

CSA Notice and Request for Comment Proposed Amendments to National Instrument 14-101 *Definitions* and Consequential Amendments

PART 1 – Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing, for a 90-day comment period, proposed amendments to:

- National Instrument 14-101 *Definitions* (**NI 14-101**);
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**);
- National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**);
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-103**);
- National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (**NI 94-102**)

(collectively, the **Proposed Amendments**).

We are issuing this Notice to solicit your comments on the Proposed Amendments.

The public comment period expires on July 21, 2021.

The text of the Proposed Amendments is published with this Notice in the following annexes:

- Annex A – Proposed Amendments to NI 14-101;
- Annex B – Proposed Amendments to NI 31-103;
- Annex C – Proposed Amendments to NI 45-106;
- Annex D – Proposed Amendment to NI 62-103;
- Annex E – Proposed Amendment to NI 94-102.

This Notice also includes Annex F dealing with local matters, as applicable.

This Notice is also available on the following websites of CSA jurisdictions:

www.lautorite.qc.ca

www.bcsc.bc.ca

www.albertasecurities.com

www.osc.gov.on.ca

nssc.novascotia.ca

www.fcaa.gov.sk.ca

www.fcnb.ca

www.mbsecurities.ca

PART 2 – Substance and Purpose

We are proposing to make two central Proposed Amendments to NI 14-101:

- Canadian financial institution: We are proposing an amendment to NI 14-101, and consequential amendments to other instruments, so that there is a uniform definition of “Canadian financial institution” that applies to all national and multilateral instruments. The proposed consequential amendments repeal existing definitions of the same expression contained in certain national instruments.
- Handbook: We are proposing an amendment to NI 14-101 to introduce a revised definition of “Handbook” to reflect the separate publications of the Chartered Professional Accountants of Canada (CPAC) that relate to accounting and assurance. These publications set out the Canadian accounting and assurance frameworks.

PART 3 – Background

The Proposed Amendments to the definition of Canadian financial institution were initiated as a result of comments we received for the CSA project on proposed National Instrument 93-101 *Derivatives: Business Conduct (NI 93-101)*, which suggested that an update be made to the definition of “Canadian financial institution” used in proposed NI 93-101.

CSA staff studied this matter and concluded that the preferred approach would be to have a common definition in NI 14-101 of “Canadian financial institution” for all CSA instruments and to repeal definitions of that expression elsewhere in the national instruments.

The Proposed Amendments to the definition of “Handbook” were identified by CSA staff when the CPAC, formerly, the Canadian Institute of Chartered Accountants (CICA), separated the Handbook into two publications in 1999. However, the driving force for the change to the definition of “Handbook” occurred when the CICA became the CPAC in 2013, at which time it was determined that these proposed amendments would be published for comment when other amendments to NI 14-101 were published. CSA staff determined that it is appropriate to publish the proposed amendments to the definition of “Handbook” concurrently with the proposed amendments to the definition of “Canadian financial institution.”

PART 4 – Summary of the Proposed Amendments

NI 14-101 (Annex A)

The proposed amendments to the definition of “Canadian financial institution” are as follows:

- The revised definition of “Canadian financial institution” does not include a foreign bank listed in Schedule III to the *Bank Act* (Canada) (**Schedule III Bank**). The current definition of “Canadian financial institution” in NI 14-101 includes a “bank”, but “bank” is not defined. CSA staff determined that the definition of “Canadian financial institution” should be revised to specifically indicate that the only banks included are those listed in Schedule

I and II to the *Bank Act* (Canada). Schedule III Banks are not included in the revised definition, as it would be counterintuitive to include a foreign bank as a “Canadian financial institution.”

- The revised definition retains an association to which the *Cooperative Credit Associations Act* (Canada) applies, but removes a reference to subsection 473(1) of that Act because that subsection has been repealed.
- The revised definition retains a reference to a credit union and adds a reference to a central credit union, financial services cooperative, credit union league or federation that is incorporated or otherwise authorized to carry on business by or under an Act of the legislature of a jurisdiction to ensure that the definition includes all relevant references.
- The revised definition does not refer to “the Confédération des caisses populaires et d’économie Desjardins de Québec”, as this organization is now included in the revised definition because of that definition’s references to a credit union league and a caisse populaire.

As noted above, the revised definition of “Handbook” reflects that the CPAC have separate publications dealing with accounting and assurance.

Consequential Amendments (Annexes B, C and E)

Each of these annexes includes the proposed repeal of definitions of “Canadian financial institution” from the national instruments referenced in the annexes. These definitions are no longer required in those national instruments, as the proposed definition of that expression in NI 14-101 would then apply to these national instruments.

Consequential Amendment (Annex D)

CSA staff determined that, in order to maintain the status quo for the application of the early warning requirements, an amendment was required to NI 62-103 to specifically include Schedule III Banks in the definition of “financial institution” given the exclusion of Schedule III Banks from the proposed definition of “Canadian financial institution” in NI 14-101.

Housekeeping Amendments (Annexes B and C)

We are proposing the following housekeeping amendments in NI 31-103 and NI 45-106:

- References to “financial intermediary” in NI 31-103 and NI 45-106 are removed since that expression is narrower than “Canadian financial institution” and thus not necessary.
- The definition of “bank” in NI 45-106 is not necessary in light of the proposed exclusion of Schedule III Banks from the definition of “Canadian financial institution” in NI 14-101.

PART 5 – Request for Comments

We welcome comments on the Proposed Amendments, as well as comments (where applicable) on the proposals in Annex F.

Please submit your comments in writing on or before July 21, 2021.

Address your submission to all of the CSA as follows:

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

Deliver your comments only to the addresses listed below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Québec (Québec) G1V 5C1
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.ca

Comments Received will be Publicly Available

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the OSC at www.osc.gov.on.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.

PART 6 – Questions

If you have any questions, please contact any of the CSA staff listed below.

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ANNEX A

Proposed Amendments to National Instrument 14-101 *Definitions*

1. *National Instrument 14-101 Definitions is amended by this Instrument.*

2. *Subsection 1.1(3) is amended by*

(a) replacing the definition of “Canadian financial institution” with the following:

“Canadian financial institution” means

- (a) a bank listed in Schedule I or II to the *Bank Act (Canada)*;
- (b) a body corporate to which the *Trust and Loan Companies Act (Canada)* applies;
- (c) an association to which the *Cooperative Credit Associations Act (Canada)* applies;
- (d) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act (Canada)*;
- (e) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a jurisdiction;
- (f) a credit union, central credit union, caisse populaire, financial services cooperative or credit union league or federation that is incorporated or otherwise authorized to carry on business by or under an Act of the legislature of a jurisdiction; or
- (g) a treasury branch established and regulated by or under an Act of the legislature of a jurisdiction; **and**

(b) replacing the definition of “Handbook” with the following:

“Handbook” means

- (a) the Chartered Professional Accountants of Canada Handbook - Accounting, as amended from time to time, and
- (b) the Chartered Professional Accountants of Canada Handbook - Assurance, as amended from time to time; .

3. This Instrument comes into force on ●, 2022.

ANNEX B

**Proposed Amendments to National Instrument 31-103 Registration Requirements,
Exemptions and Ongoing Registrant Obligations**

1. *National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.*
2. *Section 1.1 is amended by repealing the definition of “Canadian financial institution”.*
3. *Subparagraph 8.19(2)(a)(iii) is repealed.*
4. This Instrument comes into force on ●, 2022.

ANNEX C

Proposed Amendments to National Instrument 45-106 *Prospectus Exemptions*

1. *National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.*
2. *Section 1.1 is amended by repealing the definitions of “bank” and “Canadian financial institution”.*
3. *Paragraph 2.43(a) is amended by*
 - (a) adding “or” after subparagraph (i),*
 - (b) replacing “or,” in subparagraph (ii) with “and”, and*
 - (c) repealing subparagraph (iii).*
4. This Instrument comes into force on ●, 2022.

ANNEX D

Proposed Amendment to National Instrument 62-103 *Early Warning System and Related Take-Over Bid and Insider Reporting Issues*

1. ***National Instrument 62-103 Early Warning System and Related Take-Over Bid and Insider Reporting Issues*** is amended by this Instrument.
2. ***Subsection 1(1)*** is amended in the definition of “financial institution” by
 - (a) deleting “or” at the end of paragraph (b),
 - (b) adding “or” at the end of paragraph (c),
 - (c) replacing “Northern Ireland;” with “Northern Ireland,” at the end of paragraph (c),
and
 - (d) adding the following paragraph in the definition of “financial institution”:
(d) a bank listed in Schedule III of the *Bank Act* (Canada);
3. This Instrument comes into force on ●, 2022.

ANNEX E

Proposed Amendment to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*

1. *National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions is amended by this Instrument.*
2. *Section 1.(1) is amended by repealing the definition of “Canadian financial institution”.*
3. This Instrument comes into force on ●, 2022.

ANNEX F

Ontario Local Matters

The main body of this Notice explains the substance and purpose of the Proposed Amendments, which also applies for the purposes of this Annex. The OSC is also seeking comment on the proposed amendments in Schedules 1 and 2 of this Annex (the “**Proposed Ontario Local Amendments**”). See also the Regulatory Impact Analysis in Annex F.1 to this Notice.

The proposed amendments in Schedule 1 of this Annex repeal related local definitions that are not used in the regulations.

The proposed amendments in Schedule 2 of this Annex repeal the definition of “Canadian financial institution” in Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* because it would no longer be necessary in light of the revised definition of “Canadian financial institution” in NI 14-101.

Rule-Making Authority

The rule-making authority for changes related to the definition of “Canadian financial institution” consists of the following provisions of the *Securities Act* (Ontario) (the **Ontario Act**):

- Paragraph 143(1)1 of the Ontario Act
- Paragraph 143(1)2 of the Ontario Act
- Paragraph 143(1)1.3 of the Ontario Act
- Paragraph 143(1)8 of the Ontario Act
- Paragraph 143(1)15 of the Ontario Act
- Paragraph 143(1)17 of the Ontario Act
- Paragraph 143(1)20 of the Ontario Act
- Paragraph 143(1)28 of the Ontario Act
- Paragraph 143(1)31 of the Ontario Act
- Paragraph 143(1)35 of the Ontario Act

The rule-making authority for changes related to the definition of “Handbook” is paragraph 143(1)25 of the Ontario Act.

Schedule 1

Proposed Amendments to Ontario Securities Commission Rule 14-501 *Definitions*

1. *Ontario Securities Commission Rule 14-501 Definitions is amended by this Instrument.*
 1. *The definitions of “financial intermediary” and “Ontario financial institution” in subsection 1.1(2) are repealed.*
 2. These amendments come into force on ●, 2022.

Schedule 2

**Proposed Amendments to Ontario Securities Commission Rule 45-501
*Ontario Prospectus and Registration Exemptions***

1. *Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.*
2. *The definition of “Canadian financial institution” is repealed.*
3. Section 2 comes into force on ●, 2022.

ANNEX F.1

Regulatory Impact Analysis of the Proposed Amendments

A. Overview

As discussed in the CSA Notice and Request for Comment *Proposed Amendments to National Instrument 14-101 Definitions and Consequential Amendments*, the CSA/OSC is proposing to make two central definitional amendments to NI 14-101 for uniformity and clarity purposes, and related consequential changes across certain CSA national instruments and OSC local rules:

- Canadian financial institution: the CSA/OSC is proposing to amend NI 14-101, and make consequential amendments to other instruments, so that there is a uniform definition of “Canadian financial institution” that applies to all national and multilateral instruments as well as local rules. The proposed consequential amendments would repeal existing definitions of the same expression contained in other national instruments and local rules.
- Handbook: We are proposing an amendment to NI 14-101 to introduce a revised definition of “Handbook” to reflect the separate publications of the Chartered Professional Accountants of Canada that relate to accounting and assurance. These publications set out the Canadian accounting and assurance frameworks.

B. Rationale for intervention

The proposed amendments to the definition of Canadian financial institution were initiated as a result of comments received for the CSA project on proposed NI 93-101, which suggested that an update be made to the definition of “Canadian financial institution” used in that proposed instrument. CSA staff studied this matter and concluded that the preferred approach would be to have a common definition in NI 14-101 of “Canadian financial institution” for all CSA instruments and local rules, and to repeal definitions of a similar expression elsewhere in those instruments and rules, as necessary.

The proposed amendments to the definition of “Handbook” were identified by CSA staff when the Chartered Professional Accountants of Canada separated the Handbook into two publications, at which time it was determined that these proposed amendments would be published for comment when other amendments to NI 14-101 were published. CSA staff determined that it is appropriate to publish the proposed amendments to the definition of “Handbook” concurrently with the proposed amendments to the definition of “Canadian financial institution.”

C. Proposed intervention

Currently, the NI 14-101, and other instruments and rules, as identified below) include definitions of “Canadian financial institution” and other definitions of the same expression which are not uniform. The definitions also include the following attributes that would benefit from amendment:

- in NI 14-101, the definition includes a reference to a Schedule III bank, which is a foreign bank. Intuitively, a Schedule III bank should not be included in a definition for a *Canadian* financial institution;
- in some cases, the definitions are not yet reflective of amendments to the *Cooperative Credit Associations Act* (Canada); and
- in some cases, the definitions do not comprehensively refer to all types of relevant financial institutions (i.e. central credit unions, financial services cooperatives, credit union leagues or federations that are incorporated or otherwise authorized to carry on business by or under an Act of the legislature of a jurisdiction).

Rules in which “Canadian financial institution” and related expressions of the term appear include:

- NI 14-101;
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- National Instrument 45-106 *Prospectus Exemptions*;
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*;
- National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*;
- OSC Rule 14-501 *Definitions*; and
- OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

Currently, the definition of “Handbook” in NI 14-101 does not reflect that publications of the Chartered Professional Accountants of Canada that relate to accounting and assurance are separated.

Upon adoption of the proposed amendments, a single definition of “Canadian financial institution” and “Handbook” would be used within NI 14-101 and across all relevant CSA national instruments and OSC local rules, in which these terms, or similar iterations, are presently used.

D. Stakeholders affected by the proposed rule

Given that the definitions proposed to be amended are utilized in multiple rules, which are applicable to different kinds of market participants, the stakeholders for this project can generally be understood to include any member of the public or market participant making use of or adhering to an applicable CSA or OSC local rule.

As noted above, in respect of the proposed changes to the definition of Canadian financial institution definition, it was in response to comments we received for the CSA project on proposed NI 93-101 from financial institution industry associations (specifically, the Canadian Credit Union Association, Japanese Bankers Association) and other market participants interested in derivatives regulatory reform (i.e. the International Swaps and Derivatives Association and Canadian Market Infrastructure Committee) which led to the present project. Our view is that such stakeholders would benefit from enhanced uniformity and clarity as it relates to the use of the term and

associated concepts. The revised definition would not change the scope of entities covered by the rules.

E. Benefits of the proposed rule

The proposed amendments clarify and simplify the use of the expressions “Canadian financial institution” and “Handbook”. Adopting a single uniform definition of “Canadian financial institution” will benefit market participants by addressing the potential uncertainty and complexity of the term being subject to different definitions in different instruments. The amendments to the definition of Handbook are beneficial insofar as they will make the definition more precise and accurate.

Collectively, the proposed amendments deliver responsive changes and are consistent with the spirit of the measures proposed in the Reducing Regulatory Burden In Ontario’s Capital Markets and the Capital Markets Modernization Taskforce reports, as they seek to enhance clarity and consistency within securities regulatory rules and regulations, thereby reducing the potential for interpretational challenges and easing the ability to do business in Ontario.

These changes may result in a small cost saving insofar as they will increase harmonization and reduce regulatory burden, thereby saving market participants time by making the relevant provisions clearer and easier to understand.

F. Costs of the proposed rule

We do not anticipate any corresponding material costs (initial or ongoing) associated with making these amendments.

G. Risks and uncertainties

We do not foresee any risks or unintended consequences as a result of the proposed amendments.

H. Alternatives considered

No alternatives to rule-making were considered.