

Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives

PART 1

DEFINITIONS AND INTERPRETATION

Definitions

1. In this Rule,

“clearable derivative” means a derivative that is determined by the [*applicable local securities regulator*] to be subject to the clearing requirement in accordance with [*this Rule/ section x of the Act*];

“financial entity” means

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;

(b) a bank, loan corporation, loan company, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(c) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada;

(d) an entity created by enactment of the Parliament of Canada or of the legislature of a province that is a mandatary or agent of the Government of Canada or of the government of a province and the purpose of which is to provide management services;

(e) an investment fund;

(f) a person or company subject to a registration requirement, registered or exempted, under the securities legislation of a jurisdiction of Canada;

(g) a person or company organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (f) and would be regulated under the applicable legislation of Canada or [*applicable local jurisdiction*] had it been organized in Canada or [*applicable local jurisdiction*];

“local counterparty” means a counterparty to a transaction if, at the time of the transaction, one or more of the following apply:

(a) the counterparty is a person organized under the laws of [*applicable local jurisdiction*] or that has its head office or principal place of business in [*applicable local jurisdiction*];

(b) the counterparty is an affiliate of a person described in paragraph (a), and such person is responsible for the liabilities of that affiliated party;

“transaction” means entering into, making a material amendment to, assigning, selling or otherwise acquiring or disposing of a derivative or the novation resulting from the transferring or altering of the obligations arising from the derivative, other than a novation resulting from the submission of a derivative to a clearing agency.

Interpretation of the term clearing agency

2. In this Rule, the term clearing agency means a clearing agency recognized by the [*applicable local securities regulator*] pursuant to section x of the Act, or exempted from recognition pursuant to section x of that Act.

Interpretation of hedge or mitigation of commercial risk

3. In this Rule, a derivative is held for the purpose of hedging or mitigating commercial risk when all of the following apply:

(a) it establishes a position which is intended to reduce risks relating to the commercial activity or treasury financing activity of the counterparty or of an affiliate, and, alone or in combination with other derivatives, directly or through closely correlated financial instruments meets any of the following:

(i) that derivative covers the risks arising from the change in the value of asset, services, inputs, products, commodities or liabilities that the counterparty or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;

(ii) that derivative covers the risks arising from the indirect impact on the value of assets, services, inputs, products, commodities or liabilities referred to in

subparagraph (i), resulting from fluctuation of interest rates, inflation rates, foreign exchange rates or credit risk;

(b) such position is not held for any of the following purposes:

(i) for a purpose that is in the nature of speculation;

(ii) to offset or reduce the risk of another derivative transaction, unless that other position itself is held for the purpose of hedging or mitigating commercial risk.

PART 2

MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

4. (1) A local counterparty to a transaction in a clearable derivative must, submit, or cause to be submitted, that transaction for clearing to a clearing agency that provides clearing services for such clearable derivative, in the form prescribed by the clearing agency, by the end of the day of execution unless the transaction is executed after the business hours of the clearing agency in which case the transaction must be submitted for clearing the following business day.

(2) A local counterparty satisfies its duty to submit for clearing in respect of a transaction required to be cleared under subsection (1) if

(a) the transaction is required to be cleared solely because a counterparty to the transaction is a local counterparty pursuant to paragraph (b) of the definition of “local counterparty”, and

(b) the transaction is submitted for clearing pursuant to

(i) the securities legislation of a province of Canada other than [*applicable local jurisdiction*], or

(ii) the laws of the foreign jurisdictions listed in Appendix B.

Notification

5. A clearing agency must immediately notify the local counterparty or local counterparties submitting the transaction if it rejects the transaction.

List of derivatives publicly disclosed

6. A clearing agency must publicly disclose on its website, at no cost to the public, a list of all derivatives and classes of derivatives for which the clearing agency will provide clearing services and identify which are clearable derivatives or classes of clearable derivatives.

PART 3

EXEMPTIONS FROM THE MANDATORY CENTRAL COUNTERPARTY CLEARING

End-user exemption

7. (1) Section 4 does not apply to a transaction if all of the following apply:

- (a) one of the counterparties is not a financial entity;
- (b) that counterparty is entering into the transaction to hedge or mitigate commercial risk related to the operation of its business.

(2) The mandatory central counterparty clearing under section 4 does not apply to a transaction entered into by an affiliated entity of a person or company that qualifies for the exemption under subsection (1) if all of the following conditions apply:

- (a) the affiliated entity is acting as agent on behalf of the person or company;
- (b) the transaction is a hedge or mitigates the commercial risk of the person or company, or other affiliate of the person or company, that is not a financial entity;
- (c) the affiliated entity is not subject to a registration requirement under the securities legislation of a jurisdiction of Canada.

Intragroup exemption

8. (1) In this section, an “intragroup transaction” means one of the following:

(a) a transaction between two affiliated entities whose financial statements are prepared on a consolidated basis in accordance with one of the following:

- (i) if the head office of the parent entity is located in Canada, International Financial Reporting Standards, Canadian GAAP applicable to publicly accountable enterprises, Canadian GAAP applicable to private enterprises or U.S. GAAP as defined by the National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards;
- (ii) if the head office of the parent entity is located in a foreign jurisdiction, generally accepted accounting principles of the foreign jurisdiction in which the head office is located if those principles are substantially similar to those provided in subparagraph (i);

(b) a transaction between two counterparties prudentially supervised by the [*applicable local regulator*] on a consolidated basis.

(2) Section 4 does not apply to an intragroup transaction if all of the following conditions apply:

- (a) both counterparties agree to rely on this exemption;
- (b) the transaction is subject to appropriate centralized risk evaluation, measurement and control procedures;
- (c) for counterparties that are not registered as dealers or subject to such registration requirement under the securities legislation of a jurisdiction of Canada, there is a written agreement setting out the terms of the transaction between the counterparties.

(3) A counterparty to an intragroup transaction that is relying on the exemption in subsection (2) must submit to the [*applicable local securities regulator*], in an electronic format, a completed Form F1 (Intragroup exemption) no later than the 30th day following the execution of the first transaction made under this exemption.

(4) Subject to subsection (5), a completed Form F1 submitted under subsection (3) is effective for the transactions entered into between the counterparties relying on the exemption during the year following the date of its submission.

(5) Within 10 days of becoming aware of an inaccuracy in or making a change to the information provided in Form F1, a counterparty must submit to the [*applicable local securities regulator*], in an electronic format, an amendment to Form F1.

Improper use of exemption

9. Notwithstanding anything else in this Rule or any exemptive relief granted, the [*applicable local securities regulator*] may direct a local counterparty to submit a transaction for clearing under section 4, if the [*applicable local securities regulator*] determines that improper use of an exemption is or has been made.

Record keeping

10. (1) Each counterparty that is relying on an exemption under section 7 or section 8 must maintain, for a period of 7 years following the date on which the transaction expires or terminates, records of all documentation demonstrating that such counterparty is eligible to benefit from the exemption including for the local counterparty relying on an end-user exemption under section 7, the approval by the board of directors or a group that acts in a capacity similar to a board of directors.

(2) The records required to be maintained under subsection (1) must be kept in a safe location and in a durable form in any manner that permits it to be provided to the [*applicable local securities regulator*] in a reasonable period of time.

Non-Application

11. Section 4 does not apply to a transaction if one of the counterparties is the government of Canada, a government of a province or territory of Canada, a crown corporation or an entity wholly owned by the federal or provincial government whose obligations are guaranteed by the federal or provincial government.

PART 4

DETERMINATION BY THE [APPLICABLE LOCAL SECURITIES REGULATOR]

Submission of information on clearing services of derivatives by the clearing agency

12. (1) No later than [x days] after providing new clearing services for a derivative or class of derivatives, a clearing agency must submit, in an electronic format, a completed Form F2 (Derivatives clearing services), to the [applicable local securities regulator].

(2) Within [x days] of the coming into force of this Rule, a clearing agency must submit to the [applicable local securities regulator], in an electronic format, a completed Form F2 for all derivatives or classes of derivatives it provides clearing services for as of [insert date of the coming into force of this Rule].

Notice regarding determination

13. The [applicable local securities regulator] may publish a notice inviting interested persons to make representations in writing for a minimum period of 60 days before it determines whether a derivative or a class of derivatives is a clearable derivative or a class of clearable derivatives.

Conditions to determination

14. The [applicable local securities regulator] may review or impose conditions on its determination that a derivative or class of derivatives is a clearable derivative or class of clearable derivatives.

Public register [or Appendix “A”]

15. The public register maintained by the [applicable local securities regulator] in accordance with section [x] of the Act [or Appendix “A” of this Rule] shall include the following:

- (a) a list of the clearing agencies authorized to clear derivatives;
- (b) a list of clearable derivatives and classes of clearable derivatives;
- (c) the dates from which the mandatory central counterparty clearing with respect to a derivative or class of derivatives that is determined to be a clearable derivative or class of clearable derivatives takes effect, including any transitional period for implementation.

PART 5
TRANSITION

Transition

16. Section 4 does not apply to a transaction entered into before the date of the coming into force of this Rule unless there was a novation, a material amendment to the transaction or it was assigned, sold or otherwise acquired or disposed of on or after the date of the coming into force of this Rule.

PART 6
EXEMPTION

Exemption

17. The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 7
EFFECTIVE DATE

Effective date

18. This Rule comes into force on (*insert date*).