

CSA Notice of Consultation
Draft Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations
Custody-Related Amendments

October 25, 2018

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 60-day comment period draft amendments (the **Draft Custody Amendments**) to certain custody-related provisions of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**) as a consequence of recent custody-related amendments to *Regulation 81-102 respecting Investment Funds* (**Regulation 81-102**) which were made as part of the “Modernization of Investment Fund Product Regulation – Alternative Funds” project (the **Regulation 81-102 Amendments**). The Regulation 81-102 Amendments were published in final form on October 4, 2018¹.

The text of the Draft Custody Amendments is published with this notice and will also be available on the websites of certain CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

We are proposing amendments to section 14.6.1 of Regulation 31-103 to reflect the recent amendments to subsection 6.8(2) of Regulation 81-102.

The Regulation 81-102 Amendments codify existing relief granted to investment funds subject to Regulation 81-102 regarding the use of cleared derivatives. Specifically, section 6.8 of Regulation 81-102 was amended to allow these investment funds to deal with futures commission merchants and clearing corporations in accordance with the

¹ Provided all necessary ministerial approvals are obtained, the Regulation 81-102 Amendments will come into force on January 3, 2019 in all CSA jurisdictions.

rules of those organizations for cleared over-the-counter derivatives.

Section 14.6.1 of Regulation 31-103 sets out acceptable custodial practices for certain margin and security interests which codified existing custodial best practices of registered firms. The permissible activities in this section are similar to the custodial practices for investment funds permitted under Regulation 81-102 in respect of portfolio assets being held as margin for certain derivatives transactions outside of Canada. For this reason, we are proposing amendments to section 14.6.1 of Regulation 31-103 to align with the amendments to subsection 6.8(2) of Regulation 81-102 described above.

The intent of the Draft Custody Amendments is to give all clients and investment funds of registered firms the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives. In the absence of making the Draft Custody Amendments, this option would only be available to investment funds that are subject to Regulation 81-102.

Background

On July 27, 2017 custody-related amendments to Regulation 31-103 were published in final form, and these amendments came into force on June 4, 2018. In the CSA notice² that accompanied those amendments, we indicated that additional changes might be made to these custody-related provisions as a consequence of the work being done by the CSA as part of the Regulation 81-102 Amendments. The Draft Custody Amendments are being proposed as a result of the Regulation 81-102 Amendments.

Summary of the Draft Custody Amendments

Subsection 14.6.1(1) of Regulation 31-103 is being amended to add the following two definitions: “cleared specified derivative” and “regulated clearing agency”.

Subsection 14.6.1(2) is being expanded to permit clients or investment funds of a registered firm to deposit cash or securities with members of regulated clearing agencies in respect of certain prescribed margin transactions outside of Canada. Subsection 14.6.1(2) is also being expanded to include an additional type of permitted margin transaction, namely, transactions involving cleared specified derivatives.

Local Matters

An annex includes, where applicable, additional information that is relevant in a local jurisdiction only.

² Notice of publication, *Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, Amendments to Policy Statement to Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations, *Regulation to amend Regulation 33-109 respecting Registration Information*, Amendments to Policy Statement to Regulation 33-109 respecting Registration Information.

Request for comments

We welcome your comments on the Draft Custody Amendments.

Please submit your comments in writing on or before **December 24, 2018**. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Thank you in advance for your comments.

Where to send your comments

Please address your comments to all CSA members, as follows:

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

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other CSA members.

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Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
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Fax : 514 864-6381
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The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
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Fax: 416 593-2318
E-mail: 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.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.

Questions

Please refer your questions to any of the following CSA staff:

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