



## NOTICE TO MEMBERS

No. 2017 – 046

April 5<sup>th</sup>, 2017

### **SELF-CERTIFICATION**

#### **AMENDMENTS TO SECTIONS A-1A04 AND A-401 OF THE RULES OF THE CANADIAN DERIVATIVES CLEARING CORPORATION**

On July 28, 2016, the Board of Directors of the Canadian Derivatives Clearing Corporation (CDCC) approved amendments to Sections A-1A04 and A-401 of the Rules of the CDCC. The CDCC wishes to inform the Clearing Members that these amendments have been self-certified pursuant to the self-certification process set forth in the *Derivatives Act* (C.Q.L.R., c I-14.01) and approved by the Ontario Securities Commission in accordance with the “Rule Change Requiring Approval in Ontario” process.

On August 9<sup>th</sup>, 2016, CDCC published a request for comments with respect to the amendments to the Rules of CDCC.

The purpose of the amendments is to establish and document CDCC’s intention to enter into consultation with the Bank of Canada before declaring certain Clearing Members Non-Conforming or using enforcement measures permitted under such status.

The scope of CDCC’s obligation is however circumscribed to a Clearing Member who may be affected by an order under subsection 39.13(1) of the Canada Deposit Insurance Corporation Act or the Affiliates of such Clearing Member. Additional modifications were made to Sections A-1A04 and A-401 of the Rules since publication for comments which were self-certified to reflect this limited scope. The language was adjusted accordingly to provide greater transparency as to the nature of the obligation of the Corporation with respect to its consultation with the Bank of Canada.

You will find attached hereto the amendments set to come into force and to be incorporated into the version of the Rules of the CDCC that will be made available on the CDCC website at [www.cdcc.ca](http://www.cdcc.ca) as of April 5<sup>th</sup>, 2017.

If you have any questions or concerns regarding this notice, please contact CDCC’s Corporate Operations department or direct your email inquiries to [cdcc-ops@tmx.com](mailto:cdcc-ops@tmx.com).

Glenn Goucher  
President and Chief Clearing Officer

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**Canadian Derivatives Clearing Corporation**

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APPENDIX 1

(BLACKLINE)

SECTION A-1A04 and A-401

RULE A-1A MEMBERSHIP IN THE CORPORATION

(...)

SECTION A-1A04 NON-CONFORMING MEMBER

- 1) A Clearing Member who is or may become insolvent or unable to meet its obligations shall immediately notify the Corporation of its situation by telephone. Such notice shall be confirmed by the Clearing Member by notice in writing to the Corporation sent by facsimile transmission within the next business day.
- 2) A Clearing Member who, in the judgement of the Corporation or pursuant to notification to the Corporation under Subsection (1), is or may be insolvent or unable to meet its obligations, becomes a Non-Conforming Member.
- 3) Without limiting the application of this Rule, any one of the following events, whether actual or anticipated by the Corporation, constitutes a reasonable ground for the Corporation to determine in its judgement that a Clearing Member is a Non-Conforming Member:
  - a) breach of any term, eligibility, qualification, standard or condition of the Application for Membership or any other violation of these Rules;
  - b) breach of a rule of an Exchange, a Central Securities Depository, an applicable self-regulatory organization or regulatory agency, or of any other recognized, designated or foreign investment exchange or clearing agency;
  - c) refusal of an application for membership, breach of the terms of membership or contractual agreement, or suspension, termination or expulsion from membership of an Exchange, a Central Securities Depository, an applicable self-regulatory organization, Market Centres and/or Delivery Agents, the Registry, or any other recognized, designated or foreign investment exchange or clearing agency;
  - d) refusal of a licence, breach of the terms of its licence or withdrawal or suspension of such licence by a regulatory agency;
  - e) contemplated, threatened or actual action by a regulatory agency, a court of justice or administrative authority against or in respect of the Clearing Member under any provision or process of law or regulation;
  - f) default in a payment, deposit, delivery or acceptance of delivery required or payable under the Application for Membership or these Rules;
  - g) an order, arrangement, proposal, distress or execution is presented, made or approved in any jurisdiction to or by a court of competent jurisdiction relating to the bankruptcy, insolvency, winding up of the Clearing Member or the appointment of an administrator,

receiver manager, trustee, or person with similar power in connection with the Clearing Member;

- h) the determination on reasonable grounds by the Corporation that the Clearing Member is in such financial or operating condition that its continuation as a Clearing Member in good standing would jeopardize the interests of the Corporation or other Clearing Members;
  - i) any of the conditions set out in paragraphs (a) to (h) applies to an Affiliate of a Clearing Member, having, in the reasonable judgement of the Corporation, a material impact on the financial condition of the Clearing Member; or
  - j) such other event as the Board or, if time does not permit action by the Board, the Corporation in its sole discretion reasonably determines to constitute reasonable grounds for such determination.
- 4) If a Clearing Member is late in making a payment at Settlement Time, the Corporation shall impose fines and may deem that Clearing Member a Non-Conforming Member, in accordance with Section 7 of the Operations Manual. In addition, the Board may take disciplinary measures set forth in Rule A-5 against the Non-Conforming Member.
- 5) Except where the Corporation has been notified under Subsection (1), the Corporation shall, in writing or by telephone, notify a Clearing Member that it has become a Non-Conforming Member. Before doing so, the Corporation may will enter into consultations with the Bank of Canada with respect to a Clearing Member who may be affected by an order under subsection 39.13(1) of the Canada Deposit Insurance Corporation Act or the Affiliates of such Clearing Member. The Corporation may also, in its sole discretion, notify the Board, all Clearing Members, the Exchanges, the appropriate self-regulatory organization or regulatory agency that the Clearing Member is a member of, the regulatory agency of the Corporation, and such other Entities as the Corporation may consider appropriate.
- 6) The Corporation can revert the status of a Non-Conforming Clearing Member to a Clearing Member in good standing if the Clearing Member resolves, to the satisfaction of the Corporation, the issue(s) which led to its Non-Conforming status.

(...)

#### RULE A-4 ENFORCEMENT

##### SECTION A-401 ACTION AGAINST A NON-CONFORMING OR SUSPENDED MEMBER

1) The actions contemplated by the Rules in respect of a Non-Conforming Member or Suspended Member may be taken in any sequence the Corporation deems appropriate.

2) In addition to a measure made available to the Corporation under the Rules and the Application for Membership to remedy a specific or general default of a Clearing Member, where a Clearing Member is a Non-Conforming Member, the Corporation may take any one of the actions prescribed by the Rules in respect of such Clearing Member including, but not limited to:

- a) prohibiting and/or imposing limitations on the acceptance and/or clearance of Transactions by such Clearing Member;
- b) increasing the Margin Requirements for such Clearing Member or requiring additional Margin Deposits;

- c) requiring such Clearing Member to reduce or close out (or closing out on behalf of such Clearing Member) existing Transactions in such Clearing Member's accounts with the Corporation and, upon such close out, converting all amounts into Canadian currency and calculating one net amount (taking into account the Corporation's rights with respect to the Margin Deposit of such Clearing Member) owing to such Clearing Member by the Corporation or by such Clearing Member to the Corporation;
- d) transferring, whether by way of transfer, by way of assignment, by way of termination, close-out and re-establishment or otherwise, any Client Account maintained by such Clearing Member with the Corporation, any position maintained in such account and any Margin Deposits held by the Corporation in respect of such account, to another Clearing Member;
- e) sanctioning, reprimanding, fining or imposing a penalty on the Clearing Member;
- f) preventing or restricting the Clearing Member's right to withdraw any excess in Margin Deposits pursuant to Section A-607 or Section A-704; and
- g) suspending the Non-Conforming Member.

~~The actions contemplated by the Rules in respect of a Non-Conforming Member may be taken in any sequence the Corporation deems appropriate.~~

2)3) Upon the suspension of the Clearing Member and in addition to a measure made available to the Corporation under A-401 (2+) or under the Rules, the Corporation may take any one of the actions prescribed by the Rules in respect of such Clearing Member including, but not limited to:

- a) applying the Margin Deposit (including, without limitation, Margin and Clearing Fund) of the suspended Clearing Member against the obligations of such Member to the Corporation, subject to Subsection A-402(3) and, for such purpose, selling, transferring, using or otherwise dealing or disposing of any property deposited as Margin Deposit at any time, without prior notice to the Clearing Member;
- b) transferring, terminating, closing out or liquidating any or all of the Clearing Member Transactions or Open Positions, and upon such close out, converting all amounts into Canadian currency and calculating one net amount (taking into account the Corporation's rights with respect to the Margin Deposit of such Clearing Member) owing to such Clearing Member by the Corporation or by such Clearing Member to the Corporation.

~~The actions contemplated by the Rules in respect of suspended Clearing Members may be taken in any sequence the Corporation deems appropriate.~~

4) ~~Before exercising any actions contemplated under this Section, however, the Corporation may will enter into consultations with the Bank of Canada and specify the actions it considers exercising with respect to the Non-Conforming or Suspended Member who may be affected by an order under subsection 39.13(1) of the Canada Deposit Insurance Corporation Act or the Affiliates of such Clearing Member.~~

APPENDIX 2

(CLEAN)

SECTION A-1A04 and A-401

RULE A-1A MEMBERSHIP IN THE CORPORATION

(...)

SECTION A-1A04 NON-CONFORMING MEMBER

- 1) A Clearing Member who is or may become insolvent or unable to meet its obligations shall immediately notify the Corporation of its situation by telephone. Such notice shall be confirmed by the Clearing Member by notice in writing to the Corporation sent by facsimile transmission within the next business day.
- 2) A Clearing Member who, in the judgement of the Corporation or pursuant to notification to the Corporation under Subsection (1), is or may be insolvent or unable to meet its obligations, becomes a Non-Conforming Member.
- 3) Without limiting the application of this Rule, any one of the following events, whether actual or anticipated by the Corporation, constitutes a reasonable ground for the Corporation to determine in its judgement that a Clearing Member is a Non-Conforming Member:
  - a) breach of any term, eligibility, qualification, standard or condition of the Application for Membership or any other violation of these Rules;
  - b) breach of a rule of an Exchange, a Central Securities Depository, an applicable self-regulatory organization or regulatory agency, or of any other recognized, designated or foreign investment exchange or clearing agency;
  - c) refusal of an application for membership, breach of the terms of membership or contractual agreement, or suspension, termination or expulsion from membership of an Exchange, a Central Securities Depository, an applicable self-regulatory organization, Market Centres and/or Delivery Agents, the Registry, or any other recognized, designated or foreign investment exchange or clearing agency;
  - d) refusal of a licence, breach of the terms of its licence or withdrawal or suspension of such licence by a regulatory agency;
  - e) contemplated, threatened or actual action by a regulatory agency, a court of justice or administrative authority against or in respect of the Clearing Member under any provision or process of law or regulation;
  - f) default in a payment, deposit, delivery or acceptance of delivery required or payable under the Application for Membership or these Rules;

- g) an order, arrangement, proposal, distress or execution is presented, made or approved in any jurisdiction to or by a court of competent jurisdiction relating to the bankruptcy, insolvency, winding up of the Clearing Member or the appointment of an administrator, receiver manager, trustee, or person with similar power in connection with the Clearing Member;
  - h) the determination on reasonable grounds by the Corporation that the Clearing Member is in such financial or operating condition that its continuation as a Clearing Member in good standing would jeopardize the interests of the Corporation or other Clearing Members;
  - i) any of the conditions set out in paragraphs (a) to (h) applies to an Affiliate of a Clearing Member, having, in the reasonable judgement of the Corporation, a material impact on the financial condition of the Clearing Member; or
  - j) such other event as the Board or, if time does not permit action by the Board, the Corporation in its sole discretion reasonably determines to constitute reasonable grounds for such determination.
- 4) If a Clearing Member is late in making a payment at Settlement Time, the Corporation shall impose fines and may deem that Clearing Member a Non-Conforming Member, in accordance with Section 7 of the Operations Manual. In addition, the Board may take disciplinary measures set forth in Rule A-5 against the Non-Conforming Member.
- 5) Except where the Corporation has been notified under Subsection (1), the Corporation shall, in writing or by telephone, notify a Clearing Member that it has become a Non-Conforming Member. Before doing so, the Corporation will enter into consultations with the Bank of Canada with respect to a Clearing Member who may be affected by an order under subsection 39.13(1) of the Canada Deposit Insurance Corporation Act or the Affiliates of such Clearing Member. The Corporation may also, in its sole discretion, notify the Board, all Clearing Members, the Exchanges, the appropriate self-regulatory organization or regulatory agency that the Clearing Member is a member of, the regulatory agency of the Corporation, and such other Entities as the Corporation may consider appropriate.
- 6) The Corporation can revert the status of a Non-Conforming Clearing Member to a Clearing Member in good standing if the Clearing Member resolves, to the satisfaction of the Corporation, the issue(s) which led to its Non-Conforming status.

(...)

#### RULE A-4 ENFORCEMENT

##### SECTION A-401 ACTION AGAINST A NON-CONFORMING OR SUSPENDED MEMBER

- 1) The actions contemplated by the Rules in respect of a Non-Conforming Member or Suspended Member may be taken in any sequence the Corporation deems appropriate.
- 2) In addition to a measure made available to the Corporation under the Rules and the Application for Membership to remedy a specific or general default of a Clearing Member, where a Clearing Member is a Non-Conforming Member, the Corporation may take any one of the actions prescribed by the Rules in respect of such Clearing Member including, but not limited to:
  - a) prohibiting and/or imposing limitations on the acceptance and/or clearance of Transactions by such Clearing Member;

- b) increasing the Margin Requirements for such Clearing Member or requiring additional Margin Deposits;
  - c) requiring such Clearing Member to reduce or close out (or closing out on behalf of such Clearing Member) existing Transactions in such Clearing Member's accounts with the Corporation and, upon such close out, converting all amounts into Canadian currency and calculating one net amount (taking into account the Corporation's rights with respect to the Margin Deposit of such Clearing Member) owing to such Clearing Member by the Corporation or by such Clearing Member to the Corporation;
  - d) transferring, whether by way of transfer, by way of assignment, by way of termination, close-out and re-establishment or otherwise, any Client Account maintained by such Clearing Member with the Corporation, any position maintained in such account and any Margin Deposits held by the Corporation in respect of such account, to another Clearing Member;
  - e) sanctioning, reprimanding, fining or imposing a penalty on the Clearing Member;
  - f) preventing or restricting the Clearing Member's right to withdraw any excess in Margin Deposits pursuant to Section A-607 or Section A-704; and
  - g) suspending the Non-Conforming Member.
- 3) Upon the suspension of the Clearing Member and in addition to a measure made available to the Corporation under A-401 (2) or under the Rules, the Corporation may take any one of the actions prescribed by the Rules in respect of such Clearing Member including, but not limited to:
- a) applying the Margin Deposit (including, without limitation, Margin and Clearing Fund) of the suspended Clearing Member against the obligations of such Member to the Corporation, subject to Subsection A-402(3) and, for such purpose, selling, transferring, using or otherwise dealing or disposing of any property deposited as Margin Deposit at any time, without prior notice to the Clearing Member;
  - b) transferring, terminating, closing out or liquidating any or all of the Clearing Member Transactions or Open Positions, and upon such close out, converting all amounts into Canadian currency and calculating one net amount (taking into account the Corporation's rights with respect to the Margin Deposit of such Clearing Member) owing to such Clearing Member by the Corporation or by such Clearing Member to the Corporation.
- 4) Before exercising any actions contemplated under this Section, however, the Corporation will enter into consultations with the Bank of Canada and specify the actions it considers exercising with respect to the Non-Conforming or Suspended Member who may be affected by an order under subsection 39.13(1) of the Canada Deposit Insurance Corporation Act or the Affiliates of such Clearing Member.