ANNEX E

Blackline showing changes to
PROPOSED COMPANION POLICY 94-101CP
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES
Published for Comment February 12, 2015

GENERAL COMMENTS

Introduction

This Companion Policy sets out how the Canadian Securities Administrators (the "CSA" or "we") interpret or apply the provisions of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* ("NI 94-101" or the "Instrument") and related securities legislation.

The numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 94-101. Any specific guidance on sections in NI 94-101 appears immediately after the section heading. If there is no guidance for a section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

SPECIFIC COMMENTS

Unless defined in NI 94-101 or explained in this Companion Policy, terms used in NI 94-101 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction including National Instrument 14-101 *Definitions*~~, in Manitoba and Ontario, local Rule 91-506 *Derivatives: Product Determination* and, in Québec, *Regulation 91-506 respecting Derivatives Determination* (chapter I-14.01, r. 0.1).~~".

In this Companion Policy, "Product Determination Rule" means,

in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 91-101 *Derivatives: Product Determination*,

in Manitoba, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,

in Ontario, Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, and

in Québec, Regulation 91-506 respecting Derivatives Determination.

In this Companion Policy, "TR Instrument" means,

in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,

in Manitoba ~~and Ontario, local~~, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* ~~,~~

in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and

in Québec, Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting~~, and~~.

~~in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan, Proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*.~~[5]

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1)

This

~~**1.** The term "financial entity" is defined in NI 94-101 for the purposes of the end-user exemption in section 9 of the~~ Instrument~~, which provides that a transaction will only be exempt from mandatory~~ defines "regulated clearing ~~if the hedging~~agency". It is intended that only a regulated clearing agency that acts as a central counterparty ~~is not a financial entity.~~

~~The entities referred~~for over-the-counter derivatives be subject to ~~under subparagraph (b) of the~~ the Instrument. The purpose of paragraph (c) of this definition ~~of "financial entity" do not include a company or its affiliates that lend~~ is to ~~customers to finance the purchase of its non-financial goods or services.~~

~~The investment funds included in subparagraph (d) are those described in subsections 1.2 (1), (2) and (3) of National Instrument 81-106 *Investment Fund Continuous Disclosure* regarding the application of that instrument to investment funds.~~

[5] ~~This Instrument has been published for consultation, but has not yet come into force.~~

~~Subparagraph (f) of the definition of "financial entity" addresses the situation where a foreign counterparty enters into~~allow a transaction in a mandatory clearable derivative ~~with~~involving a local counterparty~~. If the foreign counterparty is similar to an entity referred to in any of paragraphs (a) to (e) of the definition of "financial entity", the end-user exemption will not~~ in one of the listed jurisdictions to be ~~available for that transaction unless~~ submitted to a clearing agency that is not yet recognized or exempted in the local ~~counterparty qualifies to benefit from the end-user exemption~~jurisdiction. Paragraph (c) does not supersede any provisions of the securities legislation of the local jurisdiction with respect to any recognition requirements for a person or company that is carrying on the business of a clearing agency in the local jurisdiction.

The Instrument uses the term "transaction" rather than the term "trade" in part to reflect that "trade" is defined in the securities legislation of some jurisdictions as including the termination of a derivative. We do not think the termination of a derivative should trigger a requirement to submit the derivative for central clearing. Similarly, the definition of transaction in NI 94-101 excludes a novation resulting from the submission of a transaction to a regulated clearing agency as this is already a cleared transaction. Finally, the definition of "transaction" is not the same as the definition found in the TR Instrument as the latter does not include a material amendment since the TR Instrument expressly provides that an amendment must be reported.

~~The term "material amendment" in~~In the definition of "transaction", the term "material amendment" should be considered in light of the fact that only new transactions will be subject to mandatory central counterparty clearing under NI 94-101. If a derivative that existed prior to the coming into force of NI 94-101 is materially amended after NI 94-101 is effective, that amendment will trigger the mandatory clearing requirement~~.~~ if applicable. A material amendment is one that changes information that would reasonably be expected to have a significant effect on the derivative's attributes, including its value, the terms and conditions of the contract evidencing the derivative, the transaction methods or the risks related to its use, excluding information that is likely to have an effect on the market price or value of its underlying interest.

We will consider several factors when determining whether a modification to an existing transaction is a material amendment. Examples of modifications to an existing transaction that would be a material amendment include any modification which would result in a significant change in the value of the transaction, differing cash flows or the creation of upfront payments.

2. The term "derivative" is defined in section 3 of the Québec *Derivatives Act* to include both "standardized" and "over-the-counter" derivatives. Standardized derivatives are derivatives traded on a published market, as provided by section 3 of the Québec *Derivatives Act*. A published market is defined to include an exchange, an alternative trading system or any other derivatives market that constitutes or maintains a system for bringing together buyers and sellers of standardized derivatives. As such, section 2 of the Instrument limits the application of the Instrument to derivatives that are not traded on an exchange; however, an exception is made for derivatives trading facilities.

Interpretation of hedging or mitigating commercial risk

4. The interpretation in the Instrument of the phrase "for the purpose of hedging or mitigating commercial risk" focuses on the purpose and effect of one or more transactions. A market participant executing a transaction for the purpose of hedging would not be precluded from relying on the end-user exemption if a perfect hedge is not ultimately achieved. The use of multiple transactions as a hedging strategy would not in itself preclude an end-user from relying on the exemption. There will be situations where an end-user may be able to rely on the exemption even where some of the transactions could be interpreted as not being a hedge, as long as there is a reasonable commercial basis to conclude that such transactions were intended to be part of the end-user's hedging strategy.

The concept of hedging or mitigating commercial risk excludes all activities that are investing or speculative in nature. However, in some cases macro, proxy or portfolio hedging may benefit from the exemption. The strategy or program should be documented and, where reasonable, subject to regular compliance audits to ensure it continues to be used for relevant hedging purposes. Hedging a risk can be a dynamic process and it is expected that an entity may have to close out or add contracts to the original hedging position should it begin to under- or over-perform. These additional transactions may also benefit from the exemption provided the transactions are intended to hedge a commercial risk.

The facts and circumstances that exist at the time the transaction is executed should be considered to determine whether a transaction satisfies the criteria for hedging or mitigating commercial risk. A market participant which in the past has conducted speculative transactions using derivatives may use the end-user exemption for a transaction that meets the conditions set out in section 4.

The determination of whether the risk being hedged or mitigated is commercial will be based on the underlying activity to which the risk relates, not the type of entity claiming the end-user exemption. For example, a not-for-profit entity would not be prevented from relying on the end-user exemption. That determination will depend on the nature of the activity to which the risk being hedged or mitigated relates. The interpretation of "hedging or mitigating of commercial risk" leaves room for judgment but a flexible approach is needed given the variety of derivatives and potential counterparties that may qualify for the exemption and hedging strategies to which this Instrument applies.

~~Not extending the end-user exemption to speculative transactions is intended to prevent abuse of the exemption. A counterparty's ability to rely on the end-user exemption for a particular transaction depends on the purpose of the transaction.~~

~~Section 11 of NI 94-101 requires a local counterparty to maintain records demonstrating that the conditions to the exemption have been met. To meet this obligation, a local counterparty should develop sufficient policies and procedures to ensure that reasonable supporting documentation is prepared and retained with respect to transactions for which the end-user exemption will be relied upon. We would generally consider several factors in determining what constitutes reasonable supporting documentation, including the sophistication of the local counterparty and the regularity with which it enters into derivatives transactions. Where reasonable, we would expect such documentation to include: the risk management objective and nature of risk being hedged, the date of hedging, the hedging instrument, the hedged item or risk, how hedge effectiveness will be assessed, and how hedge ineffectiveness will be measured and corrected as appropriate.~~

(2) For the purpose of the interpretation of control, a person or company will always be considered to control a trust to which it is acting as trustee.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

~~5.~~ **3. (1)** The duty to submit a transaction for clearing only applies at the time the transaction is executed. If a derivative or class of derivatives is determined to be a mandatory clearable derivative after the date of execution of a transaction in that derivative or class of derivatives, a local counterparty will not be required to submit the transaction for clearing. However, if after a derivative or class of derivatives is determined to be a mandatory clearable derivative, there is another transaction in that same derivative, including a material amendment to a previous transaction, (as discussed in subsection 1(1) above), that transaction in or material amendment to the derivative will be subject to the mandatory clearing requirement. Where a derivative is not subject to the mandatory clearing requirement, but the derivative is clearable through a regulated clearing agency, the counterparties have the option to submit the derivative for clearing at any time.

For a local counterparty that is not a ~~clearing member~~participant of a regulated clearing agency**,** we have used the phrase "cause to be submitted" to refer to the local counterparty's obligation. ~~The~~ In order to comply with subsection (1), a local counterparty ~~will~~would need to have arrangements in place with a participant for clearing ~~member~~services in advance of entering into a transaction~~.~~ in a mandatory clearable derivative.

A transaction in a mandatory clearable derivative is required to be cleared when at least one of the counterparties is a local counterparty and one or more of paragraphs (a), (b) or (c) apply to both counterparties.

A local counterparty that has or has had a month-end gross notional amount of outstanding derivatives exceeding the threshold in paragraph (c), for any month following the entry into force of the Instrument, must clear all its subsequent transactions in a mandatory clearable derivative with another counterparty captured under one or more of paragraphs (a), (b), or (c). A local counterparty that is a participant at a regulated clearing agency who does not subscribe to clearing services for a mandatory clearable derivative would still have to clear such transactions if it is subject to paragraph (c).

A local counterparty determines whether it exceeds the threshold in paragraph (c) by calculating the notional amount of all outstanding derivatives which were entered into by itself and those of its affiliated entities that are also local counterparties. However, the calculation of the gross notional amount excludes derivatives entered into by entities that are prudentially supervised on a consolidated basis or whose financial statements are prepared on a consolidated basis, which are exempted in section 7.

(2) The Instrument requires that a transaction subject to mandatory central clearing be submitted to a regulated clearing agency as soon as practicable, but no later than the end of the day on which the transaction was executed or if the transaction occurs after business hours of the clearing agency, the next business day.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Non-application

~~The obligation to submit a~~ **6.** A transaction ~~for clearing only applies at the time the transaction is executed. If a derivative or class of derivatives is determined to be subject to the clearing requirement after the date of execution of a transaction in that derivative or class of derivatives, a local~~ involving a counterparty ~~will not be required to submit the transaction for clearing. However, if after a clearing determination is made in respect of a derivative or class of derivatives, there is another transaction in that same derivative, including a material amendment to it, (as discussed in section 1 above), that transaction in or material amendment to the derivative will be subject to the mandatory clearing requirement. Where a derivative is not subject to the requirement to submit for clearing but the derivative is clearable through a regulated clearing agency, the counterparties have the option to submit the derivative for clearing at any time.~~

~~**Non-Application**~~

~~**6.** Section 5 does not apply to any transaction in a mandatory clearable derivative with~~ that is an entity listed in section 6~~. Transactions with an entity listed in section 6 are~~ is not subject to the duty to submit for clearing under section ~~5~~3 even if the other counterparty is otherwise subject to it.

For the purpose of paragraphs (b) and (c), it is our view that the guarantee must be for all or substantially all of the liabilities of the crown corporation or entity wholly owned by a government referred to in paragraph (a).

Notice of rejection

7. The rules of regulated clearing agencies providing for confirmations and rejections of transactions as well as legal arrangements governing indirect clearing, where applicable, should ensure that the counterparties are notified of the rejection of a transaction submitted for clearing.

PART 3
EXEMPTIONS AND APPLICATION

End user The expression “government of a foreign jurisdiction” in paragraph (a) is interpreted as including sovereign and sub sovereign governments.

Intragroup exemption

9. (1) Section 9 exempts a transaction from the clearing requirement under section 5 provided that at least one of the counterparties is not a financial entity as defined in section 1 and such transaction, at the time of execution, is intended to hedge, directly or indirectly, commercial risk related to the operation of the business of one of the counterparties that is not a financial entity. If, after execution of the transaction, circumstances change such that the transaction no longer meets the criteria of hedging or mitigating commercial risk, it will not result in a requirement to submit the transaction for clearing under section 5.

Entities not defined as a financial entity may benefit from the end-user exemption provided the particular transaction meets the interpretation of hedging or mitigating commercial risk in section 4 of NI 94-101.

(2) Certain entities may choose to centralize their trading activities through one affiliated entity. An entity that meets all conditions related to the end-user exemption can have an affiliated entity act on its behalf. The affiliated entity acting on behalf of the entity cannot be an entity subject to, registered under or exempted from the registration requirement under the securities legislation of a jurisdiction of Canada, although it may be a financial entity, provided that the conditions in paragraphs (a), (b) and (c) are met. The end-user exemption includes subsection (2) to allow affiliated entities that are part of a non-financial group to use the end-user exemption to enter into a market-facing transaction so long as the transaction is a hedge under the Instrument. For a transaction to continue to be considered to hedge commercial risk and qualify under the end-user exemption, the affiliated entity may act only on behalf of the entity, and may not act in this capacity for entities that are not affiliated entities, that is to say it cannot be a dealer.

INTRAGROUP EXEMPTION

7. ~~10.~~ **(1)** ~~and (2)~~ The ~~exemption for~~ intragroup ~~transactions~~exemption is based on the premise that the risk created by these transactions is expected to be managed in a centralized manner to allow for the risk to be identified and managed appropriately. ~~Entities using this exemption should have appropriate legal documentation between the affiliated entities and detailed operational material outlining the robust risk management techniques used by the overall parent entity and its affiliated entities when entering into the intragroup transactions.~~

~~Paragraph 10(1)(~~This subsection sets out the conditions that must be met for the counterparties to rely on the intragroup exemption for a transaction in a mandatory clearable derivative. Subparagraph (a)(i) extends the availability of the intragroup ~~transaction~~ exemption ~~provided for in subsection (2)~~ to transactions among certain entities that do not prepare consolidated financial statements. This may apply, e.g., to cooperatives or other entities that are prudentially supervised on a consolidated basis. ~~—~~Entities prudentially supervised on a consolidated basis are counterparties that are supervised on a consolidated basis either by the Office of the Superintendent of Financial Institutions (Canada), a government department or a regulatory authority of Canada or a jurisdiction of Canada responsible for regulating deposit-taking institutions.

~~Subsection (2) sets out the conditions that must be met for the intragroup counterparties to rely on the intragroup exemption for a transaction in a mandatory clearable derivative. Paragraph (b~~Paragraph (c) refers to a system of risk management policies and procedures designed to monitor and manage the risks associated with a particular transaction. We are of the view that ~~a group of affiliated entities~~counterparties relying on this exemption may structure ~~its~~their centralized risk management according to ~~its~~their unique needs, provided that the program reasonably monitors and manages risks associated with non-centrally cleared derivatives.

(~~3~~2**)** Within 30 days of the first transaction between two ~~affiliated~~ entities relying on the ~~section 10~~ intragroup exemption, a completed Form 94-101F1 *Intragroup Exemption* ("Form 94-101F1") must be ~~submitted~~delivered to the regulator to notify the regulator that the exemption is being relied upon. The information ~~submitted~~provided in the Form 94-101F1 will aid the regulators in better understanding the legal and operational structure ~~being used to allow~~allowing counterparties to benefit from the intragroup exemption. The obligation to ~~submit~~deliver the completed Form 94-101F1 is imposed on one of the counterparties to a transaction relying on the exemption. For greater clarity, a completed Form 94-101F1 must be ~~submitted~~delivered for each pairing of ~~affiliated entities~~counterparties that seek to rely upon the intragroup exemption. One completed Form 94-101F1 is valid for every transaction between the pair provided that the requirements set out in subsection (1) continue to apply.

(~~4~~3**)** Examples of changes to the information ~~submitted~~provided that ~~we~~ would ~~consider material~~require an amended Form 94-101F1 include: (i) a change in the control structure of one or more of the ~~affiliated entities~~counterparties listed in Form 94-101F1, and (ii) any significant amendment to the risk evaluation, measurement and control procedures of ~~an affiliated entity~~a counterparty listed in Form 94-101F1.

~~**Record keeping**~~

~~11~~**Multilateral portfolio compression exemption**

8. A multilateral portfolio compression exercise is an exercise which involves more than two counterparties who wholly change or terminate the notional amount of some or all of the prior transactions submitted by the counterparties for inclusion in the exercise and, depending on the methodology employed, replace the terminated derivatives with other derivatives whose combined notional amount, or some other measure of risk, is less than the combined notional amount, or some other measure of risk, of the derivatives terminated in the exercise.

The purpose of a multilateral portfolio compression exercise is to reduce operational or counterparty credit risk by reducing the number or notional amounts of outstanding derivatives between counterparties and aggregate gross number or notional amounts of outstanding derivatives.

The expression "resulting transaction" refers to the transaction resulting from the multilateral portfolio compression exercise. The expression "prior transactions" refers to transactions that were entered into before the multilateral portfolio compression exercise. Those prior transactions were not required to be cleared under the Instrument, either because they did not include a mandatory clearable derivative or because they were entered into before the derivative or class of derivatives became a mandatory clearable derivative.

We would expect a local counterparty involved in a multilateral portfolio compression exercise to comply with its credit risk tolerance levels. To do so, we expect each participant to the compression exercise to set its own counterparty, market and cash payment risk tolerance levels so that the exercise does not alter the risk profiles of each participant beyond a level acceptable to the participant. Consequently, prior transactions that would be reasonably likely to significantly increase the risk exposure of the participant cannot be included in the portfolio compression exercise in order to benefit from this exemption.

We would generally expect that the resulting transaction would have the same material terms as the prior transactions with the exception of reducing the notional amount of outstanding derivatives.

Recordkeeping

9. (1) We would generally expect that the reasonable supporting documentation to be kept in accordance with section ~~11~~9 would include full and complete records of any analysis undertaken by the ~~end-user~~local counterparty to demonstrate it satisfies the ~~requirements~~conditions necessary to rely on the ~~end-user exemption under section 9 or the~~ intragroup exemption under section ~~10~~7 or the multilateral portfolio compression exemption under section 8.

~~With respect to the end-user exemption under section 9, reasonable supporting documentation should be kept for each transaction where the end-user exemption is relied upon, setting out the~~

~~basis on which the transaction is entered into for the purposes of hedging or mitigating commercial risk, including:~~

- ~~risk management objective and nature of risk being hedged,~~
- ~~date of hedging,~~
- ~~hedging instrument,~~
- ~~hedged item or risk,~~
- ~~how hedge effectiveness will be assessed, and~~
- ~~how hedge ineffectiveness will be measured and corrected as appropriate.~~

~~The level of diligence required may vary depending on the circumstances of each counterparty. We would generally expect that, to the extent produced in relation to an end-user counterparty, records to be kept in accordance with section 11 would include documentation of the end-user's macro, proxy or portfolio hedging strategy or program and the results of regular compliance audits to ensure such strategy or program continues to be used for relevant hedging purposes.~~

~~In determining whether an exemption is available, a local counterparty may rely on factual representations by the other counterparty, provided that the local counterparty has no reasonable grounds to believe that those representations are false. However, the~~
The local counterparty subject to the mandatory central counterparty clearing requirement is responsible for determining whether, given the facts available, the exemption is available. Generally, we would expect a local counterparty relying on an exemption to retain all documents that show it properly relied on the exemption. It is not appropriate for a local counterparty to assume an exemption is available.

Counterparties using the intragroup exemption under section 7 should have appropriate legal documentation between them and detailed operational material outlining the risk management techniques used by the overall parent entity and its affiliated entities with respect to the transactions benefiting from the exemption.

PART 4
MANDATORY CLEARABLE DERIVATIVES

and

PART 6
TRANSITION AND EFFECTIVE DATE

~~**12 & 14.**~~ **10 & 12.** A regulated clearing agency must deliver a Form 94-101F2 *Derivatives*

Clearing Services ("Form 94-101F2") to identify all derivatives for which it provides clearing services within 30 days of the coming into force of the Instrument pursuant to section 12. A new derivative or class of derivatives added to the offer of clearing services after the Instrument is in force is declared through a Form 94-101F2 within 10 days of the launch of such service pursuant to section 10.

Each of the regulators has the power to determine by rule or otherwise which derivative or classes of derivatives will be subject to the mandatory central counterparty clearing requirement. through a top-down approach. Furthermore, NI 94-101 includes a bottom-up approach for determining whether a derivative or class of derivatives will be subject to the mandatory clearing obligation. The information required by Form 94-101F2 *Derivatives Clearing Services* ("Form 94-101F2") will allowassist the CSA to carryin carrying out this determination.

In the course of determining whether a derivative or class of derivatives will be subject to the clearing requirement, some of the factors we will consider include the following:

- the level of standardization of the derivative, such as the availability of electronic processing, the existence of master agreements, product definitions and short form confirmations;

- 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 to be cleared would bring undue risk to regulated clearing agencies;

- the outstanding notional exposuresamount of counterparties transacting in the derivative or class of derivatives, the current liquidity in the market for the derivative or class of derivatives and the availability of reliable and timely pricing data;

- the existence of third-party vendors providing pricing services;

- with regards to a regulated clearing agency, the existence of an appropriate rule framework, and the existence of capacity, operational expertise and resources, and credit support infrastructure to clear the derivative on terms that are consistent with the material terms and trading conventions on which the derivative is then traded;

- whether a regulated clearing agency would be able to manage the risk of the additional derivatives that might be submitted due to the clearing requirement determination;

- the effect on competition, taking into account appropriate fees and charges applied to clearing, and whether mandating clearing of the derivative could harm competition;

- alternative derivatives or clearing services co-existing in the same market;

- ~~the existence of a clearing obligation in other jurisdictions;~~

- the public interest.

FORM 94-101F1
INTRAGROUP EXEMPTION

Submission of information on intragroup transactions by a local counterparty

In item 3 of section 2, the phrase "in the manner required under the securities legislation" means in accordance with section 28 of the TR Instrument.

The forms delivered by or on behalf of a local counterparty under the Instrument will be kept confidential in accordance with the provisions of the applicable legislation. We are of the view that the forms generally contain proprietary information, and that the cost and potential risks of disclosure for the counterparties to an intragroup transaction outweigh the benefit of the principle requiring that forms be made available for public inspection.

While Form 94-101F1 and any amendments to it will be kept generally confidential, if the regulator considers that it is in the public interest to do so, it may require the public disclosure of a summary of the information contained in such form, or amendments to it.

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

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

Paragraphs (a), (b) and (c) of item 2 in section 2 ~~of Form 94-101F2~~ address the potential for a derivative or class of derivatives to be a mandatory clearable derivative given its level of standardization in terms of market conventions, including legal documentation, processes and procedures, and whether pre- to post~~--~~ transaction operations are carried out predominantly by electronic means. The standardization of the economic terms is a key input in the determination process as discussed in the following section.

In paragraph (a~~),~~) of item 2 in section 2, life~~-~~cycle ~~event~~events has the same meaning as in section 1 of the TR Instrument.

Paragraphs (d) and (e) of item 2 in section 2 ~~of Form 94-101F2~~ provide details ~~needed~~ to ~~assess~~assist in assessing the ~~extensiveness of~~market characteristics such as the ~~use~~activity (volume and notional amount) of a particular derivative or class of derivatives, the nature and landscape of the market for that derivative or class of derivatives and the potential impact ~~a~~its determination ~~for central counterparty clearing~~as a mandatory clearable derivative could have on market participants, including the regulated clearing agency. The determination process will

~~have~~involve different or additional considerations when assessing whether a derivative or class of derivatives should be a mandatory clearable derivative in terms of its liquidity and price availability, versus the considerations used by the ~~securities~~ regulator in ~~allowing~~permitting a regulated clearing agency to offer clearing services for a derivative or class of derivatives. ~~The stability of~~Stability in the ~~pricing~~ availability of pricing information will also be an important factor considered in the determination process. Metrics such as the total number of transactions and aggregate notional amounts, and outstanding positions can be used to justify the confidence and frequency with which the pricing of a derivative or class of derivatives is calculated. The data presented should also cover a reasonable period of time of no less than 6 months. Suggested information to be provided on the market includes

~~APPENDIX A~~

~~For each mandatory clearable derivative, the requirement under section 5 to submit, or cause to be submitted, a transaction for clearing does not apply to a local counterparty until both counterparties to a transaction are subject to it pursuant to Appendix A or, in Québec, as determined by the Autorité des marchés financiers. For example, where a transaction is between a counterparty that is a member of a regulated clearing agency that offers clearing services for the mandatory clearable derivative and subscribes to such service and a counterparty that is neither a member of a regulated clearing agency nor a financial entity, section 5 will not apply until 18 months after the date on which section 5 will apply to the first counterparty.~~

~~Where a local counterparty enters into more than one category provided in Appendix A or, in Québec, as determined by the Autorité des marchés financiers, the earlier date on which section 5 applies to it prevails. For example, where a local counterparty is both a member of a regulated clearing agency that offers clearing services for the mandatory clearable derivative and subscribes to such service and a financial entity, its status as a member of a regulated clearing agency prevails for purposes of the date on which section 5 applies.~~

- statistics regarding the percentage of activity of participants on their own behalf and for customers,

- average net and gross positions including the direction of positions (long or short), by type of market participant submitting transactions directly or indirectly, and

- average trading activity and concentration of trading activity among participants by type of market participant submitting transactions directly or indirectly.