

## CSA Notice of Consultation

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

September 19, 2024

#### **Introduction**

The members of the Canadian Securities Administrators (the **CSA** or **we**) are publishing for comment Draft *Regulation to amend Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives* (**Regulation 94-101**). The draft amendments to Regulation 94-101 (the **Draft Amendments**) aim to update the list of mandatory clearable derivatives to reflect the transition to a new interest rate benchmarks regime based on overnight risk-free interest rate benchmarks. Specifically, the Draft Amendments reflect the cessation of certain inter-bank offered rates (**IBORs**) and the Canadian dollar offered rate (**CDOR**) interest rate benchmarks. The Draft Amendments also contemplate adding credit default swaps (**CDS**) referencing certain indexes as mandatory clearable derivatives.

The Draft Amendments will be available on the websites of CSA jurisdictions, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.albertasecurities.ca](http://www.albertasecurities.ca)  
<https://mbsecurities.ca>  
[www.nssc.novascotia.ca](http://www.nssc.novascotia.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.osc.ca](http://www.osc.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)

We are publishing the Draft Amendments for comment for 90 days. The comment period will expire on December 19, 2024. See below under “Request for Comments” section.

The British Columbia Securities Commission (**BCSC**) did not publish the Draft Amendments for comment at this time. BCSC staff anticipates doing so following the British Columbia election.

#### **Background of Regulation 94-101**

Regulation 94-101 came into force in 2017. Its main purposes are to reduce counterparty risk in the over-the-counter (**OTC**) derivatives market and increase financial stability by requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty. An overview of this regime was provided

in the January 19, 2017, *CSA Notice of Publication, Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives and Related Policy Statement*<sup>1</sup>.

Regulation 94-101 is divided into two parts: (i) mandatory central counterparty clearing for prescribed derivatives by certain counterparties (including exemptions), and (ii) the determination of derivatives subject to mandatory central counterparty clearing. The list of mandatory clearable derivatives is included as Appendix A to Regulation 94-101.

## **Purpose of Draft Amendments**

### *(1) Transition to risk-free interest rate benchmarks*

In 2012, allegations of manipulation of the London inter-bank offered rate (**LIBOR**) led to the loss of market confidence in the credibility and integrity of not only LIBOR, but also in financial benchmarks in general. In response to concerns regarding IBORs, the Financial Stability Board called for the cessation of the IBORs and the implementation of alternative reference rates. Publication of several IBORs has stopped and CDOR has ceased to be published on June 28, 2024<sup>2</sup>.

As a result, the use of interest rate swaps referencing these benchmarks has significantly decreased and, in several cases, has disappeared.

Conversely, the adoption of risk-free interest rate benchmarks, as an alternative for certain IBORs and CDOR, has led to an increase in the liquidity of interest rate swaps referencing these benchmarks. Consequently, their systemic importance in financial markets globally and in Canada has also increased.

Other international regulators have recognized the systemic importance of interest rate swaps referencing risk-free interest rate benchmarks and have required these swaps to be mandatorily cleared in their respective jurisdictions<sup>3</sup>.

The CSA contributes to and follows international regulatory proposals and legislative developments on an ongoing basis. Among the latest proposals, the CSA have closely monitored the replacement of IBORs and CDOR with risk-free interest rate benchmarks and the impact of this development on Appendix A of Regulation 94-101.

As a result, the list of derivatives required to be cleared needs to be updated to reflect the transition to risk-free interest rate benchmarks, such as the Canadian Overnight Repo Rate Average (**CORRA**) and Secured Overnight Financing Rate (**SOFR**). This update accounts for the shift in trading activity and systemic importance. Consequently, the Draft Amendments remove the requirement to clear certain classes of OTC derivatives referencing certain IBORs or CDOR that are no longer of systemic importance, and replace them with overnight interest rate swaps (**OIS**) referencing risk-free interest rate benchmarks.

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<sup>1</sup> Available online at: <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/instruments-derives/reglements/94-101/2017-01-19/2017janv19-94-101-avis-publication-en.pdf>

<sup>2</sup> See CSA Multilateral Staff Notice 25-312 *Reminder of Cessation of CDOR on June 28, 2024*.

<sup>3</sup> For example, you may consult the Commodity Futures Trading Commission (CFTC) amendments adopted in 2022 available online at: <https://www.cftc.gov/sites/default/files/2022/08/2022-17736a.pdf>

## *(2) Addition of certain OTC derivatives*

In addition to updating the list of mandatory clearable derivatives to reflect the transition, the CSA has also reviewed the suitability of adding certain OTC derivatives to be mandatorily cleared.

To determine which OTC derivatives or classes of OTC derivatives will be subject to the mandatory central counterparty clearing requirements, the CSA used most of the factors listed in *Policy Statement to Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives*<sup>4</sup>. Such factors include the following:

- the availability of the derivative to be cleared by a regulated clearing agency;
- the level of standardization of the derivative;
- the effect of central clearing of the derivative on the mitigation of systemic risk, taking into account the size of the market for the derivative and the available resources of the regulated clearing agency to clear the derivative;
- whether mandating the derivative or class of derivatives to be cleared would bring undue risk to regulated clearing agencies;
- the current liquidity in the market for the derivative or class of derivatives. Specifically, for the review period of April 2023 to September 2023 (the **reference period**), we analyzed monthly volume by assessing the number of transactions and the gross notional amount outstanding for certain OTC derivatives, including the gross notional by maturity, and the percentage of outstanding notional cleared during each month of the reference period;
- with regards to a regulated clearing agency, the existence of capacity, operational expertise and resources; and
- international harmonization.

To conduct our analysis, we have relied upon data reported by market participants to designated or recognized trade repositories in accordance with applicable regulations, as well as discussions with recognized central counterparties and requirements in foreign jurisdictions.

## **Summary of Draft Amendments**

### *(1) Amendments to reflect the cessation of certain IBORs and CDOR and the transition to risk-free interest rate benchmarks*

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<sup>4</sup> Available online at: <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/instruments-derives/reglements/94-101/2022-09-01/2022sept01-94-101-ig-vconsolidee-en.pdf>

The Draft Amendments will remove mandatory central counterparty clearing of certain interest rate swaps and forward rate agreements (**FRA**) referencing the following interest rate benchmarks listed in Appendix A of Regulation 94-101:

- Canadian dollar (**CAD**) CDOR,
- United States dollar (**USD**) LIBOR,
- British pound (**GBP**) LIBOR, and
- Euro (**EUR**) Euro Overnight Index Average (EONIA).

These derivatives will be removed in each of the fixed-to-float swap, basis swap, OIS, and FRA classes, as applicable.

Furthermore, we propose to amend Appendix A of Regulation 94-101 by adding OIS referencing USD SOFR with a maturity between 7 days to 50 years and EUR Euro Short-Term Rate (€STR) with a maturity between 7 days to 3 years.

For reasons of liquidity and international harmonization, we are also proposing to expand the maturity of OIS referencing GBP SONIA subject to mandatory clearing to include maturity between 7 days to 50 years. Likewise, given the significant liquidity for the reference period, we propose to expand the maturity of OIS referencing CAD CORRA to include maturity between 7 days to 30 years.

### *(2) Addition of new classes of OTC derivatives*

Based on the factors listed above, we concluded that the following classes of OTC derivatives should be added to the list of mandatory clearable derivatives provided in Appendix A of Regulation 94-101:

- Fixed-to-float interest rate swaps referencing Australian dollar (AUD) Bank Bill Swap rates (BBSW) with a maturity including 28 days to 30 years;
- CDS index CDX.NA.IG<sup>5</sup> with tenors of 5 and 10 years (Series 46 and all subsequent Series);
- CDS index CDX.NA.HY<sup>6</sup> with a tenor of 5 years (Series 46 and all subsequent Series); and
- CDS index iTraxx Europe with a tenor of 5 years (Series 45 and all subsequent Series).

We concluded that the addition of the above listed derivatives would be in the public interest.

### *(3) Harmonized term in French*

In the interest of harmonizing the French terminology of over-the-counter derivatives regulations, we propose to provide in the Draft Amendments for the replacement of the term “opération” with “transaction” in the French text of Regulation 94-101, and to also make this change in *Policy Statement to Regulation 94-101 respecting Mandatory Central Counterparty Clearing of Derivatives*.

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<sup>5</sup> North American Investment Grade CDX Index

<sup>6</sup> North American High Yield CDX Index

## **Local Matters**

An annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

## **Alternatives Considered to the Draft Amendments**

The alternative to the Draft Amendments would be not to proceed with making amendments to Regulation 94-101 to reflect the cessation of certain IBORs and CDOR, or not adding certain liquid and standardized classes of products to the list of mandatory clearable derivatives. However, not proceeding with the removal of derivatives referencing certain IBORs and CDOR would be inconsistent with the desire to align with both the implementation of Canada's commitments in relation to global OTC derivatives markets reforms stemming from the G20 commitments of 2009<sup>7</sup> and the Financial Stability Board's recommendations for reforming major interest rate benchmarks<sup>8</sup>. Furthermore, not proceeding with the Draft Amendments would result in certain liquid and standardized OTC derivatives remaining uncleared by a central counterparty potentially increasing systemic risks in Canada.

## **Anticipated Costs and Benefits of the Draft Amendments**

The Draft Amendments would only apply to certain counterparties executing OTC derivatives which are subject to mandatory central counterparty clearing. Overall, the CSA is of the view that the regulatory costs of the Draft Amendments are proportionate to the benefits that would be gained by reducing the credit risk of counterparties and increasing financial stability in the Canadian OTC derivatives market.

## **Contents of Annexes**

This Notice includes the following Annex:

*Annex A:* Specific question of the CSA relating to the Draft Amendments

## **Request for Comments**

We welcome your comments on the Draft Amendments and also invite comments on the specific question set out in Annex A of this Notice. Please submit your comments in writing on or before December 19, 2024. Please send your comments by email. Your submissions should be provided in Microsoft Word format.

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<sup>7</sup> For more information relating to the G20 Summit of Pittsburgh, please see:  
<http://www.g20.utoronto.ca/2009/2009communique0925.html>

<sup>8</sup> For more information relating to the Financial Stability Board's recommendations published in July 2014, please see:  
[https://www.fsb.org/2014/07/r\\_140722/](https://www.fsb.org/2014/07/r_140722/)

Please address your submission to all of the CSA members as follows:

Alberta Securities Commission

Autorité des marchés financiers

Financial and Consumer Affairs Authority of Saskatchewan

Financial and Consumer Services Commission, New Brunswick

Financial and Consumer Services Division, Department of Justice and Public Safety, Prince Edward Island

Manitoba Securities Commission

Nova Scotia Securities Commission

Office of the Superintendent of Securities, Newfoundland and Labrador

Office of the Superintendent of Securities, Northwest Territories

Office of the Superintendent of Securities Nunavut

Office of the Yukon Superintendent of Securities

Ontario Securities Commission

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

Me Philippe Lebel

Corporate Secretary and Executive Director, Legal Affairs

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Fax: 416 593-2318

E-mail: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.asc.ca](http://www.asc.ca), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.ca](http://www.osc.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.

Questions with respect to this Notice and the Draft Amendments may be referred to:

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## **Annex A**

Would adding some single-name CDS to the list of mandatory clearable derivatives be beneficial for market participants? Please explain the reasons why it would be appropriate or not.