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September 20, 2018

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission of New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montreal (Québec) H4Z 1G3

Dear Sirs / Madames:

**Re: Proposed National Instrument 93-102 *Derivatives: Registration* (“Proposed NI 93-102”) and Proposed Companion Policy to National Instrument 93-102 (“Proposed Companion Policy”, and together with Proposed NI 93-102, the “Proposed Instrument”)**

#### **A. Introduction**

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (the “CSA”) on the Proposed Instrument.

Fidelity Investments Canada ULC (“Fidelity”) is the fourth largest asset management company in Canada. Fidelity manages approximately \$136 billion in retail mutual funds and institutional assets.

## **B. Comments**

### **1. Introduction**

Fidelity does believe that a robust regime for derivatives trading, including oversight and proficiency, is important and we are supportive of the overarching goals of the CSA in coming up with a regime that is effective. The use and risks of derivatives must be employed, monitored and controlled appropriately and prudently with appropriate expertise.

However, we think the regime being proposed is incrementally too onerous. It creates an entirely new regime on top of an existing and effectively functioning regime for the advising of securities. It is also in many ways duplicative in an unnecessary fashion.

In particular, an advisor like Fidelity will need to be registered in three categories – portfolio manager, commodity futures and now derivatives adviser. It strikes us that these regimes cry out for one regime under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”), rather than creating three separate regimes for essentially the oversight of all advising activities. This is also true for individual portfolio manager registrants. We are now looking at registering portfolio managers in three different categories with different proficiency and experience requirements depending on the regime.

Further, under the Proposed Instrument, and in conjunction with proposed National Instrument 93-101 *Derivatives: Business Conduct*, an investment advisor who advises on derivatives would be required to have a Derivatives Chief Compliance Officer (“**CCO**”), a Senior Derivatives Manager, a Derivatives Chief Risk Officer (“**CRO**”) and a Derivatives Ultimate Designated Person. We think this is excessive and certainly finding people with expertise required in the Proposed Instrument will be extremely difficult.

In addition, while investment advisors, like Fidelity, have the resources to recruit people with experience, we believe you would be putting smaller investment advisors at a significant disadvantage by requiring such an extensive regime.

Specific comments are set out below.

### **2. Derivatives Adviser Registration**

As currently drafted, the Proposed Instrument requires portfolio managers that advise on over-the-counter (“**OTC**”) derivatives to register under the Proposed Instrument (the “**Derivatives Registration Requirement**”).

Fidelity is of the view that the Derivatives Registration Requirement should not apply to portfolio managers advising on OTC derivatives that are registered pursuant to NI 31-103, as they are already subject to similarly robust registration requirements under NI 31-103. Moreover, the general “business trigger” analysis contained in the Proposed Instrument does not include an explicit exemption for portfolio managers advising on OTC derivatives that are otherwise registered under other Canadian securities legislation.

As such, and in line with the CSA's aim of reducing the regulatory burden on firms, Fidelity strongly suggests that the CSA revise the Proposed Instrument to clarify that portfolio managers advising on OTC derivatives that are already registered under NI 31-103 are exempt from the Derivatives Registration Requirement. We would be supportive of incrementally adding requirements for proficiency and experience, without an entirely new regime in NI 31-103 for derivatives.

### **3. *International Adviser and Sub-Adviser Exemption***

The Proposed Instrument contains an exemption for foreign dealers from the requirement to register as a derivatives dealer. However, this exemption, as drafted, contains additional conditions that are not found in the international adviser exemption contained in NI 31-103, such as the requirement to comply with requirements in the foreign jurisdiction and notify the regulator of instances of material non-compliance with such requirements. Moreover, the Proposed Instrument does not include a similar exemption for international sub-advisers.

As such, Fidelity strongly suggests that the CSA consider revising the Proposed Instrument to include the equivalent of the international sub-adviser exemption in Section 8.26.1 of NI 31-103 and international adviser exemption in Section 8.26 of NI 31-103. Alternatively, the CSA could just simply add sections to NI 31-103 for existing registrants who also advise on derivatives.

### **4. *Proficiency Requirements***

Fidelity appreciates the CSA's interest in having appropriately qualified market participants. However, Fidelity is of the view that the proficiency requirements set out in Item 18 of the Proposed Instrument for a CCO and CRO are unduly burdensome and restrictive, particularly the requirements for significant derivatives experience.

Fidelity strongly suggests that the CSA consider aligning the proficiency requirements for a CCO and CRO with the proficiency requirements set out in NI 31-103. Alternatively, the CSA should consider grandfathering proficiency for individuals otherwise registered under NI 31-103. Without such changes to the Proposed Instrument, firms may otherwise face significant challenges in recruiting suitable individuals for the roles of CCO and CRO.

We would therefore strongly urge a staged-in approach to these requirements, or, as stated above, grandfathering for existing CCOs who can demonstrate that an adequate oversight compliance program is already in existence at the firm.

Lastly, some firms may have access to derivatives expertise at foreign affiliates. We urge you to explicitly state that equivalent exams in foreign jurisdictions are acceptable for purposes of registration.

### **5. *Time Limits on Examination Requirements***

The above-mentioned proficiency requirements include a 36 month time limit (the "**Designation Time Limit**") on the validity of examinations prescribed in Section 18 of

Proposed NI 93-102. The Proposed Companion Policy further states that the Designation Time Limit does not apply to the CFA Charter or the Risk Manager Designation. However, the Proposed Instrument does not include a similar exemption for the Canadian Investment Manager Designation (the “**CIM Designation**”).

Fidelity strongly suggests that the CSA revise the Proposed Companion Policy to include an exemption from the Designation Time Limit for the CIM Designation, consistent with a similar exemption for the CIM Designation contained in the Companion Policy to NI 31-103.

Fidelity also believes that the requirement for a CFA is excessive for the CCO and CRO. Lastly, the rules give a significant advantage to those who have worked for a Canadian financial institution with derivatives experience. Certainly that experience can be obtained outside of a financial institution and still be very relevant.

### **C. Conclusion**

We appreciate the opportunity to comment on the Proposed Instrument. If you wish to discuss any of the foregoing, please contact the undersigned.

Yours very truly,

Fidelity Investments Canada ULC

***“W. Sian Burgess”***

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Senior Vice President, Fund Oversight