

CSA Notice of Publication

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

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

January 27, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting:

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

Collectively, the amendments to the Regulation (the **Regulation Amendments**) and to the Policy Statement are referred to as the **Amendments**.

In some jurisdictions, government ministerial approvals are required for the implementation of the Regulation Amendments. Provided all necessary approvals are obtained, the Amendments will come into force on **September 1, 2022**.

The CSA is of the view that the Amendments are necessary to address issues raised by market participants following the CSA's publications for comment of draft amendments to the Regulation and the Policy Statement on October 12, 2017 (the **2017 Draft Amendments**) and on September 3, 2020 (the **2020 Draft Amendments**). The issues relate largely to the scope of market participants that are required to clear an over-the-counter (**OTC**) derivative prescribed in Appendix A to the Regulation through a central clearing counterparty (the **Clearing Requirement**).

Background

The Amendments are a response to feedback received from various market participants and are intended 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 (except in Saskatchewan where it came into force on April 5, 2017). The purpose of the Regulation is to reduce counterparty risk in the OTC derivatives market by requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty.

The Clearing Requirement became effective for certain counterparties specified in paragraph 3(1)(a) of the Regulation (*i.e.*, a local counterparty that is a participant of a regulated clearing agency that subscribes for clearing services for the applicable class of derivatives) on the coming-into-force date of the Regulation, and was initially scheduled to become effective for certain other counterparties specified in paragraphs 3(1)(b) and 3(1)(c) on October 4, 2017.

However, in order to facilitate the rule-making process in respect of the 2017 Draft Amendments published for comment on October 12, 2017 and to refine the scope of market participants that are subject to the Clearing Requirement, the CSA jurisdictions (except Ontario) exempted counterparties specified in paragraphs 3(1)(b) and (c) of the Regulation from the Clearing Requirement.¹

The Ontario Securities Commission (the **OSC**) similarly amended the Regulation to extend the effective date of the Clearing Requirement for those counterparties until August 20, 2018.²

While the Clearing Requirement took effect in Ontario on August 20, 2018 for all categories of counterparties specified in subsection 3(1) of the Regulation, OSC staff expressed the view that only counterparties specified under paragraph 3(1)(a) are expected to comply with the Clearing Requirement until the CSA finalizes the amendments to the Regulation to narrow the scope of market participants that would be subject to the Clearing Requirement³.

On September 3, 2020 the CSA published for comment the 2020 Draft Amendments that reflect both the comments received on the 2017 Draft Amendments and further amendments to the Regulation.

We are monitoring changes to benchmark reference rates, including recent updates relating to GBP LIBOR and EONIA, which are currently subject to the Clearing Requirement. We will continue to monitor these developments as they affect trading liquidity and availability of products for clearing, and will assess whether other products are suitable as mandatory clearable derivatives, necessitating resulting changes to the Clearing Requirement.

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

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

³ As explained further in CSA Staff Notice 94-303, on May 31st 2018 the CSA jurisdictions (except Ontario) extended the blanket order relief under Blanket Order 94-501 until the earlier of its revocation or the coming into force of amendments to the Regulation with respect to the scope of counterparties subject to the Clearing Requirement. Since blanket orders were not authorized under Ontario securities law, the OSC was unable to follow the approach of the other CSA jurisdictions.

Summary of changes to the 2020 Draft Amendments

Further to the comments received on the 2020 Draft Amendments, the CSA is adopting the Amendments. The Amendments reflect our consideration of the comments received, as well as our ongoing review of the Regulation's impact on market participants. Minor non-material changes are also being adopted.

(a) Transition period

The Amendments will come into force on September 1, 2022. The transition period will allow participants to amend the relevant documentation relating to the Clearing Requirement and aligns with the commencement of the reference period with respect to the \$1 billion threshold under paragraphs 3(1)(b) and (c).

(b) Removal of the requirement to agree to rely on the intragroup exemption

Because the condition in paragraph 7(1)(b) to have both affiliated entities agree to rely on the intragroup exemption could represent an unnecessary burden for participants, the CSA has taken the view that it is reasonable to consider that reliance on this exemption will be the default position for participants.

(c) Multilateral portfolio compression

The CSA added guidance in the Policy Statement to clarify our expectations regarding the multilateral portfolio compression exemption in the Regulation.

(d) Appendix B Laws, regulations or instruments of foreign jurisdiction applicable for substituted compliance

Appendix B includes the relevant laws and regulations of the United Kingdom to ensure the substituted compliance provision reflects the regulatory changes that have followed the Brexit.

Contents of Annex

The following annex forms part of this CSA Notice:

Annex A Summary of comments and CSA responses.

Questions

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

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ANNEX A

SUMMARY OF COMMENTS AND CSA RESPONSES

Section Reference	Issue/Comment	Response
S. 1 – Definitions: Affiliated entity	Two commenters pointed out that an implementation period will be needed to amend the existing ISDA Canadian Clearing Classification Letter and to allow for its exchange between market participants.	Change made. The Amendments will come into force on September 1, 2022.
S. 3 – Duty to clear	A commenter suggested to make drafting changes to the section 3(1) and 3(2) of the Policy Statement.	Changes made.
S. 7 – Intragroup exemption	<p>Two commenters pointed out that the required agreements in paragraphs 7(1)(b) and 7(1)(d) are unnecessary and create an additional burden.</p> <p>One commenter suggested that if the required agreement in paragraph 7(1)(d) was to be kept, the CSA should clarify its expectations.</p>	<p>Change made in paragraph 7(1)(b). The CSA agrees that the reliance on the intragroup exemption should be viewed as the default position for the affiliated counterparties.</p> <p>Change made to the Policy Statement. No change made to paragraph 7(1)(d) of the Regulation. The CSA's intent is that affiliated entities should have their transactions in mandatory clearable derivatives documented. Trade confirmations, for instance, would satisfy this requirement.</p>

List of Commenters

1. Canadian Market Infrastructure Committee
2. International Swaps and Derivatives Association