Appendix 7 – Summary of public comments received on 2022 publication

Comments received in response to IIROC Rules Notice 22-0055 – Request for comments: Re-publication of Proposed Derivatives Rule Modernization, Stage 1

On April 14, 2022, IIROC issued Rules Notice 22-0055 requesting comments on revised amendments to the IIROC Rules (replaced by the Investment Dealer and Partially Consolidated Rules on January 1, 2023) (the **Rules**), relating to the modernization of our derivatives-related rules (**Revised Proposals**). We received five comment letters from the following:

- Bourse de Montréal Inc. (**MX**)
- Canadian Advocacy Council of CFA Societies Canada (**CFA**)
- Investment Industry Association of Canada (**IIAC**)
- OANDA (Canada) Corporation ULC (**OANDA**)
- Questrade, Inc. (**Questrade**)

Copies of these letters are publicly available on CIRO's website (Consultations). The following table summarizes these comments and our responses:

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General Comments	
1. Overall, the commenters continue to support the Revised Proposals and acknowledge the consideration given to several of the initial comments and recommendations received on the initial request for comment (IIROC Rules Notice 19-0200). (**CFA, MX, IIAC, OANDA**)	We acknowledge the comments.
2. One commenter believes the Revised Proposals have been carefully considered and are appropriate to implement at this time. **(CFA)**	We acknowledge the comment.
3. One commenter believes that some areas require further clarification or amendment, and emphasizes that OTC derivatives require special considerations and extending certain of the Revised Proposals to this category of derivatives poses compliance challenges for Investment Dealer Members and risks proper market functioning. The commenter further believes the Revised Proposals	We believe the Revised Proposals are in line with steps being taken by regulators globally and the CSA to ensure the OTC derivatives market is subjected to adequate regulation, considering the potential risks associated and the increased participation of retail investors in this segment of the market (for example offering of CFDs and Forex-related products). CIRO is committed to achieving the goal of ensuring relatively consistent regulatory requirements across all securities and derivatives-related business

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need to be harmonized with the equivalent CSA requirements. (**IIAC**)	lines of Investment Dealer Members. We believe the approach under the Revised Proposals will ensure this consistency and will avoid an increase in compliance costs that would otherwise be incurred where requirements are materially different. For several of the proposed amendments, we have also accounted for the difference in the level of sophistication of institutional clients, which will capture a wider spectrum of clients, compared to retail clients by introducing additional protection or disclosures for retail clients. The CSA's proposed business conduct instrument on OTC derivatives provide exemptions from requirements set out in the respective appendices, where Investment Dealer Members must comply with corresponding conduct and other regulatory requirements of CIRO. We believe the Revised Proposals continue to ensure our rules are materially harmonized with the equivalent CSA requirements.
1. Definitions	
1.1. General	
4. One commenter believes that several defined terms in the initial proposals were conflicting or inconsistent with those of the CSA, but the Revised Proposals address some of the definitions, clarify that the CSA exclusions apply irrespective of the definition used in the Rules. The commenter also acknowledges that when new regulations are introduced by the CSA, CIRO will evaluate the need for amendments to the definitions in the Rules and other related regulatory requirements. (**IIAC**)	We acknowledge the comment.
1.2. Definition of "security"	
5. One commenter agrees with the decision to exclude derivatives from the definition of a security to more clearly specify which regulatory obligations apply to the respective asset classes. (**CFA**)	We acknowledge the comment.
1.3. Definition of "derivative"	
6. One commenter believes CIRO should modify the	The goal of changes in the Revised Proposals was not to reclassify products

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definition of "derivative" to reflect the appropriate scope established by the CSA. The rationale is that the proposed definition appears to inadvertently capture certain products that have been historically excluded from the definition of derivative (e.g. structured notes including PPNs, PARs etc.). The commenter believes that while the Rules clarify that the CSA exclusions will apply irrespective of the definitions used in the Rules by introducing a new definition for "security" (*'A security as defined within the relevant securities law, other than a derivative'*), a similar statement under the definition of "derivative" (*'other than a Security, as defined within relevant securities law'*) is warranted for consistency. (**IIAC**)	qualifying as securities or include those that would not otherwise be classified as derivatives, unless they are effectively considered to be derivatives as per established norms. To avoid any potential confusion or conflict with the current classification of products under the securities legislation (for example, structured notes) or products otherwise defined under the Rules (for example, a forward repo), we made the following changes to the proposed definition of "derivative": "*A contract or instrument which includes:* *(i) an option, swap, futures contract, forward contract, futures contract option, contract for difference, or* *(ii) any other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest, including a value, price, rate, variable, index, event, probability or thing,* *but does not include a contract or instrument determined by the Corporation to be classified in a category other than a derivative*."
1.4. Revision to "institutional client" definition	
7. One commenter believes that the definition of "institutional client" should not be extended to OTC derivatives and that we should reconsider the proposed approach to avoid the risk of confusion and regulatory arbitrage with the term Eligible Derivatives Party used in CSA's proposed NI 93-101 and NI 93-102. (**IIAC**)	As indicated in our response to a similar comment received on the initial proposed amendments (*Notice 22-0055: Attachment D - Summary of public comments received on the Initial publication and IIROC's staff response*), the goal is to have one definition to reduce the gap between the definitions used to identify sophisticated clients notwithstanding the business lines, or product types (securities and derivatives, listed or OTC). However, we understand the concerns. Once the CSA finalizes its proposed instruments on OTC derivatives, we will assess the impact and accordingly consider further amendments to the definition of institutional client. Of note, if we decide to adopt a different institutional client definition for OTC derivatives-related activities than that used for securities and listed derivatives-related activities, we will need to adopt additional provisions to determine how an account is to be classified when it holds a mixture of OTC derivative and security and/or listed derivative positions. This additional

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	complexity is unfortunate but will be necessary if more than one institutional client definition is used.
8. One commenter is supportive of the proposed definition of a "hedger", including the changes that have been made from the first iteration of the amendments. (**CFA**)	We acknowledge this comment.
9. One commenter believes that it is important to exclude individuals from the classification of "hedger". (**CFA**) Another commenter asks for the rationale to exclude individuals from the definition of "hedger", giving the example of the exclusion of sole proprietorships and larger investors engaging in hedging activities. The commenter provides the example of whether a retail client must meet the definition of a hedger for an account to be considered a hedging account, or can an individual's account be considered a hedging account simply because it is being used for hedging purposes. (**IIAC**)	Under the Revised Proposals we maintained the concept where only non-individuals engaging in qualifying hedging activities can be classified as an "institutional client". The proposed definition of "hedger" is only used for the purpose of classification as an "institutional client", and does not limit the application of other requirements relating to hedging under the Rules to accounts held by an individual. For example, under Rule 4300, notwithstanding the definition of "hedger", a position in an individual's account can be considered a "qualifying hedge position" if it meets the said definition of "qualifying hedge position". As we previously indicated once the CSA finalizes its proposed instruments on OTC derivatives, we will assess the impact further and consider if new amendments are needed to the definition of institutional client, including the need to expand the "hedger" category.
10. One commenter seeks clarification with respect to the interaction of clauses (i) and (ii) of the proposed hedger definition. The commenter believes that a non-individual/ hedger should be able to qualify as a hedger if they engage in qualifying hedging activities with respect to one or more of their identified risks, but that they need not seek to hedge all of their risks from activities as existing language would suggest is required. (**CFA**)	When a non-individual engages in a 'derivative transaction' to hedge exposure to risks as part of its activities, for purposes of the definition of "hedger", the hedging can relate to some or all of the risks. We clarified the wording under the clause (ii) of the proposed definition of "hedger" to better reflect this.
11. One commenter seeks further guidance on the meaning of 'materially offset market value changes' in context of subclause (ii)(c) of the proposed definition of "hedger". The commenter suggests that the proposed Guidance Note related to applying and interpreting the definitions of "hedger" and "institutional client" be amended to provide clarification on this point in the same way the	We acknowledge this comment. We have provided additional information in the Guidance Note on 'materially offset market value changes' in subclause (ii)(c) in the definition of "hedger".

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Guidance Note provides some explanation on 'materially related to the underlying interest' referred to under subclause (ii)(a). (**CFA**)	
12. One commenter agrees with the removal of the requirement for the positions resulting from the transactions to have a high degree of negative correlation with the underlying interest or position being hedged. (**CFA**)	We acknowledge this comment.
2. Business Conduct	
2.1. Business continuity plan	
13. One commenter acknowledges the decision to remove from the IIROC Proposal the earlier proposal to require an Investment Dealer Member to invoke its business continuity plan when a significant business disruption occurs. The commenter further suggests that CIRO Staff should acknowledge and accept the reasonable exercise of professional judgment of Investment Dealer Members when determining the significance of a business disruption or impairment and the steps a firm should take when such an impairment has occurred. (**IIAC**)	We acknowledge this comment. The changes we made reinforced the principal-based approach therefore allowing Investment Dealer Members the flexibility to make the appropriate determination based on their business models. In the initial proposed amendments (IIROC Rules Notice 19-0200), we also proposed a definition of "significant business disruption" to assist Investment Dealer Members to determine the type of incident and disruption that would qualify for purposes of Rule 4700 Part A.
2.2. Derivatives-specific business conduct – risk limit	
14. One commenter seeks to understand the rationale for entirely excluding options and similar derivative contracts from these provisions, when related underlying positions are at least partially known to the dealer (for purposes of enhanced margining), and a similar methodology to risk capital limits could be applied. We would suggest further policy research to overcome the challenges of including options in the existing proposed provisions. (**CFA**)	In the initial publication (*Notice 22-0055: Attachment D - Summary of public comments received on the Initial publication and IIROC's staff response*) we had proposed amendments to extend this requirement to all derivatives. Following comments received on significant practical concerns, including operational costs, to implement this requirement for options we made changes to the proposal to exclude options at this time, until a more fulsome assessment can be conducted on the risk limit requirement.
15. One commenter seeks clarification on what is considered a "highly-leveraged" securities referred in the amended sections 2246 and 3252 of the Rules. (**Questrade**)	Investor protection concerns may arise with products featuring higher-risk characteristics or complexity, including listed products in jurisdictions with lower listing standards and/or less product feature/risk transparency.

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	As indicated in the response to comment received on the initial proposed amendments (*Notice 22-0055: Attachment D - Summary of public comments received on the Initial publication and IIROC's staff response*) we do not expect to use this approval authority frequently but require this authority to ensure that we can act in circumstances where a product (including ETFs or ETNs) featuring higher-risk characteristics or complexity, and where investor protection may be a concern, is proposed to be made available to retail clients.
3. Client disclosure and periodic client reporting	
3.1. Risk disclosure statement	
16. One commenter appreciates the changes that have been made to the proposed Derivatives Risk Disclosure Statement and believe it is more robust than as initially presented. The commenter believes that it would still be helpful for derivatives clients to be specifically informed about the concept of counterparty risk and their potential exposure to the creditworthiness of their dealer and any OTC counterparties. (**CFA**)	We acknowledge this comment. While we believe the proposed Derivatives Risk Disclosure Statement addresses the notion of counterparty risk under the section for OTC derivatives, we will continue to consider further improvements to the proposed Derivatives Risk Disclosure Statement to make the latter more informative for clients.
17. One commenter refers to Comment #33 of the Summary of public comments received on IIROC Notice 19-0200 and CIRO staff responses. The commenter highlights that section 11.36 of the Quebec Derivatives Regulation requires disclosure to the AMF, not to clients and the disclosure requirements that CIRO references in its comment related to other jurisdictions pertain specifically to OTC Leveraged Products and CDS, and not to all OTC derivatives. The commenter is of the view that it is not clear how an OEO client will benefit from knowing whether other OEO clients with OTC derivative accounts are profitable and has concerns over the resources required to meet this requirement. (**IIAC**)	The goal of the disclosure on the percentage of accounts which are profitable is to provide retail clients additional awareness of the risk involved when transacting on OTC derivatives. With the proposed amendments to the definition of "institutional clients", extending the classification to individuals with an AUM exceeding $10 million and clients qualifying as a hedger, we believe the impact of this disclosure requirement was further reduced and strikes the right balance between the sophistication level of clients and investor protection concerns. Given the nature of OTC derivatives and since retail clients opening OEO accounts do not have access to a Registered Representative to advise them before engaging into a transaction on such products, we believe such information will ensure these clients are better informed of the risk associated.

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	With regards to the reference of a similar disclosure under Quebec Derivatives Regulation (QDR), the requirement to make this information accessible to counterparties is found under section 13.2.
3.2. Annual performance and fee/charge reports – Enhanced account statement	
18. One commenter suggests that CIRO consults with Investment Dealer Members and provide, for comment, sample templates or other resources to assist Investment Dealer Members in the preparation of their enhanced account statement disclosures. (**IIAC**)	This proposal was introduced following a suggestion in the comment received on the initial proposed amendments (*Notice 22-0055: Attachment D - Summary of public comments received on the Initial publication and IIROC's staff response*), to codify this requirement which is a condition to the exemptive relief previously granted by IIROC Board from sections 3810 and 3811 of the Rules. A number of Investment Dealer Members have already been granted this exemptive relief and would have already implemented the 'enhanced account statement disclosures'. The goal of this proposal is to extend this requirement, without going through the exemption process, to new Investment Dealer Members or existing Investment Dealer Members seeking to start offering contracts for difference, foreign exchange contracts or futures contracts to retail clients. The proposed requirement does not prescribe a format and therefore provides Investment Dealer Members the flexibility to implement the requirement by customizing their monthly or quarterly statement as they find more appropriate. However, we acknowledge this comment and upon request from any Investment Dealer Member seeking assistance on the preparation of the 'enhanced account statement disclosures', CIRO staff will be able to guide them.
4. Other comments	
4.1. Best execution of client orders and transactions	
19. One commenter believes that given the nature of OTC derivatives transactions, the term 'fair' in the context of 'fair price' or 'fair market value' should be interpreted to mean what is commercially reasonable in the professional judgment of the member. (**IIAC**)	We acknowledge this comment. The proposed section 3122 of the Rules lays down the ground rules to assist Investment Dealer Members to ensure fair pricing. When evaluating this requirement CIRO Staff will take into consideration the relevant information and documents the Investment

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	Dealer Members produce to support the determination in establishing a 'fair price' or 'fair market value'.
20. One commenter wishes to reiterate that the Montreal Exchange has rules for best execution and fair trading for participants trading derivatives listed on its market. The commenter recommends that CIRO and MX should work together for efficient monitoring and enforcement, and ascertain the requirements do not conflict. The commenter also suggests that the new Memorandum of Understanding ("MoU") entered between IIROC (CIRO's predecessor) and MX as announced on January 24, 2022 by the CSA should help clarify how the monitoring and enforcement are to be conducted in the case of best execution or client priority breaches when cross-market activities are involved. (**MX**)	As indicated in our response to a similar comment received on the initial proposed amendments (*Notice 22-0055: Attachment D - Summary of public comments received on the Initial publication and IIROC's staff response*), we share the view that MX and CIRO should work together for an efficient monitoring and enforcement of our respective best execution and client priority requirements in so far as MX listed derivatives are involved. We acknowledge this comment and agree that the Memorandum of Understanding (MoU) regarding cross-market surveillance of the securities and derivatives markets between CIRO and MX will contribute to this collaboration.
4.2. Trade blotters	
21. One commenter suggests including the words "if applicable" to the proposed subclause 3805(2)(ii)(d) of the Rules as this information does not apply to contracts for difference trades. (**OANDA**)	We acknowledge this comment, and we will make the change.
4.3. Client account statements	
22. Three commenters are of the view that the requirement to send daily statements to retail clients under the proposed subsection 3808(1) is a significant and material change that can be costly and challenging for Investment Dealer Members where clients choose to receive statements via mail. The commenters believe that the requirement provide no additional benefit, as retail clients are able to review their account holdings online or through an advisor. (**IIAC, Questrade, OANDA**) One commenter suggests removing the references to "send" and "statement", and a redraft of the requirement to be more flexible, since this information	The intention behind this requirement is to ascertain that retail clients, who have open, unexpired or unexercised positions at the end of a day, have access to the information listed under subsection 3808(4) of the Rules. The proposed rule does not require daily statements to be sent to clients physically. As it is the case for monthly, quarterly and annual account statements, clients could have opted to receive those electronically. We, however, acknowledge the significance of this change when it comes to incorporate such changes into the statement production process. We made changes to the proposed subsection 3808(1) to clarify the language so that Investment Dealer Members have more flexibility on the form through which the information is made available to these clients.

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may be provided on a website rather than a formal statement that is physically sent to every client. (**IIAC**)	
4.4. Proficiency requirements	
23. One commenter recommends an exemption from the proficiency requirements for Approved Persons to reflect the instances where Dealer Members offer a limited use of derivatives such as for hedging purposes on an unsolicited basis for sophisticated high net-worth clients only. (**IIAC**)	We will take into consideration this suggestion as part of a detailed review of the proficiency and continuing education requirements for Approved Persons dealing in derivatives which will be done later as part of a comprehensive review of the adequacy of the proficiency and continuing education requirements for all securities and derivatives business lines. Please refer to IIROC Rules Notice 20-0174 – *Administrative Notice – Request for Comments - Consultation Paper - Competency Profiles for Registered Representatives and Investment Representatives, Retail and Institutional* (August 18, 2020) for the first phase of CIRO's competency profiles project which will serve as a cornerstone to CIRO's proficiency regime.
4.5. Supervision of retail derivatives accounts	
24. One commenter requests the rationale for the proposed clause 3962(5)(vi) given that the product structure of contracts for difference in itself prohibits retail clients from acquiring the right or obligation with respect to the ownership of underlying interest and its associated rights. (**OANDA**)	This prohibition is part of the existing expectations and conditions imposed on contract for difference offerings to retail clients which are being codified in the Rules. It clarifies that such rights or obligations are not available to retail clients.
4.6. Precious metals	
25. One commenter believes that precious metals bullion should not be included in the proposed derivatives rule modernization as precious metals bullion does not fit in under the scope of derivatives, and therefore any amendments related to precious metals bullion should be submitted separately for review and comment. (**Questrade**)	The Revised Proposals seek to clarify requirements applicable to precious metals bullion as part of the same proposed amendments since many of the requirements being amended to extend the scope of Rules to derivatives apply to precious metals bullion as well. Since the requirements applicable to precious metals bullion does not require significant consideration specific to the product type, we believe including it within the same proposed amendments puts a lesser burden on the consultation process and implementation, and potentially reduces associated costs, if any, for Dealer Members.
4.7. Implementation	

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26. One commenter recommends an extended implementation period greater than twelve months given the scope of the Revised Proposal and the imposition of new requirements impacting processes, procedures, documentation and systems of the Dealer Members. (**IIAC**)	We acknowledge the comment.