

CSA Staff Notice 94-301***Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing*****July 6, 2017****Introduction**

The Canadian Securities Administrators (**CSA** or **we**) are of the view that amendments to *Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* (the **Regulation**) may be necessary to clarify the scope of market participants that are subject to the requirement to clear an OTC derivative prescribed in Appendix A to the Regulation (a **mandatory clearable derivative**).

The Regulation was published on January 19, 2017, and came into force on April 4, 2017 (with the exception of Saskatchewan where it came into force on April 5, 2017). On such date, the clearing requirement came into force for certain counterparties that are participants of a regulated clearing agency, and is set to come into force for certain other counterparties on October 4, 2017. The anticipated clarification relates to those counterparties for which the clearing requirement would come into force on October 4, 2017.

Substance and Purpose

We anticipate publishing for comments proposed amendments to clarify the scope of the counterparties subject to the Regulation. To facilitate the rule-making process relating to the proposed amendments, we have determined to exempt, on a temporary basis, from the clearing requirement under the Regulation those counterparties that would be subject to the October 4, 2017 effective date.

CSA members, except the Ontario Securities Commission (the **OSC**), are issuing parallel orders of general application, effective October 4, 2017. The orders exempt certain counterparties, on a temporary basis, from the clearing requirement under the Regulation. The effect of the orders is to extend the effective date of the clearing requirement from October 4, 2017 to August 20, 2018 for those certain counterparties. The orders of general application do not exempt a counterparty that is already subject to the clearing requirement because it is a participant of a regulated clearing agency that offers clearing services in respect of a mandatory clearable derivative and subscribes to clearing services for the class of derivatives to which a mandatory clearable derivative belongs.

The OSC is publishing an amendment to the Regulation today in final form that would, subject to Ministerial approval, extend the effective date until August 20, 2018 for the same counterparties as in the orders of general application.

The orders of general application are available on the websites of the following CSA members :

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.msc.gov.mb.ca
nssc.novascotia.ca
www.fcnb.ca
www.fcaa.gov.sk.ca

Questions

If you have questions about this Notice or the orders, please contact any of the following:

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DECISION NO. 2017-PDG-0084

Blanket order regarding exemption from mandatory clearing requirement for certain counterparties

In view of the terms defined in the *Derivatives Act*, CQLR, c. I-14.01 (the “Act”), Regulation 14-101 respecting Definitions, CQLR, c. V-1.1, r. 3 (“Regulation 14-101”), and Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives, CQLR, c. I-14.01, r. 0.01 (“Regulation 94-101”);

In view of subsection 3(1) of Regulation 94-101, which requires a local counterparty to a transaction in a mandatory clearable derivative to submit, or cause to be submitted, the mandatory clearable derivative for clearing to a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative (“mandatory clearing”), if one or more of the following applies to each counterparty:

- (a) under section 14 of Regulation 94-101, effective April 4, 2017, the counterparty:
 - (i) is a participant of a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, and
 - (ii) subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;
- (b) under section 13 of Regulation 94-101, effective October 4, 2017, the counterparty:
 - (i) is an affiliated entity of a participant referred to in paragraph (a), and
 - (ii) has had, at any time after the date on which Regulation 94-101 comes into force, a month-end gross notional amount under all outstanding derivatives exceeding \$1 000 000 000 excluding derivatives to which paragraph 7(1)(a) of this Regulation applies;
- (c) under section 13 of Regulation 94-101, effective October 4, 2017, the counterparty:
 - (i) is a local counterparty in any jurisdiction of Canada, other than a counterparty to which paragraph (b) above applies, and
 - (ii) has had, at any time after the date on which Regulation 94-101 comes into force, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is a local counterparty in any jurisdiction of Canada, exceeding

\$500 000 000 000 excluding derivatives to which paragraph 7(1)(a) of this Regulation applies;

In view of the coming into effect of Regulation 94-101 on April 4, 2017, (2017) 149 G.O. II, 633;

In view of the transitional provision in section 13 of Regulation 94-101 which states that a counterparty specified in paragraphs 3(1)(b) or (c) of this Regulation to which paragraph (3)(1)(a) does not apply is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency until October 4, 2017;

In view of the intention of the *Autorité des marchés financiers* (the “Authority”) to publish for comment proposed amendments to Regulation 94-101; if implemented, the proposed amendments would clarify the scope of application of the clearing requirement so that certain counterparties will not be subject to the clearing requirement under paragraphs 3(1)(b) and (c) of Regulation 94-101 (the “proposed amendments”);

In view of the possibility of granting an exemption to certain counterparties that would have been subject to the clearing requirement effective October 4, 2017, but that may no longer be subject to it as a result of the proposed amendments;

In view of section 86 of the Act, under which the Authority may, on the conditions it determines, exempt a derivative, a person, a group of persons, an offer or a trade from any or all of the requirements or obligations under the Act if it considers that the exemption is not prejudicial to the public interest;

In view of section 99 of the Act, under which the Authority may, in the manner and on the conditions it determines, make a decision that is general or particular in its application and relates specifically to any matter within its jurisdiction under the Act;

In view of the terms defined in the Act, Regulation 94-101 and Regulation 14-101;

In view of the issuance of similar decisions and measures granting exemptions by securities regulators in the other jurisdictions of Canada;

In view of the analysis conducted by the *Direction principale de l'encadrement des dérivés* and the recommendation by the Superintendent, Securities Markets that the exemption referred to in this decision be granted on the grounds that it is not prejudicial to the public interest;

Therefore:

The Authority grants an exemption from the requirement to clear a mandatory clearable derivative to counterparties to which paragraph 3(1)(a) of Regulation 94-101 does not apply and that are subject to this requirement under paragraph 3(1)(b) or (c).

This exemption applies to transactions in mandatory clearable derivatives that take place no later than August 20, 2018.

This decision takes effect on October 4, 2017.

Signed on June 28, 2017.

Louis Morisset
President and Chief Executive Officer