

**CSA Staff Notice 94-303*****Variation, Amendment, or Revocation and Replacement of Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing and Update on Draft Regulation to amend Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives*****May 31, 2018****Introduction**

The Canadian Securities Administrators (the **CSA** or **we**), except the Ontario Securities Commission (the **OSC**), are each varying, amending, or revoking and replacing, as applicable in the local jurisdiction, parallel orders of general application (in each jurisdiction, the **2018 Order**) to extend relief for certain counterparties from the clearing requirement under *Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* (the **Regulation**), effective August 20, 2018.

**Substance and Purpose**

On July 6, 2017, the CSA published CSA Staff Notice 94-301 *Blanket Orders Exempting Certain Counterparties from the Requirement to Submit a Mandatory Clearable Derivative for Clearing* indicating that amendments to the Regulation may be necessary to clarify the scope of market participants that are subject to the requirement to clear an over-the-counter (**OTC**) derivative prescribed in Appendix A to the Regulation.

To facilitate the rule-making process relating to those amendments, CSA members, except the OSC, issued on that day parallel orders of general application, effective October 4, 2017 (the **2017 Orders**). The 2017 Orders exempt from the clearing requirement under the Regulation the counterparties specified in paragraphs 3(1)(b) or (c) of the Regulation that are not already subject to the clearing requirement under paragraph 3(1)(a) on a temporary basis. The effect of the 2017 Orders extends the effective date of the clearing requirement from October 4, 2017 to August 20, 2018. In parallel, the OSC amended the Regulation to extend the effective date of the clearing requirement until August 20, 2018 for the same counterparties as in the 2017 Orders.

Subsequently, on October 12, 2017, the CSA published *Draft Regulation to amend Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* (the **Draft Regulation Amendments**), and *Proposed Changes to Policy Statement 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* for a 90-day comment period that expired on January 10, 2018. The purpose of the Draft Regulation Amendments was to refine the scope of counterparties to which the clearing requirement applies and the types of OTC derivatives that are subject to the clearing requirement.

Three comment letters were received and can be found on the websites of the Alberta Securities Commission, the Autorité des marchés financiers and the OSC. In general, the commenters suggested modifications to the interpretation of the term “*affiliated entity*” and called for a harmonized interpretation of that term throughout the OTC derivatives rules.

In view of the comments received, the CSA is considering alternative solutions to address the aims of the Draft Regulation Amendments with respect to the scope of counterparties subject to the clearing requirement, while also addressing commenters’ calls for a harmonized interpretation of the term “*affiliated entity*” throughout the OTC derivatives rules. The CSA currently anticipates publishing for comment revised proposed amendments to the Regulation for a second consultation period at a later date.

### **2018 Orders**

Accordingly, CSA members, except the OSC, are extending the relief from the clearing requirement under the Regulation for those counterparties specified in paragraphs 3(1)(b) or (c) of the Regulation that are not already subject to the clearing requirement under paragraph 3(1)(a), until the revocation of the 2018 Orders or the coming into force of amendments to the Regulation with respect to the scope of counterparties subject to the clearing requirement, whichever is earlier.

### **OSC staff position**

The OSC will not be issuing an order of this nature given that orders of general application are not authorized under Ontario securities law. However, OSC staff are of the view that, while work in this area is ongoing, there is no public interest in recommending or pursuing an enforcement action against the counterparties specified in paragraphs 3(1)(b) or (c) of the Regulation that are not already subject to the clearing requirement under paragraph 3(1)(a), for failure to comply with the clearing requirement contained in the Regulation.

The above position of OSC staff may be withdrawn after further consideration of this matter. OSC staff expects that this position will be withdrawn on the coming into force of amendments to the Regulation with respect to the scope of counterparties subject to the clearing requirement.

\*\*\*

The 2018 Orders are available on the following websites of CSA members:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[www.mbsecurities.ca](http://www.mbsecurities.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

## Questions

Please refer your questions to any of:

Lise Estelle Brault  
Co-Chair, CSA Derivatives Committee  
Senior Director, Derivatives Oversight  
Autorité des marchés financiers  
514 395-0337, ext. 4481  
[lise-estelle.brault@lautorite.qc.ca](mailto:lise-estelle.brault@lautorite.qc.ca)

Kevin Fine  
Co-Chair, CSA Derivatives Committee  
Director, Derivatives Branch  
Ontario Securities Commission  
416 593-8109  
[kfine@osc.gov.on.ca](mailto:kfine@osc.gov.on.ca)

Paula White  
Deputy Director, Compliance and Oversight  
Manitoba Securities Commission  
204 945-5195  
[paula.white@gov.mb.ca](mailto:paula.white@gov.mb.ca)

Martin McGregor  
Legal Counsel, Corporate Finance  
Alberta Securities Commission  
403 355-2804  
[martin.mcgregor@asc.ca](mailto:martin.mcgregor@asc.ca)

Michael Brady  
Manager, Derivatives  
British Columbia Securities Commission  
604 899-6561  
[mbrady@bcsc.bc.ca](mailto:mbrady@bcsc.bc.ca)

Abel Lazarus  
Director, Corporate Finance  
Nova Scotia Securities Commission  
902 424-6859  
[abel.lazarus@novascotia.ca](mailto:abel.lazarus@novascotia.ca)

Wendy Morgan  
Senior Legal Counsel  
Financial and Consumer Services Commission  
(New Brunswick)  
506 643-7202  
[wendy.morgan@fcnb.ca](mailto:wendy.morgan@fcnb.ca)

Sonne Udemgba  
Deputy Director, Legal, Securities Division  
Financial and Consumer Affairs Authority of  
Saskatchewan  
306 787-5879  
[Sonne.udemgba@gov.sk.ca](mailto:Sonne.udemgba@gov.sk.ca)

**DECISION NO.: 2018-PDG-0041**

**Blanket order regarding exemption from mandatory clearing 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, 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) 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) effective October 4, 2017, the counterparty:
  - (i) is an affiliated entity of a participant referred to in paragraph 3(1)(a) of Regulation 94-101, and
  - (ii) has had, at any time after the effective date of Regulation 94-101, a month-end gross notional amount under all outstanding derivatives exceeding \$1 000 000 000 excluding derivatives to which paragraph 7(1)(a) of Regulation 94-101 applies;
- (c) effective October 4, 2017, the counterparty:
  - (i) is a local counterparty in any jurisdiction of Canada, other than a counterparty to which paragraph 3(1)(b) of Regulation 94-101 applies, and
  - (ii) has had, at any time after the effective date of Regulation 94-101, 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 Regulation 94-101 applies;

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 Regulation 94-101 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 decision No. 2017-PDG-0084 published by the *Autorité des marchés financiers* (the "Authority") on June 27, 2017 [(2017) Bulletin of the Authority, Vol. 14, No. 26, section 6.10, p. 277], which came into effect on October 4, 2017 ("Decision No. 2017-PDG-0084"), under which the Authority granted 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) thereof.

In view of Decision No. 2017-PDG-0084, which applies, until August 20, 2018, to transactions in mandatory clearable derivatives that take place no later than such date;

In view of the draft Regulation to amend Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives published by the Authority for comment on October 12, 2017 [(2017) Bulletin of the Authority, Vol. 14, No. 40, section 6.2, p. 166] (the "draft Regulation") that seeks to clarify the scope of application of mandatory clearing, thereby causing certain counterparties referred to under paragraphs 3(1)(b) and (c) of Regulation 94-101 not to be subject thereto;

In view of the comments received on the draft Regulation;

In view of the opportunity to extend beyond August 20, 2018 the exemption from the requirement to clear a mandatory clearable derivative for counterparties that have been subject to mandatory clearing;

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 issuance of parallel decisions and measures granting exemptions by securities regulatory authorities 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 Decision No. 2017-PDG-0084 be replaced and that the exemption referred to in the present 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) thereof.

This exemption applies to transactions in mandatory clearable derivatives that will take place on or after August 20, 2018.

The present Decision replaces Decision No. 2017-PDG-0084.

The present Decision takes effect on August 20, 2018 and ceases to have effect on the earlier of the following dates:

- 1) the effective date of any amendments made to Regulation 94-101 with respect to persons subject to mandatory clearing;
- 2) the date on which the present Decision is revoked.

Signed on May 31, 2018.

---

Louis Morisset  
President and Chief Executive Officer