

CSA Notice and Request for Comment
Proposed Amendments to
National Instrument 94-101
Mandatory Central Counterparty Clearing of Derivatives
and Proposed Changes to Companion Policy 94-101
Mandatory Central Counterparty Clearing of Derivatives

October 12, 2017

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing the following, for a 90-day comment period expiring on January 10, 2018:

- proposed amendments (the **Proposed Rule Amendments**) to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **National Instrument**), and
- proposed changes (the **Proposed CP Changes**) to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **CP**).

Together, the Proposed Rule Amendments and the Proposed CP Changes are referred to as the **Proposed Amendments**. We are issuing this notice to solicit comments on the Proposed Amendments.

Background

The CSA is proposing the Proposed Amendments based on consultations with and feedback from various market participants, and in order to more effectively and efficiently promote the underlying policy aims of the National Instrument.

The National Instrument was published on January 19, 2017 and came into force on April 4, 2017 (with the exception of Saskatchewan where it came into force on April 5, 2017). The purpose of the National Instrument is to reduce counterparty risk in the over-the-counter (**OTC**) derivatives market by requiring certain counterparties to clear certain prescribed derivatives through a central clearing counterparty (the **Clearing requirement**).

The Clearing requirement became effective for certain counterparties on the coming into force date of the National Instrument, and was initially scheduled to become effective for certain other counterparties on October 4, 2017. To facilitate the rule-making process for the Proposed Amendments, including this publication for comment, the CSA jurisdictions (except Ontario) have exempted from the Clearing requirement until August 20, 2018

those counterparties that would have been subject to the Clearing requirement on October 4, 2017.¹ In Ontario, the Ontario Securities Commission has amended the National Instrument to extend the effective date of the Clearing requirement for those counterparties until August 20, 2018.²

Substance and Purpose of the Proposed Amendments

The purpose of the Proposed Amendments is to refine the scope of counterparties to which the Clearing requirement applies and the types of derivatives that are subject to the Clearing requirement.

The Proposed CP Changes correspond to the Proposed Rule Amendments.

Summary of the Proposed Rule Amendments

Subsection 3(1) of the National Instrument currently requires a local counterparty to a transaction in a mandatory clearable derivative to submit it for clearing to a regulated clearing agency if one or more of the following apply:

- under paragraph 3(1)(a), the counterparty is a participant of the regulated clearing agency and subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;
- under paragraph 3(1)(b), the counterparty is an affiliated entity of a participant referred to in paragraph 3(1)(a) and has a month-end gross notional amount under all outstanding derivatives exceeding \$1 billion, excluding derivatives to which paragraph 7(1)(a) applies;
- under paragraph 3(1)(c), the counterparty is a local counterparty in any jurisdiction of Canada, other than a counterparty to which paragraph 3(1)(b) applies, and has had a month-end gross notional amount exceeding \$500 billion combined with each affiliated entity that is a local counterparty in Canada, excluding derivatives to which paragraph 7(1)(a) applies.

Paragraphs 3(1)(b) and (c) are the subject of the Ontario amendment to the relevant effective date and the Blanket Order exemptions in all other jurisdictions, discussed above.

The proposed amendments to paragraphs 3(1)(b) and (c) of the National Instrument would exclude from the Clearing requirement a trust or an investment fund that is an

¹ Blanket Order 94-501, available on the website of the securities regulatory authority in the local jurisdiction.

² See, in Ontario, Ontario Securities Commission, Amendment to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*, published July 6, 2017.

affiliated entity of either (i) a participant of a regulated clearing agency who subscribes to the clearing services in respect of a mandatory clearable derivative, or (ii) a local counterparty whose month-end gross notional amount under all outstanding derivatives, combined with each Canadian affiliated entity, exceeds \$500 billion. As a result, those investment funds and trusts would not be subject to the Clearing requirement.

Further, in calculating the gross notional amount outstanding for the purpose of the \$500 billion threshold under paragraph 3(1)(c), the gross notional amount outstanding of an investment fund or a trust would no longer be aggregated with other affiliated entities.

In addition, the Clearing requirement under paragraph 3(1)(c) would no longer apply to a local counterparty with a gross notional amount of outstanding derivatives of \$1 billion or less excluding the notional amount of mandatory clearable derivatives to which paragraph 7(1)(a) applies.

Finally, the proposed amendments relating to Appendix A of the National Instrument would remove overnight index swaps with variable notional type and forward rate agreements with variable notional type from the list of mandatory clearable derivatives as those are not currently offered for clearing by regulated clearing agencies.

Local Matters

Annex E to this notice is being published in any local jurisdiction where any additional information is relevant to that jurisdiction only.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A Proposed Amendments to National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*
- Annex B Blackline of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* showing the Proposed Rule Amendments
- Annex C Proposed Changes to Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*
- Annex D Blackline of Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* showing the Proposed CP Changes
- Annex E Local Matters

Request for Comments

Please provide your comments in writing by **January 10, 2018**. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com and the Autorité des marchés financiers at www.lautorite.qc.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.

Thank you in advance for your comments.

Please address your comments to each of the following:

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

Please send your comments **only** to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd floor
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Questions

Please refer your questions to any of:

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