CSA Notice and Request for Comment

Draft *Regulation 94-101 respecting Mandatory Central Counterparty Clearing Of Derivatives* (2nd Publication)

Proposed *Policy Statement to Regulation 94-101 respecting Mandatory Central Counterparty Clearing Of Derivatives* (2nd Publication)

February 24, 2016

Introduction

We, the Canadian Securities Administrators (**CSA**), are republishing for a 90-day comment period expiring on May 24, 2016:

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

We are issuing this notice to provide interim guidance and solicit comments on the Proposed Regulation and the determination of classes of interest rate derivatives (**IRD**) denominated in certain currencies as mandatory clearable derivatives. This process is part of the ongoing implementation of Canada's commitments in relation to global over-the-counter (**OTC**) derivatives markets reforms stemming from the G20 commitments.

The CSA Derivatives Committee (the **Committee**) has consulted and collaborated with the Bank of Canada, the Office of the Superintendent of Financial Institutions (Canada), the Department of Finance Canada, and market participants on the determination of certain classes of OTC derivatives as mandatory clearable derivatives. The Committee also continues to contribute to and follow international regulatory developments. In particular, members of the Committee work with international regulators and bodies such as the International Organization of Securities Commissions and the OTC Derivatives Regulators' Group in the development of international standards and regulatory practices.

Although a significant market in Canada, the Canadian OTC derivatives market comprises a relatively small share of the global market, and a substantial portion of transactions entered into by Canadian market participants involve foreign counterparties. The Committee endeavours to

develop regulations for the Canadian market that are aligned with international practices to ensure that Canadian market participants have access to the international market and are regulated in accordance with international principles.

We would like to draw your attention to another publication, Draft *Regulation 94-102 respecting Derivatives Customer Clearing and Protection of Customer Positions and Collateral*, and to the recent publication of *Regulation 24-102 respecting Clearing Agency Requirements.* These publications, and the Proposed Regulation, each relate to central counterparty clearing and we therefore invite the public to consider these publications comprehensively.

We note that once the Proposed Regulation is in force, the Committee intends that Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*, Québec *Regulation 91-506 respecting Derivatives Determination* and the Multilateral Instrument 91-101 *Derivatives: Product Determination* (collectively, the **Scope Regulations**) will apply to the Proposed Regulation. Accordingly, in Québec, *Regulation to amend Regulation 91-506 respecting Derivative Determination* is published for consultation concurrently with the Proposed Regulation.

Background

The members of the CSA published Draft *Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* on February 12, 2015 (the **Draft Regulation**), inviting public comment on all aspects of the Draft Regulation. Twenty-five 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 as Annex A to this Notice. Copies of the comment letters can be found on the websites of the Alberta Securities Commission, Ontario Securities Commission and Autorité des marchés financiers.

Summary of Changes to the Proposed Regulation

The Committee has reviewed the comments received and made changes to the Proposed Regulation in response. In particular, the Clearing Regulation now applies only to participants that subscribe to the services of a regulated clearing agency for a mandatory clearable derivative, and their affiliated entities, as well as to local counterparties with a month-end gross notional amount of outstanding OTC derivatives above $500 000 000 000.

The revised scope of application addresses concerns of market participants regarding indirect clearing. The Committee intends to reassess this scope when more market participants reasonably have access to clearing services for OTC derivatives.

In addition, the non-application provision was broadened by adding the International Monetary Fund and by including entities that are guaranteed by one or more governments. Also, the interpretation of an affiliated entity was broadened by adding partnerships, and an exemption for multilateral portfolio compression exercise was added.

Finally, our intent to keep Form 94-101F1 confidential has been clarified in the Clearing Policy Statement.

Substance and Purpose of the Proposed Regulation

The purpose of the Clearing Regulation is to propose mandatory central counterparty clearing of certain standardized OTC derivatives transactions in order to reduce systemic risk in the derivatives market and increase financial stability.

The Clearing Regulation is divided into two areas: (i) mandatory central counterparty clearing for certain derivatives (including proposed exemptions), and (ii) 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 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 when itself and the other counterparty are one or more of the following:

(i) a participant subscribing to the services of a regulated clearing agency for a mandatory clearable derivative;

(ii) an affiliated entity of a participant described in (i);

(iii) a local counterparty that, together with its local affiliated entities, has an aggregate gross notional amount of more than $500 000 000 000 in outstanding derivatives as specified under the Scope Regulations, excluding intragroup transactions.

In addition to the non-application section, two exemptions are provided in the Clearing Regulation. 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 deliver Form 94-101F1 to the regulator identifying the other counterparty and the basis for relying on the exemption.

The proposed multilateral portfolio compression exercise exemption applies, subject to the conditions listed in the Clearing Regulation, when several counterparties are changing, terminating and replacing prior uncleared transactions in derivatives that were not mandatory clearable derivatives at the time the prior transactions were entered into.

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

The Committee seeks comment on the determination as mandatory clearable derivatives of certain classes of IRD denominated in US dollars (**USD**), Euro (**EUR**), British pounds (**GBP**) and Canadian dollars (**CAD**) (collectively, the **Proposed Determination**). In making this Proposed Determination, the Committee has considered factors including

- information on OTC derivatives cleared by regulated clearing agencies,
- markets of importance to Canadian financial stability, and
- foreign central clearing mandates.

Regulated clearing agencies have notified the Committee of all the OTC derivatives or classes of OTC derivatives for which they provide clearing services. For each of these derivatives or classes of derivatives, the Committee has assessed whether it is suitable for mandatory central clearing by examining the following criteria set out in the Clearing Policy Statement:

- standardization of legal documentation and of the operational processes at the regulated clearing agency, as measured by the use of electronic affirmation and confirmation platforms and the use of industry standard documentation and definitions;
- sufficient transaction activity and participation to absorb the risk resulting from the default of two large participants of a regulated clearing agency, as measured by the number of participants subscribing to OTC derivative services at the regulated clearing agencies;
- fair, reliable and generally accepted pricing information made available in the relevant class of derivatives by market entities providing pre- and post- trade transparency;
- sufficient liquidity in the market to allow for close out or hedging of outstanding derivatives in a default scenario of at least two participants of a regulated clearing agency, as measured by the average number of transactions and average notional transactions size daily.

We have also considered publicly available data, derivatives transaction data reported pursuant to local derivatives data reporting regulations[1] and foreign regulators' proposals, including their analysis of the standardization and risk profile of the proposed mandatory clearable derivatives as well as the liquidity and characteristics of their market.

International harmonization is also an important factor used by the Committee when making a determination on whether a type or class of derivative should be a mandatory clearable derivative. In the absence of broadly harmonized requirements, there may be potential for

[1] *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, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*.

regulatory arbitrage or other distortions in market participants' choices as to where to conduct business or book trades.

The list of proposed mandatory clearable derivatives for all jurisdictions of Canada, other than Québec, is included in the Clearing Regulation as Appendix A. In Québec, a list of mandatory clearable derivatives will be published in a decision from the Autorité des marchés financiers. Following the review of OTC derivatives against the criteria presented above, the Committee is proposing that the following classes of IRD be mandatory clearable derivatives:

Interest Rate Swaps

Type	**Floating index**	**Settlement currency**	**Maturity**	**Settlement Currency Type**	**Optionality**	**Notional type**
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant or variable
Overnight index swap	FedFunds	USD	7 days to 30 years	Single currency	No	Constant or variable
Overnight index swap	EONIA	EUR	7 days to 30 years	Single currency	No	Constant or variable

Overnight index swap	SONIA	GBP	7 days to 30 years	Single currency	No	Constant or variable

Forward Rate Agreements

Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant or variable

In particular, IRD represent more than 80% of the gross notional amount of outstanding derivatives of local counterparties. Within IRD traded, single currency interest rate swaps (**IRS**) dominate. IRD are also highly standardised, thus posing minimal operational concerns for clearing unlike more complex and exotic products. There is also sufficient liquidity for clearing in IRD. IRD are not only traded by local participants, but also by local branches or affiliates of foreign participants. Furthermore, the majority of local counterparties that would be subject to the Proposed Regulation have already begun clearing IRS on regulated clearing agencies.

Our goal is to harmonise, to the greatest extent possible, the Proposed Determination across Canada and with international practices. Certain classes of IRD denominated in USD, GBP and EUR are already mandated to be cleared in the United States, in Australia beginning in April 2016, and in Europe beginning in June 2016.

There is currently no central clearing mandate in any jurisdiction covering CAD IRS, although it is being assessed by some foreign jurisdictions. Considering that the market for CAD IRS involves foreign counterparties outside of our jurisdiction, the competitiveness of local counterparties subject to the Proposed Regulation could be impacted negatively, in the absence of foreign regulators also mandating clearing of CAD IRS. The Committee is well aware of this potential impact and is seeking to harmonise implementation of the Proposed Determination with our international counterparts to minimise disadvantageous consequences. Where harmonisation is not possible, the Committee could consider delaying the determination of CAD IRS as mandatory clearable derivatives, or including a transition provision or phase-in to minimise negative consequences while potential foreign mandates are considered. For example, such a phase-in could provide that, for a certain period of time, CAD IRS only be mandated to be cleared when entered into by two local counterparties in any jurisdiction of Canada. Transactions involving a foreign counterparty could then be part of a second phase triggered once a foreign mandate for CAD IRS is in place.

The Committee would appreciate your input on the following questions.

1. The scope of counterparties subject to the clearing requirement has been significantly scaled back since the publication of the Draft Regulation. In your view, is the scope in the Proposed Regulation appropriate considering the Proposed Determination?

2. Is the Proposed Determination appropriate for the Canadian market? Please provide specific concerns relating to any or all of the following:

   (i) US IRD;
   (ii) GBP IRD;
   (iii) EUR IRD;
   (iv) CAD IRS;
   (v) any other derivatives.

3. What additional risks to the market or regulated clearing agencies would result from the Proposed Determination?

4. As currently contemplated, the Proposed Regulation and the Proposed Determination would become effective simultaneously. Do you agree with this approach or should a transition period be provided after the Proposed Regulation has come into force and before mandatory clearable derivatives must be cleared? Please identify significant consequences that could arise from the current approach and what length of time would be appropriate if you deem that a phase-in is necessary.

5. Please discuss any significant consequences that could arise from a determination of CAD IRS as a mandatory clearable derivative absent a corresponding CAD IRS mandate in one or more foreign jurisdictions.

6. Are the characteristics used in Appendix A and the table above to define mandatory clearable derivatives adequate? If not, what other variables should be considered?

Anticipated Costs and Benefits of the Proposed Regulation

We believe that the impact of the Proposed Regulation, including anticipated compliance costs for market participants, is proportional to the benefits we seek to achieve. The G20 has agreed that requiring standardised and sufficiently liquid OTC derivatives transactions to be cleared through central counterparties will result in more effective management of counterparty credit risk through multilateral netting of transactions and mutualisation of losses through a default fund. As such, central counterparty clearing of derivatives included in the Proposed Determination contributes to greater stability of our financial markets and reduced systemic risk.

We recognise that counterparties will incur additional costs in order to comply with the Proposed Regulation due to the increase in transactions that are centrally cleared. 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 intragroup and multilateral portfolio compression exemptions in the Clearing Regulation will help mitigate the costs borne by

counterparties as a result of the Clearing Regulation.

Moreover, the narrow scope of application of the Clearing Regulation will provide relief for certain categories of market participants. We note that the current approach of the Clearing Regulation will provide the provincial regulators time to establish a derivatives registration regime under which a category would be contemplated for larger derivatives participants who could become subject to the Clearing Regulation. We will continue to monitor trade repository data to assess the characteristics of the markets for derivatives mandated to be cleared to inform whether the $500 000 000 000 threshold for an entity to be subject to mandatory clearing should be lowered and if so, what carve-outs might be appropriate for certain types of entities.

With respect to the Proposed Determination, while we acknowledge that CAD IRS are systemically important to the Canadian market, as noted above, there may be potential costs associated with requiring CAD IRS to be cleared without international harmonisation. In the absence of foreign regulators also mandating clearing of CAD IRS, local counterparties subject to the Proposed Regulation could be impacted negatively if foreign counterparties withdraw from the market and reduced the ability of local counterparties to hedge their risks. This risk is particularly relevant to the cleared CAD IRS market where approximately half of all outstanding positions are cleared by foreign clearing members.

Content of Annex

The Summary of Comments and List of Commenters are published in Annex A of this Notice.

Request for Comments

Please provide your comments in writing by **May 24, 2016**.

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:

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514 864-6381
consultation-en-cours@lautorite.qc.ca

Josée Turcotte
Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
comments@osc.gov.on.ca

Questions

Please refer your questions to any of the following:

Derek West Co-Chairman, CSA Derivatives Committee
Senior Director, Derivatives Oversight
Autorité des marchés financiers
514 395-0337, ext. 4491
derek.west@lautorite.qc.ca

Kevin Fine
Co-Chairman, CSA Derivatives Committee
Director, Derivatives Branch
Ontario Securities Commission
416 593-8109
kfine@osc.gov.on.ca

Paula White
Deputy Director, Compliance and Oversight
Manitoba Securities Commission
204 945-5195
Paula.white@gov.mb.ca

Martin McGregor
Legal Counsel, Corporate Finance
Alberta Securities Commission
403 355-2804
martin.mcgregor@asc.ca

Michael Brady
Manager, Derivatives
British Columbia Securities Commission
604 899-6561
mbrady@bcsc.bc.ca

Abel Lazarus
Senior Securities Analyst
Nova Scotia Securities Commission
902 424-6859
abel.lazarus@novascotia.ca

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

ANNEX A

COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Issue/Comment	Response
General Comment	A commenter suggested that the regulation use a more principles-based approach.	No change. A clearing requirement is necessary to ensure the objective of enhancing central clearing is accomplished.
S. 1 – Definitions	A commenter requested that we define derivative to be harmonized with Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting.*	Change made. An application section was added to explain that derivative has the same meaning as in securities legislation and the *Regulation 91-506 respecting Derivatives Determination* and Proposed Multilateral Instrument 91-101 *Derivatives: Product Determination.*
S. 1 – Definitions: Financial entity	Several commenters pointed out that, until there is a registration regime in place, it would be difficult for a participant to determine if it is a financial entity or not.	Change made. The definition of "financial entity" was removed since the distinction between a financial and non-financial entity was solely for the purpose of the end-user exemption which was deleted.
S.1 – Definitions: Local counterparty	A number of commenters requested additional guidance on concepts such as "head office", "principal place of business" and "affiliate".	Partial change. We note that the interpretation of "affiliated entity" was changed to harmonize with other Canadian derivatives regulations. The other concepts are commonly used terms with judicially considered definitions.
	A few commenters asked what is meant by "responsible for the liabilities of that affiliated party".	Change made. The Clearing Regulation now specifies that the responsibility is for all or substantially all the liabilities of the affiliated entity.
S.1 – Definitions: Mandatory Clearable Derivatives	A commenter requested that the definition should be harmonized across Canada and internationally.	No change. Although the definition provides that mandatory clearable derivatives will be determined in a decision in Québec, while other jurisdictions of Canada will list

		them in Appendix A of the Clearing Regulation, the intent of the Committee is to harmonize the determinations across Canada. When proposing mandatory clearable derivatives, the Committee intends to take into account whether the derivatives are mandated to be cleared in foreign jurisdictions.
S.1 – Definitions: Regulated clearing agency	A commenter suggested that the definition be restricted to a person that acts as a central counterparty.	The Clearing Policy Statement now explains that a regulated clearing agency acts as a central counterparty.
Former S.3 – Interpretation of the term affiliated entity	Two commenters opined that definitions should be the same across regulations. Another commenter requested that partnerships and unincorporated entities be included in the definition.	Change made. We included a broader definition of affiliated entity that includes partnerships and trusts for greater harmonization with other derivatives regulations.
Former S. 4 – Interpretation of hedging	Many commenters expressed the need for clarification regarding the meaning of "speculating", the "intent to reduce risk", the "list of risks" and the "normal course of business".	This section was deleted since non-financial entities are no longer required to clear their transactions unless they fall into the scope of revised subsection 3(1).
Former S. 5 – Duty to clear	A few commenters highlighted the difficulties relating to access to clearing for certain market participants. Many commenters requested an exemption or an exclusion from the scope of the duty to clear for smaller financial entities or non-systemic entities such as pension schemes.	Change made. See revised subsection 3(1) where the scope of the duty to clear was narrowed to capture only the largest entities, and those with direct access to a regulated clearing agency.
	A commenter expressed the concern that the Clearing Regulation would not provide for situations where a local counterparty accesses a regulated clearing agency directly without being a clearing member.	Change made. The definition of "participant" referring to a person in a contractual relationship with a regulated clearing agency and bound by its rules has been added to the Clearing Regulation.

	A commenter proposed to extend the clearing requirement to foreign entities whose transactions have a direct, substantial and foreseeable effect in Canada or are aimed at evading the clearing requirement.	No change. We note that, although the obligation to clear rests on local counterparties, a transaction with a foreign counterparty must be cleared if the foreign counterparty is also subject to subsection 3(1).
	Three commenters were concerned about the lack of substituted compliance within Canada and with foreign jurisdictions available for a counterparty subject to the duty to clear in more than one jurisdiction.	Partial change. Regarding substituted compliance within Canada, Alberta, New Brunswick and Nova Scotia were added to the list of jurisdictions which provide substituted compliance where a transaction is cleared at a clearing agency regulated in any jurisdiction of Canada. It is the Committee's view that an application for exemptive relief may be made in a local jurisdiction that do not provide substituted compliance. With regard to equivalence with foreign jurisdictions, we note that only local counterparties under paragraph (b) of that definition should benefit from substituted compliance, since the Clearing Regulation would only apply when there is a local counterparty in scope involved in the transaction if the Clearing Regulation is the stricter rule applicable to the transaction.
	A commenter submitted that the requirement to submit transactions for clearing before the end of the day of execution is too short since it does not allow the overnight file transfer and could impact liquidity.	No change. We note that this requirement is consistent with foreign regulation.
Former S. 6 – Non-application	Several commenters expressed their concern that this section confers an advantage to crown corporations over their competitors.	No change. We note that the regulators retain the right to modify the applicability of all exemptions.

	Some commenters added that the non-application section should provide objective criteria.	
	Two commenters requested that the non-application section be available for entities wholly-owned by or acting as agent for the government and who do not benefit from a guarantee of its obligations by that government.	No change. The non-application section includes a crown corporation for which the government where the crown corporation was constituted is responsible for all or substantially all of the crown corporation's liabilities. We note that crown corporations are not required to clear their transactions unless they fall into the scope of revised subsection 3(1).
	A commenter suggested adding the International Monetary Fund to the list of entities.	Change made. The International Monetary Fund was added to the non-application section. We note that the non-application section has not been extended to recognize other supra-national agencies. The Committee anticipates exemption requests would be sent to regulators as required.
	A commenter suggested that former section 6 apply to a financial entity that is wholly owned by one or more government(s) as long as all or substantially all the liabilities of the entity are guaranteed by one or more of that or these government(s). It was also noted that a government of a foreign jurisdiction in former paragraph 6(a) should include both sovereign and subsovereign governments.	Change made. The language in the non-application section has been adapted to include entities wholly-owned by more than one government. The Clearing Policy Statement now includes guidance on the interpretation of a foreign government.
Former Part 3 - Exemptions	A commenter suggested that an exemption should be available for a transaction resulting from a multilateral portfolio compression exercise where the previous transactions were not	Change made. An exemption was added in section 8 of the Clearing Regulation for certain transactions resulting from a multilateral portfolio compression exercise.

	cleared and were entered into prior to the effective date of the clearing requirement for the derivative.	
Former S. 9 – End-user exemption	Many commenters requested that the exemption be broadened to be available for small financial entities, pension funds and property and casualty insurers. Three commenters believed this exemption should be available to a registrant hedging the risk of a non-financial affiliated entity.	This section was deleted in consideration of the new scope of application.
Former S. 10 – Intragroup exemption	Many commenters thought that the intragroup exemption should be available for entities that are not prudentially supervised on a consolidated basis or that do not have consolidated financial statements.	No change. The Committee notes that the approach used in the Clearing Regulation is harmonized with exemptions found in foreign regulations.
	A commenter asked that financial statements using Canadian or U.S. GAAP or GAAP of the local jurisdiction be allowed.	No change. The Committee notes that Canadian and U.S. GAAP are included in *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*.
	Two commenters expressed the need for clarification as to the agreement between the affiliated entities.	No change. The Committee notes that the requirement that the counterparties agree to rely on the exemption provides sufficient flexibility for them to choose in which form to express their intent to rely on the exemption.
	Four commenters asked for clarification on the level of detail of the written agreement required and whether written confirmations are required for each transaction.	No change. The Committee notes that the written agreement required provides flexibility.
	A commenter urged that former subsection 10(3) include “or cause to be submitted” to allow a counterparty that centralizes its compliance and reporting	Change made. See revised subsection 7(2) where “or cause to be delivered” was added.

	functions to another entity to submit the form through this entity.	
	A commenter requested clarification regarding whether Form 94-101F1 should be submitted for every transaction between two affiliated entities.	Change made. See revised subsection 7(2). We are of the view that Form 94-101F1 must be delivered only once per pair of counterparties to be valid for all transactions between the pair.
	A commenter suggested the elimination of a form filing requirement.	No change. The Committee notes that regulators could review filed Forms 94-101F1 to determine whether the exemption was properly relied on.
	A commenter proposed that a corporate group be permitted to file only one Form 94-101F1.	No change. We note that the exemption is available on a bilateral basis and not on a group basis.
	Two commenters proposed that Form 94-101F1 be submitted to a trade repository. A commenter suggested that only one regulator should receive the form and share it with the other regulators.	No change. The regulators do not have arrangements in place with trade repositories regarding the Clearing Regulation. The Committee notes that there is no agreement in place between regulators for sharing the information received on Form 94-101F1. Furthermore, it is the Committee's view that it would not be overly burdensome for market participants to send the same form to several regulators.
Former S. 11 – Recordkeeping	Some commenters sought clarification on the requirements for the end-user exemption regarding factual representations and documentation on a portfolio level.	The end-user exemption and related requirements were deleted.
Former S. 12 – Submission of information on clearing services for derivatives by a regulated clearing agency	Two commenters asked about the authority to make top-down determinations.	Change made. See revised sections 10 and 12 of the Clearing Policy Statement that discuss top-down determinations.

Former S. 13 – Other exemption	A commenter requested clarification on the impact of the clearing requirement on a market participant who submitted an application for an exemption.	No change. We believe that market participants will have sufficient time ahead of a determination to submit an application for a discretionary exemption. However, a transition period was added to section 3.
Former S. 14 – Transition – regulated clearing agency filing requirement	A commenter proposed that products already offered for clearing by a clearing agency be presumed eligible for clearing.	No change. It is the Committee's view that the information required in Form 94-101F2 is an important element for regulators in making or proposing a determination as to which derivatives should be mandatory clearable derivatives.
Form 94-101F1	A commenter requested that Form 94-101F1 be kept confidential	Change made. The Clearing Policy Statement includes a provision about the confidentiality of this form.
Form 94-101F2	A commenter requested that regulated clearing agencies provide specific information on the end-to-end testing conducted with its participants.	No change. We note that the information requested from regulated clearing agencies is only one part of the determination process which considers multiple factors as set out in the notice.
Appendix A – Mandatory clearable derivatives	<u>Determination</u> Many commenters provided their insight on which types of derivatives should or should not be mandatory clearable derivatives. Several commenters suggested that the process for the determination of mandatory clearable derivatives should be harmonized with international standards and across all jurisdictions of Canada. Two commenters asked that the list of mandatory clearable derivatives be kept in one place. Some commenters also suggested that mandatory clearable derivatives and derivatives	No change. It is the Committee's intention that the mandatory clearable derivatives will not include derivatives that are outside the scope of the Scope Regulation. Other than in Québec, all mandatory clearable derivatives will be listed in Appendix A to the Clearing Regulation. In Québec, the same mandatory clearable derivatives would be determined in a decision by the Autorité des marchés financiers. The timing for implementation of each determination will be aligned across all jurisdictions of Canada. It is the Committee's view that foreign determinations of

	excluded from the scope should be harmonized with foreign jurisdictions.	derivatives mandated to be cleared are important criteria when determining what derivatives should be a mandatory clearable derivative under the Clearing Regulation.
	<u>Consultation</u> Many commenters requested that either the Clearing Regulation or the Clearing Policy Statement contain a statement to insure that the regulators will seek public comment prior to determining a mandatory clearable derivative. A commenter suggested that the determinations follow a simplified approach that does not follow the full rulemaking process and that is harmonized in all jurisdictions of Canada.	No change. Any subsequent determinations of a mandatory clearable derivative will require that Appendix A of the Clearing Regulation be amended to include the new derivative or class of derivatives. In some jurisdictions of Canada, such an amendment would be a material change requiring a public consultation. Since the Clearing Regulation is a national instrument, every jurisdiction of Canada would align with the longest public consultation period. It is the Committee's view that the public consultation required to make an amendment will allow sufficient time for market participants to comment and prepare for the new clearing requirements.
	<u>Timing</u> A commenter was concerned that a derivative would be determined a mandatory clearable derivative before mutual recognition across Canada and substituted compliance are provided. Another commenter raised the concern that no timing is provided for when determinations are made which makes it difficult for market participants to predict when they can expect a determination to be published. Several commenters mentioned that the clearing requirement should not become effective until	No change. We note that the regulators intend to adopt a "stricter regulation applies" principle in the case of cross-border discrepancies. As a result, when a foreign counterparty 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 counterparty's jurisdiction. We also note that the Committee continues to monitor the development of cross-border guidance with respect to

	the registration regime for OTC derivatives is finalized.	substituted compliance on clearing requirements. Considering the changes to the Clearing Regulation, qualification as a registrant is no longer a criteria.
	<u>Phase-in</u> A few commenters provided comments on the phase-in approach and which market participants should be caught and when.	The phase-in approach was deleted as client clearing services are not readily available yet. We intend to monitor the situation and reassess in the future whether the application of the Clearing Regulation should be made broader.

List of Commenters

1. ATCO Power Canada Ltd.
2. Canadian Advocacy Council
3. Capital Power Corporation
4. Canadian Commercial Energy Working Group
5. Canadian Market Infrastructure Committee
6. Canadian Life and Health Insurance Association Inc.
7. Canadian Pension Fund Managers
8. Central 1 Credit Union
9. CLS Bank International
10. Concentra Financial Services Association
11. Dentons Canada LLP
12. Enbridge, Inc.
13. Global Foreign Exchange Division, GFMA
14. Investment Industry Association of Canada
15. Insurance Bureau of Canada
16. International Energy Credit Association
17. International Swaps and Derivatives Association, Inc.
18. KFW Bankengruppe
19. LCH.Clearnet Group Limited
20. Pension Investment Association of Canada
21. SaskEnergy Incorporated
22. TMX Group Limited
23. TransCanada Corporation
24. TriOptima AB
25. Western Union Business Solutions