



**DON'T JUST SIT THERE, DO SOMETHING:  
Preparing to comply with the new OTC  
derivatives regulatory regime**

Presentation for The Canadian Institute's  
*22nd Annual Securities Superconference*

# Agenda

- Proposed Alberta Securities Commission Blanket Order 91-505 *Over the Counter Derivatives Transactions*
- Reporting of Transactions
- End User Exemption
- Central Clearing
- Collateral and Custody
- ISDA DF Protocol

# ASC BOR 91-505 and ASC Rules Amendments

- Published for comment on October 15, 2012
- Replaces proposed ASC Rule 91-505 *Over the Counter Derivatives*
- Repeals existing BOR 91-503 *Over the Counter Derivatives and Commodity Contracts*
- Exemption from prospectus filing and receipt requirements for OTC derivatives transactions between “qualified parties” (same definition as in BOR 91-503, including retaining commercial user exemption)

# ASC BOR 91-505 and ASC Rules Amendments continued

- Exemption from dealer registration requirement for OTC derivatives transactions that are either a) physical commodity contracts or b) between two qualified parties so long as transaction meets requirements set out by ASC.
- Physical commodity contracts are non-exchange traded contracts for delivery of a commodity (other than cash or a currency) which are intended to be physically-settled and can only be cash-settled where physical delivery becomes impossible due to an event beyond the control of the parties.
  - This definition does not fully address the issues set out in comment letters to the ASC on proposed Rule 91-505.

# ASC BOR 91-505 and ASC Rules Amendments continued

- Requirements that may be set out by the ASC for exemption from the dealer registration requirement include:
  - Reporting to a trade repository (termed “agency” in the BOR and ASC Rules);
  - Trading on a recognized or exempted exchange;
  - Clearing through a CCP recognized by the ASC; or
  - Maintaining a minimum level of working capital in respect of non-cleared transactions.

## ASC BOR 91-505 and ASC Rules Amendments continued

- Revisions to ASC Rule would allow ASC to promulgate rules concerning derivatives exchanges, central clearing and working capital requirements for non-cleared trades. ASC already has power to make rules regarding trade reporting.
- Comments must be in by November 16, 2012.

# Trade Reporting

- A global system of Legal Entity Identifiers (LEI) will be in place for all OTC derivatives market participants by March 2013.
  - A LEI is a unique identifier for each party which transacts in OTC derivatives (like a CUSIP number for securities).
- Parties should begin to identify which entities in their corporate structure transact in OTC derivatives and determine which ones will need to apply for LEIs.
- Although, the trade reporting rules are expected to follow the *Securities Act* (Ontario) and exempt trade reporting from any confidentiality agreements, parties should review documents to make sure there are no contractual consequences for disclosure.

# End User Exemption

- Currently the end user exemption is proposed to be made available for non-systemically important, non-financial institution market participants who use OTC derivatives for hedging.
- Parties should determine if they are eligible for exemption. If they engage in non-hedging activity, they should determine if they should end such activity in order to become eligible for end user exemption.
- The rule will likely require board level approval of reliance on exemption. Parties should educate directors from now on scope of exemption and provide information necessary to make determination once rule comes into effect.



# Central Clearing

- Even if CSA central clearing rules do not come into effect immediately in January 2013, financial institutions will have strong capital incentives to move transactions to central clearing once OSFI Capital Adequacy Requirements come into force (Jan 1, 2013).
- Parties will need to review derivatives portfolio and determine which transactions can be standardized and centrally cleared.
- Parties will need to find dealers (direct clearing members) who are ready to clear transactions for them on the various platforms.
- Central clearing will result in new costs associated with derivatives contracts (particularly uncollateralized contracts). Parties should evaluate viability of transactions in light of such costs.

# Collateral and Custody

- CSA has not set out rules for collateral for uncleared transactions yet. However, financial institutions will be required to hold additional capital in respect of these transactions beginning in January 2013. So there will be a strong incentive for full two way collateralization.
- Parties will need to take into account collateral costs for transactions that may have been previously uncollateralized (or had very high margin thresholds before collateral needed to be delivered).
- Parties should look into hiring reputable third party custodians to hold received collateral.

# ISDA Dodd Frank Protocol

- Extraterritorial application of Dodd Frank Act is fairly substantial and many Canadian entities will be subject to DF external business conduct rules.
- These entities will have to provide certain information to counterparties.
- ISDA has created a protocol and a set of questionnaires that simplifies process of providing information about an entity and the disclosures required to be made by counterparties.
- Parties should consider signing up for protocol.