
**Presentation to CCLS IIROC Sub-Committee on Conduct,
Compliance and Legal Advisory Section**

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Creation of New Roles and Responsibilities Under 93-101 and 93-102

Role	Responsibilities	Implications
<p><i>Derivatives Ultimate Designated Person (“DUDP”), the Derivatives Chief Compliance Officer (“DCCO”) and the Derivatives Chief Risk Officer (“DCRO,” collectively “Derivatives Officers”)</i></p>	<ul style="list-style-type: none"> ▪ Derivatives Officers are responsible for ensuring the firm’s compliance to the rules and other derivatives regulations. ▪ The Derivatives Officers make annual compliance attestations to the firm’s Board. ▪ The DUDP must report to board and securities regulators about instances of non-compliance with the rules or other to derivatives regulations such incidents pose material harm to the counterparty, material harm to capital markets or shows a pattern of non-compliance. ▪ 93-102 imposes a number of proficiency requirements (exams and minimum experience requirements) on the Derivatives Officers. 	<ul style="list-style-type: none"> ▪ Corporate governance frameworks will require considerations of OSFI guidelines as well as 93-101 and 93-102 requirements. ▪ First, second and third line responsibilities will need to be updated to ensure that there are no gaps in roles and responsibilities. ▪ For annual board attestations and escalations, boards will need to be educated on derivatives dealer compliance responsibilities.
<p><i>Senior Derivatives Managers Regime (SDM)</i></p>	<ul style="list-style-type: none"> ▪ SDMs (i.e. the heads of a derivatives business unit) will be responsible for ensuring the compliance of their derivatives business unit and individual personnel with the Rules and other derivatives regulations. ▪ An annual report must be delivered by the SDM to the Board on their business unit’s compliance with the rules and other derivatives regulations, detailing instances of material non-compliance and the remediation actions taken. 	<ul style="list-style-type: none"> ▪ Similar to above, roles and responsibilities between Derivatives Officers and SDMs will need to be clearly delineated to ensure that there are no gaps. ▪ Open question whether SDMs should be at Volcker/FRTB or at another desk/business level.

Select Compliance Issues to Consider

Issue	Comments
<i>Non-Domestic Branches</i>	<ul style="list-style-type: none">• Both 93-101 and 93-102 apply to non-domestic branches of Canadian banks.• As these branches are also subject to OSFI rules and domestic rules, compliance programs must consider and manage the complexity of application of multiple rules that may not be entirely consistent.
<i>Client Outreach</i>	<ul style="list-style-type: none">• Both the 93-101 and 93-102 have a number of client outreach requirements as existing client information would insufficient to satisfy the rules.• EDP and non-EDP asset thresholds are different than eligible contract participants under CFTC rules (CFTC rules use a total assets threshold while 93-101 and 93-102 use net assets; CFTC thresholds are also lower at total assets of \$10 million for non-individuals and net worth of \$1 million for individuals).• Know-your-derivatives party information may need to be updated.• Get written representation from clients that they have “requisite knowledge and experience”, understand that the derivatives are “suitable” and the “characteristics” of derivatives.• Since both rules apply to non-domestic branches of Canadian banks, client outreach in foreign jurisdictions would also be required because the asset thresholds differ (e.g. private banking customers (analogous to EDPs) in Hong Kong and Singapore asset thresholds are SGD \$2 million (~CAD 2 million) and HKD \$8 million (~CAD 1.3 million) respectively).• For clients that satisfy the commercial hedger criteria for EDP and individual clients that satisfy the EDP net asset threshold, waivers will be required.
<i>Written Agreements</i>	<ul style="list-style-type: none">• Derivatives dealers must enter into a written agreement in respect of each transactions to determine the value of derivative.• Many short-term FX transactions are done by way of a confirmation; CFTC rules have similar requirements that were addressed through an ISDA March 2013 DF Protocol.• A similar Canada specific protocol may be needed, but could be difficult to get clients to accept the protocol as the DF Protocol was not well received.
<i>Information Given To Regulators</i>	<ul style="list-style-type: none">• 93-101 and 93-102 require derivatives dealers to make their books and records available to provincial securities regulators and also requires reports to securities regulators about instances of material non-compliance with laws.• Such disclosure could contain prescribed supervisory information (PSI) which is protected under federal law and cannot be disclosed to anyone, including provincial securities regulators• Compliance programs and governance will need to be developed to ensure that disclosure to securities regulators do not trip federal laws.

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<i>Fair Dealing</i>	<ul style="list-style-type: none">• 94-101 has fair dealing obligations that requires firms to “act fairly, honestly and in good faith”.• This includes determining prices for derivatives transacted with derivatives parties in a fair and equitable manner.• Because this creates significant litigation risk, considerations and governance structure would be need to be put in place for each trade and pricing for each trade.
<i>Derivatives Party Assets</i>	<ul style="list-style-type: none">• For trades with non-EDPs, there is a requirement to segregate IM (note this requirement is different than under CFTC rules where a swap dealer only has to give the client an option).• New custodian arrangements may be needed.
<i>Registration in each province</i>	<ul style="list-style-type: none">• Derivatives dealers would need to register in all provinces and pay fees to all provincial regulators and each provincial regulator could separately bring an enforcement action.
<i>Foreign Dealers that receive substituted compliance</i>	<ul style="list-style-type: none">• The foreign derivatives dealers must notify their principal securities regulator of each instance of material non-compliance with respect to their local dealer registration and business conduct rules.• Submit to the jurisdiction of the provincial securities regulators and appoint a service agent in each province where they do business.• Make an undertaking to provide the securities regulators with prompt access to books and records upon request (note, this will typically be at the parent level).• Notify the regulator on an annual basis of the derivatives dealer’s exemption status.
<i>Trade Reporting</i>	<ul style="list-style-type: none">• Under Ontario, Manitoba and Quebec, any dealer, including a foreign derivatives dealer that is required to register under 93-102 will be required to report its global trades in those provinces (there is an exception from this requirement available in other provinces).