

## CSA Notice of Publication

### *Regulation to amend Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*

### **Custody-Related Amendments**

**March 14, 2019**

#### **Introduction**

We, the Canadian Securities Administrators (the **CSA**), are adopting amendments (the **Custody Amendments**) to certain custody-related provisions of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**).

The Custody Amendments have been, or are expected to be, adopted by each member of the CSA. In some jurisdictions, ministerial approvals are required for the implementation of the Custody Amendments. If all necessary ministerial approvals are obtained, the Custody Amendments will come into force on **June 12, 2019**. Further detail can be found in Annex A of this Notice.

#### **Substance and Purpose**

The substance and purpose of the Custody Amendments is to continue to align the permissible custodial practices in section 14.6.1 of Regulation 31-103 with the similar permitted custodial practices for investment funds in subsection 6.8(2) of *Regulation 81-102 respecting Investment Funds* (**Regulation 81-102**). This subsection deals with portfolio assets held as margin for derivatives transactions outside Canada.

Amendments to subsection 6.8(2) of Regulation 81-102 came into force on January 3, 2019 as part of the implementation of the final phase of the CSA's Modernization of Investment Fund Product Regulation Project. This final phase related to the establishment of a regulatory framework for alternative mutual funds (the **Regulation 81-102 Amendments**).

Implementing the Custody Amendments will result in all clients and investment funds of registered firms having the same ability to deposit assets with certain dealers in respect of cleared over-the-counter derivatives.

## **Background**

We published proposed amendments for comment on October 25, 2018 (the **October 2018 Proposal**). The 60-day comment period ended on December 24, 2018. We received no comment letters on the October 2018 Proposal. We made a change to correctly reference the definition of “regulated clearing agency”, but no other changes have been made to the proposed amendments. As this change is not material, we are not publishing the Custody Amendments for another comment period.

## **Summary of amendments to Regulation 31-103**

The amendments are to section 14.6.1 of Regulation 31-103.

We added the definitions of the following terms to subsection 14.6.1(1) of Regulation 31-103:

- “cleared specified derivative”
- “regulated clearing agency”

We amended subsection 14.6.1(2) to permit clients or investment funds of a registered firm to deposit cash or securities with certain members of regulated clearing agencies as margin for certain transactions outside of Canada.

We amended paragraphs 14.6.1(2)(a) and (b) to subject members of “regulated clearing agencies” to the membership and net worth requirements set out in these paragraphs. Paragraph 14.6.1(2)(c) was amended to ensure that registered firms’ clients or investment funds only use members of “regulated clearing agencies” for margin transactions if, as per the existing requirements of this paragraph, it is more beneficial to the client or investment fund than using a Canadian custodian.

We also amended subsection 14.6.1(2) to include an additional type of permitted margin transaction, namely, transactions involving “cleared specified derivatives”.

## **Annex**

This Notice contains the following annex:

- Annex A – Adoption of the Regulation

## Questions

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

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## ANNEX A

### ADOPTION OF THE REGULATION

The Custody Amendments will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon
- a regulation in Québec
- a commission regulation in Saskatchewan

In Ontario, the Custody Amendments, as well as other required materials, were delivered to the Minister of Finance on March 7, 2019. The Minister may approve or reject the Custody Amendments or return them for further consideration. If the Minister approves the Custody Amendments or does not take any further action, the Custody Amendments will come into force on June 12, 2019.

In Québec, the Custody Amendments are adopted as a regulation made under section 331.1 of the *Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The regulation will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Custody Amendments is subject to ministerial approval. If all necessary approvals are obtained, British Columbia expects the Custody Amendments to come into force on June 12, 2019.

In Saskatchewan, the implementation of the Custody Amendments is subject to ministerial approval. If all necessary approvals are obtained, the Custody Amendments will come into force on June 12, 2019 or, if after June 12, 2019, on the day on which they are filed with the Registrar of Regulations.