



Canadian Foundation *for*  
Advancement *of* Investor Rights  
Fondation canadienne *pour* l'avancement  
*des* droits *des* investisseurs

September 9, 2016

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**RE: ASC Staff Notice and Request for Comment 91-708 OTC Trading in Contracts for Difference, Foreign Exchange Contracts, and Binary Options**

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FAIR Canada is pleased to offer comments on ASC Staff Notice and Request for Comment 91-708: OTC Trading in Contracts for Difference, Foreign Exchange Contracts, and Binary Options (the “Notice”), which seeks comments on the possible relief from certain reporting requirements and from the prospectus requirement in respect of the distribution of over-the-counter (OTC) trading in contracts for difference (CFDs), rolling-spot foreign exchange contracts, and binary options.

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

**1. Executive Summary**

- 1.1. FAIR Canada does not support the introduction of an exemption from the requirement to file a Form 45-106FI *Report of Exempt Distribution* (the “Report of Exempt Distribution”) for CFDs, rolling-spot foreign exchange contracts or binary options. Reports of Exempt Distribution are important tools for collecting key information on the exempt market. Regulators can use this information to assist with effective regulation and the development of a strong regulatory framework for the exempt market. The requirement to file a Report of Exempt Distribution is crucial and there should not be an exemption.
- 1.2. FAIR Canada does not support the introduction of prospectus exemptions for CFDs or rolling-spot foreign exchange contracts. These are complex, high-risk products that are often associated with leveraged investing and are unsuitable for the overwhelming majority of retail investors.

**2. Exemption from the requirement to file Form 45-106F**

*Do you support an exemption from the requirement to file a Form 45-106F1 Report of Exempt Distribution in respect of trades that are reported under MI 96-101? Why or why not?*

- 2.1. FAIR Canada does not support an exemption from the requirement to file a Report of Exempt

Distribution in respect of trades that are reported under MI 96-101 as contemplated in the Notice. A Report of Exempt Distribution allows securities regulators to collect and publish key information on the exempt market. FAIR Canada has observed that there already is a dearth of basic information required to understand the exempt market. Sufficient data is required in order to regulate effectively and make sound policy decisions.<sup>1</sup> The information collected through a Report of Exempt Distribution is therefore useful as it can help to fill the gap in data that currently exists.

- 2.2. FAIR Canada believes that lower capital formation costs and increased confidence in our markets will be achieved by creating a regulatory framework for the exempt market that delivers strong investor protection while facilitating true (i.e. quality) capital formation. Confidence in our markets, including confidence that the markets are fair and that the rules are effectively enforced, is critical to long term capital formation and economic growth. Obtaining information about the exempt market is necessary in order to ensure that an appropriate regulatory process is established. The requirement to file a Report of Exempt Distribution is, therefore, crucial and there should not be an exemption.<sup>2</sup>

### 3. Prospectus Exemption

*Do you think that it is appropriate to provide a prospectus exemption to permit the sale of CFDs or rolling-spot foreign exchange contracts to retail investors? Please provide a detailed explanation of your reasons.*

- 3.1. FAIR Canada is opposed to prospectus exemptions that would permit the sale of CDFs or rolling-spot foreign exchange contracts to retail investors. FAIR Canada agrees with the ASC: an exemption from the prospectus requirement is not appropriate in light of the inherent risks of such products.
- 3.2. FAIR Canada believes that CDFs and rolling-spot foreign exchange contracts are complex, high-risk products that are unsuitable for the overwhelming majority of retail investors. FAIR Canada is strongly opposed to any regulatory changes that would facilitate the sale of such products to retail investors, and therefore FAIR Canada opposes the introduction of a prospectus exemption.
- 3.3. FAIR Canada is particularly concerned that the deployment of these products appears highly correlated to the use of leverage and may encourage leveraged investing. FAIR Canada is of the view that leveraged investing is not suitable for most investors and that there should be a

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<sup>1</sup> Several academics and FAIR Canada have called on regulators to improve their understanding of the exempt market by collecting better information and making that information public. Academic papers include Jack M. Mintz, "Muddling up the Market: New Exempt-Market Regulations May do More Harm than Good to the Integrity of Markets", The University of Calgary School of Public Policy SPP Research Papers, v. 7 issue 35 (November 2014), available online at: <http://www.policyschool.ucalgary.ca/sites/default/files/research/mintz-mudlingmarket.pdf>; and Vijay Jog, "The Exempt Market in Canada: Empirics, Observations and Recommendations", University of Calgary School of Public Policy SPP Research Papers, v. 8 issue (March 2015), available online at: <http://www.policyschool.ucalgary.ca/sites/default/files/research/exempt-markets-jog.pdf>. FAIR Canada has raised this issue in several of its submissions including its 2012 submission to the CSA on reforms to the accredited investor and minimum amount exemptions from consultation note 45-401 published November 10, 2011: available online at <http://faircanada.ca/wp-content/uploads/2011/01/120229-FAIR-Canada-submission-re-MA-AI-exemptions.pdf>.

<sup>2</sup> See FAIR Canada's previous comments regarding Reports of Exempt Distribution, available online at: [http://faircanada.ca/fca\\_submissioncategory/capital-raising-exempt-market/](http://faircanada.ca/fca_submissioncategory/capital-raising-exempt-market/)

presumption of unsuitability in respect of these products.<sup>3</sup>

- 3.4. Moreover, FAIR Canada believes that the regulatory changes outlined in the Notice ignore the need for investor protection. Ignoring investor protection will only make the exempt market more inefficient and will further erode investor confidence in our capital markets. This will, in turn, hurt economic growth. FAIR Canada therefore urges the ASC to give no further consideration to this prospectus exemption.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408/[neil.gross@faircanada.ca](mailto:neil.gross@faircanada.ca) or Marian Passmore at 416-214-3441/[marian.passmore@faircanada.ca](mailto:marian.passmore@faircanada.ca).

Sincerely,



Canadian Foundation for Advancement of Investor Rights

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<sup>3</sup> See FAIR Canada's previous comments regarding leveraged investing, including comments made in response to OSC alerts on the risks of leveraged investing, available online at: <http://faircanada.ca/whats-new/osc-alerts-investors-about-risk-of-leveraged-investing/>; and a letter to the CSA urging regulators to act on leveraged investing, available online at: <http://faircanada.ca/wp-content/uploads/2011/10/111026-letter-to-CSA-re-Leverage-final.pdf>.