Draft Regulation

Derivatives Act
(chapter I-14.01, par. (2), (3), (9), (11), (12), (26), (27) and (29))

Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority") that, in accordance with section 175 of the *Derivatives Act* (chapter I-14.01), the following Regulation, the text of which is published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 90 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives*.

The *Policy Statement to Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* is also published hereunder.

Request for comment

Comments regarding the above may be made in writing by **May 13, 2015**, to the following:

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Further information

Further information is available from:

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February 12, 2015

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

Draft *Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives*

Draft *Policy Statement to Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives*

February 12, 2015

Introduction

We, the Canadian Securities Administrators are publishing for a 90-day comment period expiring on May 13, 2015:

- Draft *Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* (the **Clearing Regulation**), and

- Draft *Policy Statement to Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* (the **Clearing Policy Statement**).

Collectively, the Clearing Regulation and the Clearing Policy Statement will be referred to as the "Draft Regulation".

We are issuing this notice to provide interim guidance and solicit comments on the Draft Regulation.

We would like to draw your attention to the recent publication of a Draft *Regulation 24-102 respecting Clearing Agency Requirements* and the January 2014 publication of CSA Staff Notice 91-304 *Model Provincial Rule – Derivatives: Customer Clearing and Protection of Customer Collateral and Positions.* These publications, including the Draft Regulation, relate to central counterparty clearing and we therefore invite the public to consider these publications comprehensively.

Background

On December 19, 2013, the OTC Derivatives Committee (the **Committee**) published CSA Notice 91-303 *Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives* (the **Draft Model Rule**). The Committee invited public comments on all aspects of the Draft Model Rule. Thirty-four comment letters were received. A list of those who submitted comments, as well as a chart summarizing the comments received and the Committee's responses are attached in Appendix A to this Notice. Copies of the comment letters can be found

at http://www.lautorite.qc.ca/en/previous-consultations-derivatives-conso.html.

The Committee has reviewed the comments received and made determinations on revisions to the Draft Model Rule, which has been transformed into the Draft Regulation for the purpose of adopting a harmonized regulation across Canada. A few modifications were made since the last publication, such as including the Bank for International Settlements in the non-application section as well as deleting the requirements for an approval from the board of directors and the agency relationship from the end-user exemption.

The Committee will review all comment letters on the Draft Regulation to make recommendations on changes at a Committee level.

Substance and Purpose of the Draft Regulation

The purpose of the Clearing Regulation is to propose mandatory central counterparty clearing of certain standardized over-the-counter (**OTC**) derivatives transactions, in order to improve transparency in the derivatives market and enhance the overall mitigation of systemic risk.

The Clearing Regulation is divided into two rule-making areas: (i) rules relating to mandatory central counterparty clearing for certain derivatives (including proposed end-user and intragroup exemptions), and (ii) rules relating to the determination of derivatives subject to mandatory central counterparty clearing (each a mandatory clearable derivative).

Summary of the Clearing Regulation

a) Mandatory central counterparty clearing and end-user and intragroup exemptions

The Clearing Regulation provides that a local counterparty to a transaction in a mandatory clearable derivative must submit that transaction for clearing to a regulated clearing agency.

The Clearing Regulation provides substituted compliance for transactions involving a local counterparty where the transaction is submitted for clearing pursuant to the laws of a jurisdiction of Canada other than the jurisdiction of the local counterparty or pursuant to the laws of a foreign jurisdiction listed in Appendix B or, in Québec, that appears on a list to that effect. It also provides substituted compliance for a local counterparty in a reliant jurisdiction if the transaction is submitted for clearing to a clearing agency or a clearing house that is recognized or exempted from recognition pursuant to the securities legislation of another jurisdiction of Canada.

Two exemptions to the clearing requirement are provided in the Clearing Regulation. The proposed end-user exemption applies when at least one of the counterparties is not a financial entity, as defined in the Clearing Regulation, and the counterparty that is not a financial entity is entering into the transaction to hedge or mitigate a commercial risk.

The Clearing Regulation provides an interpretation of hedging or mitigating commercial risk. There is no requirement to apply for the end-user exemption or to submit any documents to the regulator or, in Québec, the securities regulatory authority in order to rely on the exemption.

The proposed intragroup exemption applies, subject to conditions provided in the Clearing Regulation, where affiliated entities or counterparties prudentially supervised on a consolidated basis enter into a transaction in a mandatory clearable derivative. A counterparty relying on the intragroup exemption must submit a form to the regulator or, in Québec, the securities regulatory authority, identifying the other counterparty and the basis for relying on the exemption.

A counterparty relying on either exemption must document and maintain records to demonstrate its eligibility to rely on the exemption.

b) Determination of mandatory clearable derivatives

A regulated clearing agency is required to notify the regulator or, in Québec, the securities regulatory authority of all OTC derivatives or classes of OTC derivatives:

- for which it provides clearing services as of the date of the coming into force of the Clearing Regulation, and

- for which it provides clearing services after the date of the coming into force of the Clearing Regulation.

After receiving notification by the clearing agency, the regulators or, in Québec, the securities regulatory authority will determine whether such cleared derivative or class of derivatives should be made a mandatory clearable derivative.

Our goal is to harmonize, to the greatest extent appropriate, the determination of mandatory clearable derivatives or classes of derivatives across Canada and with international standards.

The Committee is contributing to the work carried out by the OTC Derivative Regulators Group (**ODRG**), which is composed of executives and senior representatives from OTC derivatives regulators in Australia, Brazil, Ontario, Québec, the European Union, Hong Kong, Japan, Singapore, Switzerland and the United States. The Committee's goal is to harmonize the determination process in Canada with the relevant international standards on clearing determinations,[1] which provide for: 1) a framework for consultation among authorities on mandatory clearing determinations, and 2) where practicable, an expeditious review of derivatives that are subject to a mandatory clearing determination in another jurisdiction.

[1] This framework is founded on IOSCO recommendations and aims to harmonize mandatory clearing determinations across jurisdictions to the extent practicable and where appropriate, subject to jurisdictions' determination procedures. *See IOSCO Report on Requirements for Mandatory Clearing* (February 2012), available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD374.pdf .

As part of the determination process, we will publish for comment the derivatives we propose to be mandatory clearable derivatives and invite interested persons to make representations in writing. Except in Québec, the determination process is expected to follow our typical rule-making or regulation making process. The list of mandatory clearable derivatives will be included in the Clearing Regulation as Appendix A, as amended from time to time. In Québec, the determination process will be made by decision and the list of mandatory clearable derivatives will appear on a public register kept by the Autorité des marchés financiers.

In assessing whether a derivative or class of derivatives should be a mandatory clearable derivative, we anticipate considering various factors including the standardization of a derivative or class of derivatives, its risk profile, and the liquidity and characteristics of its market in determining whether the derivative or class of derivatives is appropriate for mandatory central counterparty clearing. It is anticipated that derivatives transaction data reported pursuant to local derivatives data reporting regulations[2] will provide key information in the determination process.

c) Phase-in of the requirement to clear a mandatory clearable derivative

We expect to follow a phase-in approach with respect to the clearing requirement which would be consistent with the approach taken by the United States and the European Union, and which has been proposed in Australia.

More specifically, we anticipate that the requirement to clear a derivative or class of derivatives that has been determined to be a mandatory clearable derivative would be phased-in across different categories of market participants. Clearing members of a regulated clearing agency that provides clearing for the mandatory clearable derivative at the time its determination becomes effective would be subject to the clearing requirement in the first phase-in category. The second phase-in category would include financial entities above a specified (yet to be determined) threshold. The third phase-in category would include all other financial entities. The fourth and final phase-in category would include all counterparties that are not financial entities.

We are considering granting a cumulative 6-month grace period to each phase-in category except the first category. Hence, counterparties that are not financial entities would benefit from an 18-month grace period after the date the determination becomes effective for the first phase-in category. The Committee asks market participants to comment on an appropriate basis and value for the threshold that would determine whether a financial institution should be included in the second or third phase-in category; that is, whether the requirement to submit for clearing a transaction in a mandatory clearable derivative that involves a local counterparty should apply at 6 months or 12 months after the date on which the determination becomes effective. Is

[2] *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting* (Québec); Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; and, once implemented, Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (collectively, the **TR Regulations**).

average monthly aggregate gross notional outstanding value an appropriate basis for the threshold? If so what time period should be used, for example the last 3 months preceding the determination?

Anticipated Costs and Benefits

We believe that the impact of the Clearing Regulation, including anticipated compliance costs for market participants, is proportional to the benefits we seek to achieve. Greater transparency in the OTC derivatives market is one of the central pillars of derivatives regulatory reform in Canada and internationally. The G20 has agreed that requiring standardized and sufficiently liquid OTC derivatives transactions to be cleared through central counterparties, where appropriate, will result in more effective management of counterparty credit risk. In addition, central counterparty clearing of derivatives may also contribute to greater stability of our financial markets and to a reduction in systemic risk.

We recognize that counterparties will incur additional costs in order to comply with the Clearing Regulation. The primary expenditure associated with the proposed Clearing Regulation is the cost of clearing transactions. However, we note that the G20 has also committed to impose capital and collateral requirements on OTC derivative transactions that are not centrally cleared; the related costs may well exceed the costs associated with clearing OTC derivatives transactions. The end-user and intragroup exemptions in the Clearing Regulation will help mitigate the initial costs associated with the clearing of OTC derivative transactions. Moreover, the proposed phase-in of the clearing requirement for a mandatory clearable derivative will provide temporary relief for market participants that are not financial entities and smaller or less active financial entities. We note that the phase-in approach of the clearing requirement will allow the local provincial regulators to provide more clarity on the developing derivatives registration regime, and to use trade repository data to investigate whether thresholds or carve-outs are appropriate for certain types of entities.

Annex

The summary of comments and the list of commenters are set out in Annex A to this Notice.

Comments

Please provide your comments in writing by **May 13, 2015**.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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Questions

Please refer your questions to any of:

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ANNEX A

COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Issue/Comment	Response
General Comments	<u>Harmonization</u> A number of commenters raised concerns about a possible lack of harmonization across provinces in the implementation of the Clearing Regulation and in the determination of derivatives to be subject to mandatory clearing.	Change made. We note that the Committee has now opted to develop a regulation, given its intention that the substance of the regulations be the same across jurisdictions, and that market participants and derivative products will receive the same treatment across Canada, both in terms of participants (similar exemptions) and of products (same determinations) included. See *Determination of mandatory clearable derivatives* above.
	<u>Implementation</u> A commenter requested greater clarity regarding the intended timing of implementation and application of the Clearing Regulation. Another commenter recommended that the local provincial regulators give sufficient time to counterparties to get set up with their clearing intermediaries and agents.	No change. The committee would like to see the regulation in place by Q4 2015 or Q1 2016. We note that a requirement to clear would not be triggered until a proposed determination has been published for comment and a final determination made. See *Phase-in of the requirement to clear a mandatory clearable derivative* above.
	<u>Determination</u> Four commenters were concerned about the harmonization, within Canada and at the international level, of derivatives subject to mandatory clearing. Three commenters proposed a joint determination process for the local provincial regulators. Three commenters suggested types or classes of derivatives that should or should not be	No change. See *Determination of mandatory clearable derivatives* above. We also note that the existence of master agreements or short form confirmations is a factor considered in evaluating the level of standardization of a derivative.

	mandated for clearing, and one commenter discussed additional factors to consider when making a determination. Two commenters suggested that a "top-down approach" whereby local provincial regulators assess what types of products and transactions contribute to systemic risk in the market and determine, based on their analysis, that certain products are "clearable derivatives", should be considered in addition to the bottom-up approach. Another commenter supported an approach whereby a regulator cannot mandate that a clearing agency clears a particular clearable derivative. Finally, five commenters requested that regulators provide advance notice or mandatory consultations with the industry before mandating a derivative or class of derivatives for clearing.	
	<u>Scope</u> A commenter submitted that OTC derivative transactions involving physical commodities such as OTC natural gas commodity hedging transactions should not be classified as derivatives per the Draft Model Rule's definitions and therefore should not be subject to the pending derivatives legislation.	No change. We note that it is the intention of the Committee that the determinations to be made will not include derivatives that are outside the scope of the local *Derivatives: Product Determination*[1] regulations.
S. 1 – Definitions: Local	A commenter pointed out that the local counterparty definition in TR Regulations differs from the local counterparty definition in	No change. We note that the inclusion of registrants in the local counterparty definition of the Clearing Regulation would

[1] Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*, Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, Québec *Regulation 91-506 Respecting Derivatives Determination* and Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination* (the **Scope Regulations**).

Counterparty	the Draft Model Rule.	result in requiring foreign registrants to clear even when there is no local counterparties involved in a transaction.
	A number of commenters requested additional guidance on concepts such as "head office", "principal place of business" and "affiliate" or, more specifically, what is meant by "responsible for the liabilities of that affiliated party". Another commenter suggested cross-referencing the definition of local counterparty found in the Policy Statement of the TR Regulations.	No change. We note that these are longstanding legal concepts.
	A commenter pointed out that the definition of local counterparty brings into the clearing requirements numerous counterparties that conduct no business and, in particular, do not carry out any derivative trading activities in Canada, such as companies organized under a province law but which have no actual presence or business in Canada.	No change. We note that a local provincial regulator may exempt entities or groups of entities in its jurisdiction.
S. 1 – Definitions: Financial Entity	A commenter pointed out that former paragraph 1(g) reference to former paragraph 1(f) would capture any entity anywhere in the world that might potentially be subject to registration as a derivatives dealer in Canada. The practical effect of this is that any such party transacting with a local counterparty that is itself a financial entity may be subject to mandatory clearing requirements in Canada regardless of whether the transaction is eligible for a clearing exemption in such party's own jurisdiction. Another commenter suggested	No change. See *Determination of mandatory clearable derivatives* above. We note that the local provincial regulators intend to adopt a "stricter rule applies" principle in case of cross-border discrepancies. As a result, when a foreign party transacts with a local counterparty in a derivative that is subject to mandatory clearing under the Clearing Regulation, the transaction must be cleared even if an exemption exists in the foreign party's jurisdiction. We also note that the Committee continues to monitor the development of cross-border

	that a local counterparty has satisfied its clearing requirement in respect of a transaction if the counterparty to that transaction is not a local counterparty and, if under the applicable laws of the foreign jurisdiction, such transaction is exempt from clearing because the counterparty qualifies for an exemption.	guidance with respect to substituted compliance on clearing requirements.
	A number of commenters have requested more clarity on the upcoming registration regime, or to wait until the regime is in place before mandating derivatives to be cleared. Moreover, a number of commenters expressed concern with the inclusion of certain entities in the definition of financial entity, such as pension funds, investment funds (mortgage investment entities, private equity funds and venture capital funds) and entities registered or exempt from registration.	No change. See *Phase-in of the requirement to clear a mandatory clearable derivative* above. We note that the phase-in approach to the clearing requirement will allow the local provincial regulators to provide more clarity on the developing derivatives registration regime, and to use trade repository data to investigate whether thresholds or carve-outs are appropriate for certain types of entities.
	A commenter suggested that, in former paragraph (g), reference should also be made to entities that would be regulated "or exempted from regulation" under the applicable legislation of Canada or the applicable local jurisdiction to conform to former paragraph (f). The commenter further suggested that the statement "had it been organized in Canada or the applicable local jurisdiction" is not necessary.	Change made. See revised section 1. We note that entities exempted from registration are included in the financial entity definition. See *Phase-in of the requirement to clear a mandatory clearable derivative* above.
S. 1 – Definitions: Transaction	Three commenters proposed that trades which reduce risk, such as compression replacement trades, terminations, compression amended trades (partial unwinds)	No change. We note that the Committee will continue to monitor international regulatory developments with regards to trade compression.

	and certain risk rebalancing trades resulting from post-trade risk reduction services should not trigger the clearing requirement.	
	A commenter pointed out that it would be beneficial to have an objective test to determine what is considered to be a "large change".	No change. We note that the Committee considers that the proposed approach provides flexibility as an entity should be able to establish subjectively whether a transaction was amended with the sole purpose of avoiding the central clearing requirement.
Former S. 3 – Interpretation of hedge or mitigation of commercial risk	A number of commenters have requested additional guidance on the concepts of "hedging" and "mitigating commercial risk", and how these differ from "speculation". Commenters also suggested that the Committee adopt a flexible approach to these concepts given the wide variety of derivatives, potential end-users, and hedging strategies to which the Clearing Regulation will apply. Another commenter encouraged the recognition of derivatives, which satisfy the requirements under IFRS or U.S. GAAP to be accounted for as hedges, as being held for the purpose of hedging or mitigating commercial risk.	No change. We note that the Committee considers that the proposed approach provides flexibility and legal certainty, and that the Clearing Policy Statement provides sufficient guidance on the concepts of "hedging" and "mitigating commercial risk". Additional guidance may be published once compliance with the Clearing Regulation is assessed. We also note that hedges meeting the stricter accounting standards should be sufficient to meet the conditions of the end-user exemption.
	A number of commenters requested additional or revised guidance with regards to the interpretation of commercial risk or a definition for the terms "closely correlated" and "highly effective".	Changes made. See revised section 4 on Interpretation of hedge or mitigation of commercial risk.
	A number of commenters pointed out that the list of risks in former paragraphs 3(a)(i) and (ii) may not be exhaustive.	Changes made. We note that the amendments brought to paragraphs 4(1)(a) and (b) are consistent with the definition of Derivatives in the *Securities Act*

		(Ontario).
	A commenter suggested that the addition of "incurring in the normal course of its business" at the end of former paragraph 3(a)(i) may be problematic as companies develop new risk management strategies as they enter into new lines of business and new commercial arrangements.	No change. We note that new activities occur in the normal course of business. Entities can therefore use the end-user exemption as long as the conditions are met.
	Two commenters stated that they enter into commodity derivatives trading with their customers as part of their core business and are required to hedge these transactions. However, given that the transactions with their customers are not held for the purpose of hedging or mitigating commercial risk, they cannot benefit from the end-user exemption (see former paragraph 3(b)(ii)). They argued that former paragraph 3(b)(ii) should be modified so that the ineligibility applies only where the party concerned is hedging in its capacity as an intermediary or market-maker in derivatives, rather than hedging to mitigate a commercial risk of another kind.	No change. We note that the end-user exemption specifically targets transactions that are entered into to hedge or mitigate a commercial risk incurred by an eligible entity.
Former subsection 4(1) – Duty to submit for clearing	Two commenters pointed out that there may not be sufficient time to clear a transaction before the end of the day if that transaction is executed shortly before the clearing agency closes.	No change. We note that this issue should not materialize where straight-through processing is implemented. The Committee will monitor the implementation of the regulation and may provide further guidance if needed.
	A commenter pointed out that technically, the "transaction" is not submitted for clearing. If the transaction has the required features, then the clearer submits the deal terms and a new	No change. We note that the Committee believes that the Clearing Regulation provides sufficient clarity as currently drafted.

	transaction with the clearing agency is created. The contract between the original parties no longer exists.	
Former subsection 4(2) – Duty to submit for clearing: substituted compliance	Two commenters suggested to broaden the concept of substituted compliance such that the clearing requirement would be satisfied if the transaction was submitted for clearing, pursuant to the laws of another Canadian jurisdiction or the laws of an approved foreign jurisdiction, to a clearing agency recognized in that jurisdiction.	Partial change made. Substituted compliance was added for a local counterparty in a reliant if the transaction is submitted for clearing to a regulated clearing agency of another jurisdiction of Canada. See *Determination of mandatory clearable derivatives* above. We note that the Committee continues to monitor the development of cross-border guidance with respect to substituted compliance on clearing requirements.
Former S. 5 – Notification	Three commenters were concerned with the operational consequences of considering a transaction to be void *ab initio* if it is rejected for clearing by the clearing agency.	Changes made. See revised Section 7 of the Policy Statement. The guidance now refers to the rules of the clearing agencies and to the legal arrangements governing indirect clearing in place with regards to the rejection of transactions.
Former S. 7 – End-user exemption	A number of commenters pointed out that the end-user exemption should not require a formal agency relationship.	Change made. The reference to "agent" has been removed from former paragraph 7(2)(a).
	A number of commenters requested precisions on the end-user exemption: • Are both the end-user exemption and the intragroup exemption available for intragroup transactions? • Can an entity self-exempt on the basis that it is not a financial entity and is undertaking transactions to hedge or mitigate risk? • In the event that both counterparties are not	No change. We note that: • Both the end-user exemption and the intragroup exemption are available for intragroup transactions unless the entity seeking exemption is a financial entity (cannot use the end-user exemption). • It is the responsibility of the entity seeking to be exempted to determine whether the exemption

	financial entities, is it sufficient that only one party satisfies the requirement under former paragraph 7(1)(b)?	applies to its transactions. • In the event that both counterparties are not financial entities, it is sufficient that only one party satisfies the requirement under paragraph 9(1)(b).
	A number of commenters have requested that the end-user exemption be available to small financial entities (including credit unions, captive financial companies, registered dealers and registered portfolio managers) that fall below a threshold coherent with the size of the Canadian OTC derivatives market. Moreover, a commenter suggested allowing registered dealers to exercise the end-user exemption when hedging the risk of their affiliates, as long as such affiliates would qualify to exercise the end-user exemption on their own.	No change. See *Phase-in of the requirement to clear a mandatory clearable derivative* above. We note that the phase-in approach of the clearing requirement will allow the local provincial regulators to provide more clarity on the developing derivatives registration regime, and to use trade repository data to investigate whether thresholds or carve-outs are appropriate for certain types of entities, such as credit unions.
	A commenter stated that former paragraph 7(2)(c) should refer to an affiliated entity that is not subject to a registration requirement, or that is exempted from a registration requirement, under the securities legislation of a jurisdiction of Canada. Failing to include all exempt entities on a general basis may prevent access to the exemption even where there the policy rationale underlying the Draft Model Rule does not support it.	Change made. See revised paragraph 9(2)(c).
	A commenter proposed to add "at least" prior to "one of the counterparties is not a financial entity" to make it clear that the	Changes made. See revised paragraph 9(2)(a).

	end-user exemption is also available to two parties if neither of them is a financial entity.	
Former S. 8 – Intragroup exemption	Two commenters questioned the necessity of Form F1 in the context of securities regulation. A commenter suggested that the intragroup exemption be simplified such that transactions between 100% owned affiliates are exempt as long as certain conditions are met without the need for additional agreements or forms. Three commenters proposed that a Form F1 should be effective until withdrawn, unless updates or notifications of change to the originally filed form are submitted. Two other commenters requested that parties should be permitted to provide a listing of all types of transactions in a particular sub-asset class expected between them.	Change made. We note that the Committee believes that Form F1 is necessary in all cases, even for 100% owned affiliates. We note, however, that the annual filing requirement has been removed and replaced with a requirement to amend the original filing with a notification of material change.
	A commenter asked whether "prudentially supervised" is intended to refer to federally-regulated financial entities that are under the regulatory jurisdiction of the Office of the Superintendent of Financial Institutions.	No change. We note that "entities prudentially supervised on a consolidated basis" refers to two counterparties that are supervised on a consolidated basis either by the Office of the Superintendent of Financial Institutions (Canada), a government department or a regulatory authority of Canada or a jurisdiction of Canada responsible for regulating deposit-taking institutions.
	Two commenters suggested that the requirement that the entities prepare statements on a consolidated basis is not necessary and may unduly exclude affiliated entities that	No change. We note that the former paragraph 8(1)(b) is sufficiently broad to allow entities which do not prepare financial statements on a consolidated basis to rely on the

	should otherwise properly be able to rely on the exemption. They suggested the adoption of the securities laws' "affiliate" definition.	Intragroup exemption.
	A commenter suggested that transactions between credit unions and their centrals should benefit from the intragroup exemption.	No change. We note that the proposed phase-in of the clearing requirement provides temporary relief for credit unions and their centrals. The proposed phase-in of the clearing requirement will also allow the local provincial regulators to use trade repository data to investigate whether thresholds or carve-outs are appropriate for certain types of entities.
	A commenter pointed out that the documentation related to the intragroup exemption should be flexible and should refer to the CFTC and EMIR rules on the matter.	No change. We note that the Committee has reviewed the CFTC and EMIR rules on the matter and believes the Clearing Regulation provides sufficient flexibility.
	A commenter suggested that it should be clarified that reference to "securities legislation of a jurisdiction of Canada" includes commodity futures and derivatives legislation.	No change. We note that "securities legislation" is defined in Regulation 14-101 and includes in Québec the *Derivatives Act*. In other jurisdictions, the relevant *Securities Act* applies. We further note that it is the intention of the Committee to respect the Scope Regulations in the determinations to be made.
	A commenter would like confirmation that the intragroup exemption is available to registered dealers as long as they satisfy the necessary criteria.	No change. We note that the intragroup exemption applies to registered dealers as long as the criteria provided by the exemption are met.
	A commenter proposed that former paragraph 8(2)(c) could be shortened to simply stipulate the requirement for a written agreement setting out the terms of the transaction between the	Changes made. See revised paragraph 10(2)(c).

	counterparties.	
Former S. 9 – Improper use of exemption	Three commenters requested clarification on how the local provincial regulators would determine that an entity has improperly used an exemption, and on the process by which the local provincial regulators would direct a local counterparty to submit a transaction for clearing under section 4.	Changes made. Former section 9 on Improper use of exemption has been removed as local regulators have the legal powers to enforce regulations.
Former S. 9 – Record keeping	A commenter pointed out that a party to an OTC derivatives transaction should be able to rely on representations made by the other party, without any further investigation or documentation, in order to determine whether the clearing requirement applies.	Changes made. See additional guidance included in Section 11 of the Clearing Policy Statement. We note, however, that certain conditions must be met for a local counterparty to rely on factual representations by the other counterparty.
	A commenter pointed out that, with respect to the requirement in former subsection 9(1) and specifically with respect to the Intragroup exemption, it should be sufficient that the records are kept by one of the "intragroup" parties.	No change. We note that it is not expected that documents or legal opinions be kept by each counterparty; however, both counterparties must be able to make copies of these agreements available to the regulator upon request.
	Three commenters questioned the necessity to obtain board approval for qualifying for the end-user exemption. A commenter suggested that a board of directors should be required to authorize the use of the end-user exemption no more than annually and requested that the CSA permit lower-tier entities to rely upon authorization from the board of directors of a higher-tier affiliate to exercise the exemption.	Changes made. See revised paragraph 11(1). End-users will not be required to obtain board approval in order to qualify for the end-user exemption.
	A number of commenters requested additional guidance and questioned the level of detail required as supporting	No change. We note that hedge-accounting compliant record-keeping is not a requirement for all hedging derivatives under the

	documentation with respect to each transaction for which the end-user exemption will be relied upon. They also expressed the opinion that it imposed a heavy regulatory burden on participants using this exemption. Notably, a number of commenters requested guidance on how the Committee requires entities to assess or document their hedging effectiveness.	Clearing Rule. However, hedges meeting the stricter accounting standards should be sufficient to meet the conditions of the end-user exemption.
Former S. 10– Non-Application	Two commenters requested that the non-application be extended to foreign governments, entities owned by foreign governments and recognized supra-national agencies, such as the International Monetary Fund.	Change made. See amendments made to section 6 on Non-Application. We note that non-application has not been extended to recognized supra-national agencies. The Committee expects to receive exemption requests from these entities.
	A commenter requested that the non-application should be extended to entities wholly owned by a federal, or provincial government, **or** to entities whose obligations are guaranteed by a federal or provincial government. Another commenter proposed that the non-application should be extended when a crown corporation or other corporation owned by the government is an agent of the Crown without a guarantee being in place. Another commenter argued that government-related entities that are also agents of the Crown should be granted the same immunity through former section 10 as government.	No change. We note that in the case of entities wholly owned by the government of Canada, a government of a jurisdiction of Canada or a government of a foreign jurisdiction, the non-application is only extended to those entities whose obligations are guaranteed, respectively, by the government of Canada, a government of a jurisdiction of Canada or a government of a foreign jurisdiction.
	A number of commenters were opposed to the non-application of the Draft Model Rule to federal and provincial governments and to government entities. A	No change. We note that the local provincial regulators retain the right to modify the applicability of all exemptions and may register certain entities given the

	commenter suggested limiting the application of former section 10 only to those government entities whose OTC derivatives portfolios are not in excess of a certain threshold.	size of their activities.
Former S. 12 – Transition	Two commenters suggested that parties should not have to clear transactions entered into before the coming into force of this regulation if they are "materially amended" as this requirement may deter parties from making amendments for legitimate purposes. Two commenters requested confirmation that the end-user and intragroup exemptions will apply to Material Changes.	No change. See the interpretation of material amendment in the Clearing Policy Statement. We note that the end-user and intragroup exemptions will apply to material amendments.
	A commenter suggested that an objective test would be beneficial to determine whether an amendment is material.	No change. We note that the Committee considers that the proposed approach provides flexibility as an entity should be able to establish whether a transaction was amended materially. Guidance on material amendments is provided in the Clearing Policy Statement.
Form F1	A commenter requested that the word "application" be removed from section 3 of the form. A commenter asked whether this information will be accessible to the public.	Changes made. We note that Form F1 is a notice filing and not an application.
Form F2	A commenter requested that the access given to regulators be limited to "applicable" books and records.	Changes made. See revised Form F2.

List of Commenters

1. Atlantic Central
2. Bruce Power L.P.
3. Caisse de dépôt et placement du Québec
4. Canadian Bankers Association
5. Canadian Commercial Energy Working Group submitted by Sutherland Asbill & Brennan LLP
6. CanadianLife and Health Insurance Association Inc.
7. Capital Power
8. Central 1
9. Canadian Market Infrastructure Committee
10. Concentra Financial
11. Enbridge Inc.
12. Encana Corporation
13. Énergie NB Power
14. Financial Institutions Commission
15. Ford Motor Company
16. FortisBC Energy Inc.
17. Global Foreign Exchange Division
18. IGM Financial Inc.
19. International Swaps and Derivatives Association
20. Investment Industry Association of Canada
21. Just Energy Group Inc.
22. KfW Bankengruppe
23. LCH.ClearnetGroup Limited
24. New Brunswick Investment Management Corporation
25. Pension Investment Association of Canada
26. Sask Energy Incorporated
27. Sask Power
28. Shell Trading
29. Stewart McKelvey
30. Suncor Energy Inc.
31. TMX Group Limited
32. Trans Canada Corporation
33. Tri Optima AB
34. Western Union Business Solutions