

CSA Notice and Request for Comment

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

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

October 12, 2017

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing the following, for a 90-day comment period expiring on January 10, 2018:

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

Together, the Draft Regulation Amendments and the Draft Policy Statement Amendments are referred to as the **Draft Amendments**. We are issuing this notice to solicit comments on the Draft Amendments.

Background

The CSA is proposing the Draft Amendments based on consultations with and feedback from various market participants, and in order to more effectively and efficiently promote the underlying policy aims of the Regulation.

The Regulation was published on January 19, 2017 and came into force on April 4, 2017 (with the exception of Saskatchewan where it came into force on April 5, 2017). The purpose of the Regulation is to reduce counterparty risk in the over-the-counter (**OTC**) derivatives market by requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty (the **Clearing requirement**).

The Clearing requirement became effective for certain counterparties on the coming into force date of the Regulation, and was initially scheduled to become effective for certain other counterparties on October 4, 2017. To facilitate the rule-making process for the Draft Amendments, including this publication for comment, the CSA jurisdictions (except Ontario) have exempted from the Clearing requirement until August 20, 2018

those counterparties that would have been subject to the Clearing requirement on October 4, 2017.¹ In Ontario, the Ontario Securities Commission has amended the Regulation to extend the effective date of the Clearing requirement for those counterparties until August 20, 2018.²

Substance and Purpose of the Draft Amendments

The purpose of the Draft Amendments is to refine the scope of counterparties to which the Clearing requirement applies and the types of derivatives that are subject to the Clearing requirement.

The Draft Policy Statement Amendments correspond to the Draft Regulation Amendments.

Summary of the Draft Regulation Amendments

Subsection 3(1) of the Regulation currently requires a local counterparty to a transaction in a mandatory clearable derivative to submit it for clearing to a regulated clearing agency if one or more of the following apply:

- under paragraph 3(1)(a), the counterparty is a participant of the regulated clearing agency and subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;
- under paragraph 3(1)(b), the counterparty is an affiliated entity of a participant referred to in paragraph 3(1)(a) and has a month-end gross notional amount under all outstanding derivatives exceeding \$1 billion, excluding derivatives to which paragraph 7(1)(a) applies;
- under paragraph 3(1)(c), the counterparty is a local counterparty in any jurisdiction of Canada, other than a counterparty to which paragraph 3(1)(b) applies, and has had a month-end gross notional amount exceeding \$500 billion combined with each affiliated entity that is a local counterparty in Canada, excluding derivatives to which paragraph 7(1)(a) applies.

Paragraphs 3(1)(b) and (c) are the subject of the Ontario amendment to the relevant effective date and the Blanket Order exemptions in all other jurisdictions, discussed above.

The draft amendments to paragraphs 3(1)(b) and (c) of the Regulation would exclude from the Clearing requirement a trust or an investment fund that is an affiliated entity of either (i) a participant of a regulated clearing agency who subscribes to the clearing

¹ Blanket Order 94-501, available on the website of the securities regulatory authority in the local jurisdiction.

² See, in Ontario, Ontario Securities Commission, Amendment to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, published July 6, 2017.

services in respect of a mandatory clearable derivative, or (ii) a local counterparty whose month-end gross notional amount under all outstanding derivatives, combined with each Canadian affiliated entity, exceeds \$500 billion. As a result, those investment funds and trusts would not be subject to the Clearing requirement.

Further, in calculating the gross notional amount outstanding for the purpose of the \$500 billion threshold under paragraph 3(1)(c), the gross notional amount outstanding of an investment fund or a trust would no longer be aggregated with other affiliated entities.

In addition, the Clearing requirement under paragraph 3(1)(c) would no longer apply to a local counterparty with a gross notional amount of outstanding derivatives of \$1 billion or less excluding the notional amount of mandatory clearable derivatives to which paragraph 7(1)(a) applies.

Finally, the draft amendments relating to Appendix A of the Regulation would remove overnight index swaps with variable notional type and forward rate agreements with variable notional type from the list of mandatory clearable derivatives as those are not currently offered for clearing by regulated clearing agencies.

Local Matters

An Annex to this notice is being published in any local jurisdiction where any additional information is relevant to that jurisdiction only.

Request for Comments

Please provide your comments in writing by **January 10, 2018**. 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 and the Autorité des marchés financiers at www.lautorite.qc.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
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
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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Corporate Secretary
Autorité des marchés financiers
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Fax: 514 864-6381
consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
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Questions

Please refer your questions to any of:

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