.
	Two commenters submitted that firms regularly enter into foreign exchange transactions prior to completing an ISDA Master Agreement and should be exempt from such requirement.	No change. A written agreement should be entered into prior to completing a transaction.
Former s. 36 – Records	Several commenters note that the recordkeeping requirements are too broad and the added costs on derivatives firms will be passed on to other market participants. Commenters suggested that the recordkeeping obligations be limited to keeping records of communications related to the negotiation, execution and amendment or termination of derivatives. All records of communications should not be kept where a record of those communications otherwise exists.	No change. Please see the Instrument and related guidance in the CP.
Former s. 37 – Form, accessibility and retention of records	Two commenters submitted that the length of the record retention requirement exceeds that of the CFTC.	No change. This retention period is consistent with other Canadian requirements.
Part 6 – Exemptions		
Division 1 – Exemption from this Instrument		
Former s. 39 – Exemption for certain derivatives end-users, General	Two commenters requested clarification of the scope of the end-user exemption and suggested reference to particular categories of persons. Several commenters submitted that the availability of the end-user exemption should not be restricted to parties that interact solely with EDPs.	Change made. The end-user exemption in new s. 37 of the Instrument has been amended to clarify the scope of the exemption. The end-user exemption includes the following conditions: • (a) the person or company does not solicit or otherwise transact a derivative with, for or on behalf of, a non-eligible

		derivatives party; • (b) the person or company does not, in respect of any derivative or transaction, advise non-eligible derivatives parties, other than general advice that is provided in accordance with the conditions of s. 42 [*Advising generally*]; • (c) the person or company does not regularly make or offer to make a market in a derivative with a derivatives party; • (d) the person or company does not regularly facilitate or otherwise intermediate transactions for another person or company other than an affiliated entity that is not an investment fund; • (e) the person or company does not facilitate clearing of a derivative through the facilities of a qualifying clearing agency for another person or company. Although the end-user exemption includes a condition that the person or company does not solicit or transact with a non-EDP, we have also amended the definition of EDP to include a specified commercial hedger category. We believe this should partially address the commenter's concerns.
Former s. 39 – Exemption for certain derivatives end-users, para (c)	Several commenters submitted that entities that are market-makers and that do not otherwise act as derivatives dealers or advisers, but regularly quote prices due to a need to regularly hedge positions, should not be excluded from the end-user exemption. One commenter requested clarification on whether former s. 39(c) is intended to capture commodity firms trading amongst themselves in the over the counter market.	No change. However, clarifying changes have been made to the CP. A person or company that frequently and regularly transacts in derivatives to hedge business risk but that does not undertake any of the activities listed in new s. 37 may qualify for this exemption.
Division 2 – Exemptions from Specific Requirements in this Instrument		
Former s. 40 – Foreign derivatives dealers, General	One commenter submitted that substituted compliance from substantially the entire Instrument should be granted either to both foreign derivatives dealers and Canadian financial institutions or to neither of them in order to maintain a level playing field.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
	One commenter requested that corresponding domestic and foreign laws that can be complied with in lieu of the Instrument and the residual provisions of the Instrument be published for consultation before the Instrument is finalized.	Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 40 – Foreign derivatives dealers, subsection (1)	One commenter submitted that the foreign dealer exemption should not be conditional on dealings with EDPs when the business conduct rules of a foreign jurisdiction are deemed equivalent.	No change. The foreign dealer exemption is not available to derivatives firms that transact with non-EDPs. This approach is similar to the approach taken towards foreign dealers in NI 31-103.

Former s. 40 – Foreign derivatives dealers, subsection (3)	Two commenters submitted that the requirement to deliver a statement pursuant to former s. 40(3)(c) in order to qualify for the exemption does not provide any additional protection and the disclosures are generally addressed in the Master Agreement. This type of statement is not required by the CFTC as a condition of substituted compliance. This requirement should be removed, and disclosure in a Master Agreement should be sufficient. In the alternative, the statement should only be required delivered to non-EDPs.	No change. However, clarifying language has been added to the CP. Disclosures contemplated in s. 38(3)(b) can be made by a derivatives firm in a master trading agreement with its counterparty.
	Several commenters requested clarification on the policy rationale behind former s. 40(3)(e) on which the exemption for foreign dealers based on substituted compliance is not available if the dealer is in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in a Canadian jurisdiction, particularly if only dealing with EDPs.	Change made. The subsection was removed. A person or company in the business of trading in derivatives on an exchange or a derivatives trading facility is no longer prohibited from qualifying for the exemption under new s. 38(1).
Division 3 – Exemptions for Derivatives Advisers		
Division 3, General	One commenter submitted that a corresponding exemption to former s. 41 should be added for portfolio managers, as they have limited derivatives activity.	We have specifically requested comment in the Notice and Request for Comment in relation to Proposed NI 93-102 as to whether and in what circumstances registered advisers (portfolio managers) under NI 31-103 should be considered derivatives advisers. We will consider these responses in determining whether registered advisers (portfolio managers) that provide incidental advice in relation to derivatives should be considered in the business of advising in relation to derivatives or whether an express exemption is required.
Former s. 44 – Foreign derivatives advisers, General	Several commenters generally supported exempting foreign derivatives advisers but noted that the exemption is too narrow, as many jurisdictions do not subject derivatives advisers to registration. Derivatives advisers should be exempt from the Instrument when exempt or not required to be registered in their principal jurisdiction, which would better align with the international adviser exemption in NI 31-103.	No change. We have intentionally limited the exemption in s. 43 [*Foreign derivatives advisers*] of the Instrument to foreign derivatives advisers that are "registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix D".
	One commenter requested that corresponding domestic and foreign laws that can be complied with in lieu of the Instrument and the residual provisions of the Instrument be published for consultation before the Instrument is finalized.	Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Former s. 44 – Foreign derivatives advisers, subsection (1)	One commenter submitted that the foreign adviser exemption should not be conditional on dealings with EDPs when the business conduct rules of a foreign jurisdiction are deemed equivalent.	No change. The foreign adviser exemption is not available to derivatives firms that transact with non-EDPs.
Former s. 44 – Foreign derivatives advisers, subsection (3)	One commenter submitted that the requirement to deliver a statement pursuant to former s. 44(3)(c) in order to qualify for the exemption does not provide any additional protection and is inconsistent with former s. 23, which requires a similar statement only be delivered to non-EDPs.	No change. However, clarifying language has been added to the CP. Disclosures contemplated in s. 43(3)(b) can be made by a derivatives firm in a master trading agreement with its counterparty.
	Several commenters requested clarification on the policy rationale behind former s. 44(3)(e) on which the exemption for foreign advisers based	Change made. A person or company in the business of trading in derivatives on an exchange or a derivatives trading facility is no longer

	on substituted compliance is not available if the adviser is in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in a Canadian jurisdiction, particularly if only dealing with EDPs.	prohibited from qualifying for the exemption under s. 43(1).
Part 7 – Granting an Exemption		
Former s. 45 – Exemption	One commenter submitted that credit unions make available products largely on demand to provide a full suite of services and do not operate platforms, are not market makers, and are not directly offering quotes. Credit unions are the intended beneficiaries of the Instrument and qualify for the end-user exemption. Credit unions should not be defined as derivatives dealers or advisers and should fall outside the scope of the Instrument.	No change. The exemption available for derivatives end-users that satisfy certain requirements is set out in s. 37. Discretionary exemptions are available on an ad-hoc basis.
	One commenter submitted that IIROC-regulated dealers are already regulated and should be exempt from the Instrument.	No change. This Instrument will include exemptions for entities that are subject to and comply with other regulatory requirements that, on an outcomes basis, are equivalent to requirements in this Instrument. Requirements of Canadian and foreign regulators that are deemed equivalent will be published for comment prior to the finalization of this Instrument.
Part 8 – Effective Date		
Former s. 46 – Effective date	Two commenters suggested delaying the implementation date to harmonize the Instrument with CFTC and Securities and Exchange Commission rules.	No change. Canadian jurisdictions are committed to implementing harmonized business conduct rules.
	Several commenters suggested extending the implementation period to become compliant to 6 months for previously regulated firms and 12 months for those not previously regulated.	No change. Please see the Instrument and related guidance in the CP.
	One commenter submitted that all pre-effective date transactions regardless of their remaining term should be grandfathered and that grandfathering should apply even if pre-effective date transactions are subsequently amended after the date the Instrument is finalized.	We are permitting a derivatives firm to leverage a pre-existing “permitted client”, “accredited counterparty” or “qualified party” representation from its client as set out in s. 45 of the Instrument for pre-existing transactions. If the conditions in that section are satisfied, then those transactions are only subject to s. 8 [*Fair dealing*], s. 20 [*Daily reporting*] and s. 28 [*Derivatives party statements*].

List of Commenters

1. Associated Foreign Exchange, ULC
2. Bruce Power L.P.
3. Canadian Bankers Association
4. Canadian Credit Union Association
5. Capital Power Corporation
6. Enbridge Inc.
7. Franklin Templeton Investments Corp.
8. International Energy Credit Association
9. International Swaps and Derivatives Association, Inc.
10. Investment Industry Association of Canada
11. Investor Advisory Panel
12. Just Energy Corp.
13. NorthPoint Energy Solutions, Inc.
14. Osler, Hoskin & Harcourt LLP
15. Pension Investment Association of Canada
16. Portfolio Management Association of Canada
17. SIFMA Asset Management Group
18. The Canadian Advocacy Council for Canadian CFA Institute Societies
19. The Canadian Commercial Energy Working Group
20. The Canadian Market Infrastructure Committee
21. Western Union Business Solutions